

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	222
Land:	Bangladesh
Kilde:	UNHCR
Titel:	Good Practices Paper - Action .1 Resolving Existing Major Situations of Statelessness
Udgivet:	23. februar 2015
Optaget på baggrundsmaterialet:	14. marts 2016

Resolving Existing Major Situations of Statelessness

UNHCR is publishing a series of Good Practices Papers to help States, with the support of other stakeholders, achieve the goals of its Campaign to End Statelessness within 10 Years. These goals are to:

Resolve the major situations of statelessness that exist today

Prevent the emergence of new cases of statelessness

Improve the identification and protection of stateless populations

Each Good Practices Paper corresponds to one of the 10 Actions proposed in UNHCR's *Global Action Plan to End Statelessness: 2014 - 2024* and highlights examples of how States, UNHCR and other stakeholders have addressed statelessness in a number of countries. Solutions to the problem of statelessness have to be tailored to suit the particular circumstances prevalent in a country. As such, these examples are not intended to serve as a blueprint for strategies to counter statelessness everywhere. However, governments, NGOs, international organizations and UNHCR staff seeking to implement the *Global Action Plan* will be able to adapt the ideas they find in these pages to their own needs.

Background

Action 1 of the *Global Action Plan* calls on States to resolve the major situations of statelessness that exist today. Many large-scale and protracted situations of statelessness trace their origins to the time of a State's creation, when particular groups of individuals were excluded from the initial body of citizens or subsequently deprived of their nationality for discriminatory reasons. To be successful, strategies to resolve such situations often require UNHCR and its partners to advocate in a sustained manner for changes to legislation and policies. UNHCR can also provide technical advice on how such changes can be made.

Some States have resolved situations in which large numbers of people are stateless by amending the rules for acquisition of nationality so that stateless persons are automatically considered nationals, provided that they fulfil specific objective criteria that demonstrate their strong links to the country. Most commonly, these criteria cover stateless individuals born in the territory or resident there before a specific date (or who are descended from such persons). This is usually the most effective way to resolve large-scale statelessness, as it does not require the individuals concerned to take any action to acquire a nationality. However, procedures do need to be in place to ensure that these individuals can acquire documents that prove they are nationals.

Other States have used non-automatic acquisition procedures. These include procedures where nationality is only acquired upon application (but where grant of nationality is non-discretionary) or naturalization (which is normally a discretionary procedure). Non-automatic procedures are generally a less effective way to resolve statelessness because they require the person concerned to apply for nationality. For various reasons, including lack of information about the right to apply and the related procedures, or due to problems of physical access or poverty, some stateless persons may not be able to benefit from such procedures. Naturalization procedures usually give government authorities the discretion to reject applicants and may in some cases also lead to unreasonable delays in the grant of nationality.

States that are party to the 1954 Convention relating to the Status of Stateless Persons are required to help stateless persons become naturalized citizens. They can do so, for example, by creating expedited procedures, charging low fees and reducing residence or other requirements.¹

Where States are willing to end Statelessness but lack the capacity to do so, UNHCR can help, usually in coordination with national authorities and civil society, and sometimes regional organizations or UN partners. Such assistance could include:

- filling capacity gaps in administrative procedures
- raising awareness through public information campaigns
- providing legal advice to stateless individuals and guidance on how to access procedures
- supporting community outreach and mobile teams to ensure that stateless persons have access to nationality procedures and documents
- strengthening integration efforts, national-reconciliation activities and confidence-building initiatives

Below are highlighted some key elements in the successful resolution of major situations of statelessness in certain countries.

LAW OR POLICY REFORM ENABLING AUTOMATIC ACQUISITION OF NATIONALITY

■ Sri Lanka – statelessness following migration and State succession

Stateless Hill Tamils acquired nationality through law reform. A concerted nationality campaign helped almost 200,000 members of the community to acquire proof of their new nationality.

■ Bangladesh – statelessness following migration and State succession

Statelessness among members of the Urdu-speaking, or “Bihari”, community was resolved after Government policy was changed to accommodate a High Court ruling that recognized this group as nationals.

■ Kyrgyzstan – gradual resolution of statelessness following State succession

Implementation of an innovative citizenship law has led to rapid progress in resolving statelessness among former Soviet citizens and more recent arrivals.

¹ See Article 32 of the Convention.

LAW REFORM ENABLING ACQUISITION OF NATIONALITY BY REGISTRATION

■ **Brazil – statelessness caused by a legal obstacle to acquisition of nationality by children born to nationals abroad**

A sustained campaign by civil society, the media and politicians resulted in constitutional reform which enabled stateless children born abroad to Brazilian parents to acquire Brazilian nationality upon registration at a Brazilian consulate. The reform also prevents new cases of statelessness.

ACQUISITION OF NATIONALITY THROUGH NATURALIZATION

■ **Russian Federation – statelessness following State succession**

Implementation of legal and administrative reforms has facilitated the naturalization of hundreds of thousands of stateless former Soviet citizens.

■ **Turkmenistan – statelessness following State succession**

A Government-led registration campaign verified the nationality status of undocumented former Soviet citizens living in the country. This has paved the way for the naturalization of those who are stateless, with gradual processing of their cases and grant of nationality by decree.

■ **Viet Nam – statelessness of a former refugee population and among Vietnamese women married to foreigners**

Reform of the nationality law and adoption of an operational plan involving action by national and local authorities allowed for the naturalization of stateless former Cambodian refugees. Reforms to the nationality law also sought to address the situation of women who became stateless following marriage to a foreign national.

COMMON THEMES IN ALL RESPONSES TO ADDRESS MAJOR STATELESSNESS SITUATIONS

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

Law or policy reform enabling automatic acquisition of nationality

Sri Lanka

- **Political awareness** that statelessness persisted in the Hill Tamil community in Sri Lanka helped to spur reforms.
- **A new law in 2003 provided for the automatic grant of nationality** to some individuals and the chance to acquire **nationality by declaration** to others, with **facilitated procedures** for the acquisition of proof of nationality.
- **UNHCR collaborated with the Government of Sri Lanka and the Ceylon Workers Congress** to launch a **nationality campaign** that resulted in the **distribution of documentation** confirming Sri Lankan nationality to 190,000 Hill Tamils.
- Key elements of the nationality campaign included **extensive awareness-raising and media outreach** in local languages. A corps of volunteers was trained to conduct the campaign, while **mobile clinics** were deployed to **provide legal advice** to the affected populations and **collect application forms** for processing by the Government.
- **UNHCR and a broad range of stakeholders undertook follow-up activities** to ensure Hill Tamils received documentation confirming their Sri Lankan citizenship and to promote their social and economic integration into Sri Lankan society.
- Greater awareness of statelessness resulted in more **legislative reform** aimed at reducing statelessness among other groups in Sri Lanka.

Statelessness among the Hill Tamils

Sri Lanka presents one of the best examples of how legal and policy reform, combined with a citizenship campaign, can resolve a long-standing situation of statelessness in a short time.

The stateless population in Sri Lanka consisted mainly of individuals descended from labourers brought over from India by the British between 1820 and 1840 to work on tea plantations. They are commonly referred to as “Tamils of Recent Indian Origin” or “Hill Tamils.” The majority of Hill Tamils have continued to live and work in tea plantation

areas, though some have been displaced to northern parts of Sri Lanka as a result of the waves of conflict that have shaken Sri Lanka since the 1980s.

Shortly after Sri Lanka (then called Ceylon) gained its independence, the 1948 Ceylon Citizenship Act and the 1949 Indian and Pakistani Residents Act were passed. Both laws discriminated against the Hill Tamils. The Ceylon Citizenship Act required that those born before independence prove that two generations of their families had been born in Sri Lanka. Furthermore, the Indian and Pakistani



Indian origin Tamil plantation workers meet with UNHCR staff on Bopitiya Estate, Deltota, Sri Lanka.
© UNHCR / G. Amarasinghe

Residents Act required a seven- or 10-year period of uninterrupted residence, respectively, and a specific level of income for an individual to qualify for citizenship. The Hill Tamils could not meet these requirements, rendering them stateless.

A census conducted in 1964 estimated there were 168,000 Hill Tamils without citizenship. Two agreements were reached with India (in 1964 and 1974) to address statelessness among the Hill Tamils. Under the agreements, Sri Lanka would grant citizenship to 375,000 Hill Tamils, while India would grant citizenship to 600,000 members of the community and repatriate them. A total of 506,000 people applied for Indian citizenship and 470,000 applied to become Sri Lankan citizens.

However, implementation of these agreements was slow and incomplete. Many of those who applied for Sri Lankan citizenship did not receive any documentation confirming their nationality. As for those who applied for Indian citizenship, by 1982 there were 86,000 applications still pending with the Indian authorities, while 90,000 Hill Tamils who had been issued with Indian passports had not left Sri Lanka. In 1982, India informed Sri Lanka that the implementation periods for the 1964 and 1974 agreements had elapsed and it was no longer required to process claims for citizenship by and repatriation of Hill Tamils who remained in Sri Lanka. Although Sri Lanka disputed this claim, the last Hill Tamil to be repatriated to India left in 1984, whereupon India no longer considered any Hill Tamils in Sri Lanka as possessing Indian nationality.

Law reform automatically granting Sri Lankan nationality to Hill Tamils

STEPS IN THE 1980s:

As many of the Hill Tamils remained stateless and had few options but to continue working on tea plantations, the Ceylon Worker's Congress (CWC), an organization that is both a trade union and a political party, took up their cause. The CWC began advocating for legal reforms to resolve the Tamils' statelessness, leading in the 1980s to the adoption of a series of laws to address the problem.

A first step was achieved with the Grant of Citizenship to Stateless Persons Act, No. 5 of 1986 (1986 Act).² The Act granted the right to acquire Sri Lankan citizenship through registration to two groups: those who should have acquired Sri Lankan citizenship pursuant to the bilateral agreements, but had not done so; and 94,000 persons who were originally to apply for Indian citizenship under the bilateral agreements, but had also not done so. Citizenship by registration could only be granted by the Minister to applicants who took an oath, which had to be registered, and to whom a certificate of registration confirming compliance with the procedure was given. The complexity of this process prevented many who were qualified to acquire citizenship from doing so.

The 1986 Act was followed by the Grant of Citizenship to Certain Stateless Persons (Special Provisions) Act, No. 39 of 1988 (1988 Act).³ The 1988 Act granted automatic Sri Lankan citizenship (as opposed to citizenship by registration) to all stateless persons of Indian origin lawfully residing in Sri Lanka who were not covered by the 1986 Act. Pursuant to the 1988 Act, those qualifying for automatic Sri Lankan citizenship were to apply for and obtain a citizenship certificate from the Commissioner for the Registration of Persons of Indian Origin.

Despite the positive steps taken to resolve statelessness through the 1986 and 1988 acts, implementation of these laws remained problematic, particularly in light of the complicated registration process set out in the 1986 Act and the cumbersome process of obtaining citizenship certificates set forth in the 1998 Act. The CWC and some community groups continued to advocate for an end to the plight of the stateless Hill Tamils in Sri Lanka, who in 2003 were estimated to number some 300,000.

STEPS IN 2003:

A new law to resolve statelessness among the Hill Tamils was passed in 2003. According to the Grant of Citizenship to Persons of Indian Origin Act, No. 153 of 2003 (2003 Act),⁴ all persons of Indian origin who had been residing in Sri Lanka since October 1964 and their descendants were recognized as Sri Lankan nationals. Learning from the difficulties experienced in the implementation of the 1986 and 1998 Acts, the 2003 Act granted nationality on an automatic basis and introduced streamlined procedures for Hill Tamils to acquire proof of nationality. Furthermore, under the 2003 Act, Sri Lankan citizenship could be acquired by declaration by Hill Tamils who had received Indian passports but had continued to live in Sri Lanka and were no longer considered nationals of India.

As such, the 2003 Act established two simplified procedures for those who qualified as Sri Lankan citizens to obtain proof of this fact. Hill Tamils who never possessed any citizenship documents could make a "general declaration," countersigned by a justice of the peace, as proof of their citizenship, rather than go through the lengthy process of obtaining citizenship certificates as prescribed by the 1988 Act. Hill Tamils who held Indian passports were required to sign a "special declaration" affirming their will to voluntarily acquire Sri

² Grant of Citizenship to Stateless Persons Act, No. 5 of 1986 [Sri Lanka], 21 February 1987, available at: <http://www.unhcr.org/refworld/docid/3ae6b5081c.html>.

³ Grant of Citizenship to Stateless Persons (Special Provisions) Act, No. 39 of 1988 [Sri Lanka], 11 November 1988, available at: <http://www.unhcr.org/refworld/docid/3ae6b5084.html>.

⁴ Grant of Citizenship to Persons of Indian Origin Act, No. 153, [Sri Lanka], 153, 23 September 2003, available at: <http://www.unhcr.org/refworld/docid/45af77952.html>. This Act was accompanied by a separate legislative measure applying the provisions of this law as amendments to the 1948 Citizenship Act, Citizenship (Amendment) Act, No. 16 of 2003 [Sri Lanka], No. 16 of 2003, 1 April 2003, available at: <http://www.unhcr.org/refworld/docid/4e6625b92.html>.

Lankan citizenship, thereby renouncing any possible outstanding right to Indian citizenship. This was required because dual nationality is not permitted by India. These special declarations were to be countersigned by the Commissioner for the Registration of Persons of Indian Origin in Colombo and an acknowledgement of this approval returned to the individual concerned.

Hill Tamil nationality campaign

The successful reduction of statelessness among the Hill Tamils was due not only to the adoption of laws, such as the 2003 Act, but also to the readiness of the Sri Lankan Government to work with UNHCR, the CWC and Hill Tamil community organizers. Pursuant to its statelessness mandate, UNHCR approached the Sri Lankan Government while the legislative reform process was underway, offering technical as well as logistical assistance to provide citizenship documentation to Hill Tamils. Together, the CWC and UNHCR designed a nationality campaign, including a scheme to deploy volunteers to the plantation areas to collect applications for citizenship documentation. This plan was approved by the Sri Lankan Government and funded in large part by UNHCR.

UNHCR and the CWC deployed 50 mobile clinics to tea plantation areas, distributing and collecting the relevant forms from Hill Tamils who wished to make either a “general declaration” or “special declaration” for the appropriate counter-signature or acknowledgement of the Government. The campaign began in late November 2003, with a nationwide media drive using the major Tamil-, Sinhala- and English-language newspapers as well as television and radio to explain the law and inform the public about the mobile clinics.

UNHCR and the CWC also trained 500 volunteers who had signed up to assist with the mobile clinics. A one-day workshop was held to brief them on statelessness, the history of Sri Lankan nationality laws since 1948 and the eligibility criteria for citizenship under the 2003 Act. The volunteers were also coached on how to answer the questions that would commonly arise and complete and register the relevant forms. Teams of at least six volunteers, each with a designated leader, were established for each of the 50 mobile clinics. Each team leader had to be fluent in Sinhala and Tamil, as well as basic English, and received special training.

The 10-day nationality campaign began on 1 December 2003 with the opening of the 50 mobile clinics in tea-plantation areas. The campaign encountered some challenges in producing the large number of application forms needed and in ensuring that photocopying, stamping and registration systems were fully functional at all the 50 mobile clinics. Another problem was the refusal of some tea-plantation managers to allow their workers to leave their jobs to attend the mobile clinics. To reach as many of these workers as possible, campaign volunteers set up clinics on the outskirts of plantations and worked overtime, including on weekends.

The nationality campaign was successful in processing, registering and providing documentation confirming the Sri Lankan citizenship of 190,000 Hill Tamils. Of this number, 72,000 were Hill Tamils with expired Indian passports who had to make a “special declaration,” facilitated by the nationality campaign. The rest were Hill Tamils who had never previously possessed any citizenship.

Although extremely effective, the December 2003 campaign was unable to deploy to all tea plantation areas. It was also unable to reach areas in northern and eastern Sri Lanka to approach the approximately 10,000 Hill Tamils who had been displaced from the plantation areas. To remedy this, UNHCR launched a supplementary small-scale nationality campaign in the north and east of Sri Lanka in 2004. This followed the successful model of first launching a media campaign and training volunteers before deploying mobile units in government offices in designated areas to reach the concerned individuals. Approximately 700 Hill Tamils were registered and granted proof of nationality under this programme before the December 2004 tsunami halted the operation.

Resolving the remaining statelessness gaps in Sri Lanka

UNHCR not only deployed protection officers to monitor how the campaign unfolded in 2003 and 2004, but also conducted an evaluation in 2006 to examine the impact of the campaign. This revealed that proof of their newly acquired Sri Lankan citizenship allowed many Hill Tamils to receive national identification cards and open bank accounts. However, Hill Tamils who had not received nationality documentation as part of the 2003-2004 campaign but had approached the Sri Lankan Government for citizenship documents reported that they were still required to give a statement or oath pursuant to the requirements of the 1988 Act, despite these requirements having been superseded by the automatic acquisition procedure under the 2003 Act. Furthermore, some Hill Tamils reported that they were discriminated against by the authorities when they tried to obtain birth certificates.

Although the change in law and policy ensured that Hill Tamils acquired Sri Lankan nationality, more efforts were required to overcome discriminatory attitudes towards the community, including projects to promote their economic and social development and integration into Sri Lankan society. The 2003-2004 nationality campaigns raised awareness among other UN actors and NGOs of the need to assist the Hill Tamils, and UNHCR has collaborated with these stakeholders on a number of projects. One example is a 2007 initiative with the Government of Sri Lanka and UNDP's Access to Justice Project that aims to provide nationality and other civil-registration documents through mobile clinics.

Efforts by UNHCR to map other statelessness issues in Sri Lanka and the Sri Lankan Government's greater awareness of statelessness led to the passing of two new laws granting Sri Lankan nationality to two additional stateless groups. First, the Grant of Citizenship to Persons of Chinese Origin (Special Provisions) Act, No. 38 of 2008⁵ provided for automatic acquisition of Sri Lankan nationality by individuals of Chinese origin who had been permanent residents of Sri Lanka since 1948 and their descendants. Second, the Grant of Citizenship to Stateless Persons (Special Provisions) (Amendment) Act, No. 5 of 2009⁶ amended the 1988 Act to allow stateless persons of Indian origin who fled Sri Lanka and have lived in refugee camps in India since the 1980s, but who would otherwise have qualified for Sri Lankan nationality, to acquire it.

⁵ Grant of Citizenship to Persons of Chinese Origin (Special Provisions) Act, No. 38 of 2008 [Sri Lanka], No. 38 of 2008, 31 October 2008, available at: <http://www.unhcr.org/refworld/docid/4c5170452.html>.

⁶ Grant of Citizenship to Stateless Persons (Special Provisions) (Amendment) Act, No.5 of 2009 [Sri Lanka], No.5 of 2009, 29 July 2010, available at: <http://www.unhcr.org/refworld/docid/4c515bfe2.html>.

Bangladesh

- Statelessness affecting the Urdu-speaking minority was resolved as a result of sustained **community-based advocacy, a successful litigation strategy and lobbying for the implementation of court decisions** upholding the Bangladeshi citizenship of this group.
- National advocacy was bolstered by **increasing pressure from the international community** to reduce statelessness among the Urdu-speakers.
- **UNHCR played an important liaison role** between national campaigners, the international community and the Government of Bangladesh. UNHCR's **awareness-raising activities** encouraged other UN actors, including the UN Country Team, to work to reduce statelessness among the Urdu-speakers.
- **A landmark High Court ruling** and a favourable political environment led to the **prompt implementation** of the court's decision and the **allocation of resources** to ensure that Urdu-speakers were registered in the voter rolls and received national identification cards.

Statelessness among the Urdu-speakers

The Urdu-speaking community of Bangladesh, also known as the “Biharis”, is a linguistic minority that was excluded from the body of citizens upon the creation of the independent State of Bangladesh in 1971. The Urdu-speakers comprise individuals who emigrated from India at the time of partition to settle in the then East Pakistan, as well as their descendants. During Bangladesh's Liberation War, some Urdu-speakers sided with Pakistan. As a result, all Urdu-speakers in Bangladesh faced violence and were forced to convene in camps run by the International Committee of the Red Cross. Whereas some 100,000 Urdu-speakers were repatriated to Pakistan,⁷ more than 100,000 remained, mostly in the camps, which turned into permanent settlements. The community then entered a cycle of poverty and exclusion from mainstream Bangladeshi society. By 2006, it was estimated that there were 151,000 Urdu-speakers in 116 camps and settlements in

Bangladesh, with approximately 100,000 additional Urdu-speakers living outside camps throughout the country.

Although the Urdu-speakers qualified for Bangladeshi citizenship pursuant to the relevant laws in force,⁸ in practice, from 1971-2008, the Bangladeshi authorities refused to consider the remaining Urdu-speakers in Bangladesh as its nationals. Urdu-speakers were systematically excluded by the Government from exercising many of the rights accorded to Bangladeshi citizens, including national identity documents and education, as well as other basic services.

The fact that the Urdu-speaking community was entitled to Bangladeshi citizenship by law but denied it in practice meant that any change in the situation would require a fundamental shift in Government

⁷ Only a portion of Urdu-speakers who registered to repatriate to Pakistan were eventually repatriated pursuant to tripartite agreements between India, Pakistan and Bangladesh in 1973 and 1974.

⁸ According to the Adaptation of Existing Bangladesh Laws Order of 1972, all pre-existing laws were to remain in force, meaning that the Pakistani Citizenship Act of 1951 governs nationality. This law confers Bangladeshi citizenship on every person born in Bangladesh after independence or born to a father who is a citizen of Bangladesh. Further, the Bangladesh Citizenship (Temporary Provisions) Order of 1972, also known as the President's Order, confirmed as Bangladeshi citizens all those who were resident in Bangladesh at the time of independence and continued to reside in Bangladesh, without any ethnic or linguistic distinctions, in addition to those who were born in Bangladesh or whose father or grandfather was born there. Please see Pakistan Citizenship Act, 1951 (Bangladesh) [Bangladesh], II of 1951, 13 April 1951, available at: <http://www.unhcr.org/refworld/docid/3ae6b52a8.html>; and Bangladesh Citizenship (Temporary Provisions) Order, 1972 [Bangladesh], 149 of 1972, 26 March 1971, available at: <http://www.unhcr.org/refworld/docid/3ae6b51f10.html>.



A young Urdu-speaking girl in Dhaka, Bangladesh. ©UNHCR / G.M.B. Akash

policy. But progress on this issue was hampered by divided loyalties among members of the community and differences over the appropriate solution to end their statelessness.⁹ Meanwhile, members of the younger generation of Urdu-speakers in Bangladesh began to emerge from the camps and integrate into Bangladeshi society. Some did so by learning to speak Bangla and expending their scarce resources to obtain an education from private institutions. The younger generation also formed several community-based NGOs.¹⁰

Community-driven strategic litigation to prompt systemic policy change

The younger generation of Urdu-speaking activists decided to pursue strategic litigation to confirm the right of Urdu-speakers to Bangladeshi citizenship. In the first landmark case, *Khan v. Bangladesh* (2003)¹¹ (2003 Khan case), 10 Urdu-speakers petitioned the Bangladesh Supreme Court, High Court Division (High Court) to direct the Election Commission of Bangladesh to register them as voters. The petitioners claimed that not only had they been denied the right to register to vote in forthcoming elections despite being citizens, two Government authorities named as respondents in their case had informed them verbally that Urdu-speaking Geneva Camp residents were categorically not entitled to vote in Bangladesh. In a decision handed down on 5 May 2003, the High Court ruled that the petitioners were Bangladeshi citizens as a matter of law, were entitled to be registered as Bangladeshi voters, and ordered the Election Commission to enrol them as such.

⁹ For example, community members of the older generation of Urdu-speakers formed the Stranded Pakistanis General Repatriation Committee (SPGRC) and continued to advocate that their community be allowed to repatriate to Pakistan. After Pakistan's initial acceptance of the 109,000 in 1973, Pakistan lost interest in the repatriation of any more Urdu-speakers from Bangladesh.

¹⁰ For example, the Association of Young Generation of Urdu-Speaking Community (AYGUSC) worked with the Dhaka-University based Refugee and Migratory Movement Research Unit to support its advocacy by providing historical and sociological background on the development of the Urdu-speaking community and its integration in Bangladesh. See Saad Hamadi, *Bangladeshi at Last*, October 2007, available at: <http://www.himalmag.com/component/content/article/1310-Bangladeshi-at-last.html>.

¹¹ *Abid Khan and others v. Government of Bangladesh and others*, Writ Petition No. 3831 of 2001, Bangladesh: Supreme Court, 5 March 2003, available at: <http://www.unhcr.org/refworld/docid/4a54bbcf0.html>.

While the 2003 *Khan* case was an important milestone, it failed to transform Government policy on a systemic basis for all Urdu-speakers. The High Court's decision was limited to determining the citizenship status and right to register as voters of the 10 petitioners who participated in the case. This decision joined a series of prior legal decisions that upheld the Urdu-speakers' right to Bangladeshi citizenship as a matter of law but had not been implemented with respect to the whole population.¹²

As Bangladesh began to prepare for elections in 2007, the Election Commission registered some Urdu-speakers who had integrated into Bangladeshi society to vote as Bangladeshi nationals, but continued to systematically avoid approaching Urdu-speakers living in the long-established camps and settlements, thereby perpetuating the Government's policy of not considering these Urdu-speakers as Bangladeshi nationals. In 2007, political tensions resulted in the declaration of a state of emergency and the creation of a caretaker Government, which pledged to ensure meaningful elections.

The political stalemate that delayed the elections presented another opportunity for a group of Urdu-speakers to go to court to seek a wider ruling that would benefit the Urdu-speaking community at large, particularly the camp-based population. In the case of *Khan v. Election Commissioner* (2008)¹³ (2008 *Khan* case), a group of 11 Urdu-speaking petitioners residing in two camps in Dhaka filed another petition with the High Court. The petitioners presented evidence that the Election Commission had adopted a policy of not enrolling camp-based Urdu-speakers. The court ruled in the petitioners' favour. It directed the Election Commission to enrol not only the petitioners as Bangladeshi citizens eligible to vote, but also all adult Urdu-speaking people living in camps in Bangladesh. The court also urged the Commission to provide these individuals with national identity cards without delay.

The resolution of the statelessness status of the Urdu-speakers of Bangladesh was achieved at a time of political transition in the country. The formation of a caretaker Government in 2007 presented an opportune moment for the authorities to move beyond entrenched prejudice against the Urdu-speaking community. It was in this environment that the 2008 *Khan* case was pursued in court alongside direct advocacy with the Government by national NGOs and community organizations.

Multi-level advocacy to implement the decision in the 2008 *Khan* case

Though strategic litigation in the courts played a catalytic role in resolving the statelessness status of the Urdu-speaking community of Bangladesh, the eventual reform of policy that allowed the Supreme Court's ruling to be implemented was the result of advocacy by community-based and national actors, as well as the international community.

Following the decision in the 2003 *Khan* case, UNHCR boosted its efforts to encourage policy reform as a means of tackling statelessness among the Urdu-speakers of Bangladesh. By 2005, UNHCR had approached the Government for discussions on how to uphold the nationality rights of the Urdu-speaking communities. UNHCR also worked with its UN sister agencies and the diplomatic community in Bangladesh to highlight the plight of the stateless Urdu-speakers. This resulted in a coordinated UN inter-agency approach designed to assist the Urdu-speaking community. The UN Resident Coordinator and UNDP Resident Representative gave priority to assisting the stateless Urdu-speakers in the UN Country Team's goals for 2005 and 2006. Meanwhile, UN Habitat and UNICEF implemented projects to improve housing and child protection among Urdu-speaking communities.

¹² The Supreme Court in *Khan v. Bangladesh* (2003), for example, cited the case of *Mukhtar Ahmed v. Bangladesh* from 1977, which considered the Bangladeshi nationality status of an Urdu-speaker who had applied to relocate to Pakistan in the immediate aftermath of the creation of independent Bangladesh. In that case, the Court ruled that simply registering for relocation neither conferred Pakistani citizenship on an individual, nor extinguished the petitioner's acquisition of Bangladeshi nationality. The case of *Abdul Khlaque v. the Court of Settlement* (1992) upheld this ruling, while in another, *Bangladesh v. Professor Golam Azam* (1994), the Bangladeshi Appellate Court ruled that even an Urdu-speaker who was politically active as pro-Pakistan fell within Bangladesh's laws and was to be considered as a Bangladeshi national. The Bangladeshi Government consistently refused to translate these court decisions into a systemic policy recognizing the Bangladeshi nationality of the Urdu-speaking community.

¹³ *Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission*, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008, available at: <http://www.unhcr.org/refworld/docid/4a7c0c352.html>.

Furthermore, in 2006 UNHCR deployed a protection officer through the International Rescue Committee's Surge deployment programme to work full-time on the statelessness situation in Bangladesh. This deployee conducted a legal analysis of the citizenship status of the Urdu-speaking community, made recommendations on policy reform that would permit the Government to recognize the Urdu-speakers as Bangladeshi citizens, and collaborated with community-based NGOs to coordinate advocacy strategies. For example, UNHCR partnered with the NGO Al-Falah¹⁴ to conduct a survey of Urdu-speakers living in camps in order to tailor its recommendations to address the challenges these communities face.

Even before the 2008 *Khan* case was decided, the Government of Bangladesh had agreed (in September 2007) to give citizenship to Urdu-speaking Biharis born after 1971 or who were under 18 years of age on the date Bangladesh became an independent nation. In November 2007, a group of 23 eminent academics, journalists, lawyers and human rights activists made a joint statement urging the Government to offer citizenship rights in line with the country's Constitution to all Urdu-speakers in the camps. International advocacy organizations, such as Refugees International¹⁵ and Minority Rights Group International¹⁶ issued reports on the statelessness status of the Urdu-speakers, contributing to international awareness of the problem and increasing the pressure to resolve it.

2008 voter registration and national identity card distribution

The decision in the 2008 *Khan* case provided the final impetus for the transitional Bangladeshi Government to take concrete measures to recognize Urdu-speakers as Bangladeshi citizens. In August 2008, the Election Commission of Bangladesh began a campaign to register the Urdu-speaking communities in the camps and settlements around Bangladesh. Election Commission enumerators took voter registration forms door to door to reach as much of the Urdu-speaking community as possible. In this process, Urdu-speakers also acquired national identification cards, confirming alongside their voter registration their status as Bangladeshi citizens and their entitlement to State social services.¹⁷

¹⁴ For more information about Al-Falah's work, see their website, available at: <http://www.alfalah.com.bd>.

¹⁵ An overview of Refugees International's work on the Urdu-speakers of Bangladesh is available here: <http://www.refugeesinternational.org/where-we-work/asia/bangladesh>; of particular note is the Refugees International report, *Citizens of Nowhere: The Stateless Biharis of Bangladesh*, available at: <http://www.refugeesinternational.org/policy/in-depth-report/citizens-nowhere-stateless-biharis-bangladesh>.

¹⁶ Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Bangladesh: Biharis*, 2008, available at: <http://www.unhcr.org/refworld/docid/49749d58c.html>.

¹⁷ By the end of 2014, in line with the court judgments and the Government's change of policy, the overwhelming majority of the Urdu-speakers residing in Geneva Camp had acquired national identity cards or other documentation confirming their status as Bangladeshi citizens. A minority still consider themselves to be "Stranded Pakistanis" and have chosen not to apply for national identity cards despite their legal entitlement. The Council on Minorities, a community organization, reported that a small number of Geneva camp residents had faced difficulties in obtaining Bangladeshi passports or birth certificates for their children. This appears to be a localized problem unrelated to citizenship status and is not reported to be faced by members of the community who live outside Geneva Camp or in camps or settlements outside Dhaka. See Council of Minorities and Namati, *Realising Citizenship Rights: Paralegals in the Urdu-Speaking Community in Bangladesh*, 2014.

Kyrgyz Republic

- **The new citizenship law** in 2007 created several avenues for reducing statelessness, including through **recognition of stateless former USSR citizens as nationals, provided they could prove residence in Kyrgyzstan during the preceding five years**. The law also created a **simplified naturalization procedure** for individuals able to prove a link with Kyrgyzstan. Subsequent amendments expanded the criteria for persons who could benefit from these procedures so that statelessness among particular populations could be resolved.
- **UNHCR and its implementing partners conducted pilot surveys** to identify the prevalence and causes of statelessness in the country and to propose recommendations to resolve protracted cases.
- The surveys resulted in the **creation of an inter-ministerial process** to address statelessness, particularly through the convening of **annual High-Level Steering Meetings on the Prevention and Reduction of Statelessness and the adoption of a National Action Plan to Prevent and Reduce Statelessness**.
- At UNHCR's 2011 Ministerial Meeting, **Kyrgyzstan pledged to prevent and reduce statelessness** and continue working in that direction in accordance with the National Action Plan.
- **UNHCR provides capacity support** to Government agencies in charge of citizenship issues and processing applications for citizenship determination. **UNHCR also helps national NGOs** to pursue complementary projects aimed at providing **legal assistance, conduct community outreach**, provide inputs in law amendment processes and make other contributions to the prevention and reduction of statelessness.

Statelessness in the Kyrgyz Republic

As in other States formed since the dissolution of the Soviet Union, statelessness in Kyrgyzstan has persisted for more than two decades. The causes are migration between the former Soviet republics, particularly within Central Asia, problems with modernizing and simplifying the rules and facilities for providing legal residence and identity documentation, and differences in nationality laws among the countries of the region. Although the Law on Citizenship of the Kyrgyz Republic of 18 December 1993 (Citizenship Law) seemed to cast a wide net over those it recognized as Kyrgyz citizens,¹⁸ problems have arisen in practice, particularly among migrants from other former

Soviet republics who never formally acquired or confirmed their nationality with any State. The situation is compounded by gaps in the laws of some States in the region that can result in withdrawal of nationality when citizens reside abroad without registering with the consular authorities of the country of nationality. As a result, it is estimated that several tens of thousands of stateless persons and persons of undetermined nationality reside in Kyrgyzstan.¹⁹

In the early 1990s, Kyrgyzstan was one of the primary destinations for refugees from Tajikistan. These refugees also became stateless because they

¹⁸ The Citizenship law recognized the following as Kyrgyz citizens: anyone who had been a citizen of the former Soviet Kyrgyz Republic on 15 December 1990 (the date when the Declaration on State Sovereignty of the Kyrgyz Republic was adopted) and who had not declared possessing the citizenship of any other State; persons who acquired citizenship of the Kyrgyz Republic between 15 December 1990 and 18 February 1994 (the date the new Citizenship Law entered into force) and who had not subsequently lost it; and those who acquire Kyrgyz nationality through the provisions set forth in the 1993 Citizenship Law. Please see *Law on Citizenship of the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic of 25 July 2002 No. 130)* [Kyrgyzstan], 1333-XII, 18 December 1993, available at: <http://www.unhcr.org/refworld/docid/40fe4f3e4.html>.

¹⁹ UNHCR has reported that the stateless population of Kyrgyzstan is estimated at between 21,000 and 32,000 individuals, although accurate figures on the scope of statelessness in the country are lacking.



Former Tajik refugees, now integrated Kyrgyz citizens in Chui Province, Kyrgyzstan. © UNHCR / A. Plotnikov

left Tajikistan before the country adopted its first nationality law. The facilitated naturalization of around 10,000 of these refugees between 2004 and 2007 was thus a major achievement in ensuring durable solutions for refugees through local integration, as well as in the resolution of a protracted statelessness situation.

Recognition of stateless former USSR citizens as citizens and simplified naturalization procedures through the 2007 Citizenship Law

Recognizing that many individuals had yet to replace USSR passports and confirm their citizenship, Kyrgyzstan adopted the Law on Citizenship of the Kyrgyz Republic in 2007 (2007 Law).²⁰ Shortly thereafter, Presidential Decree #473, Regulation on Procedures to Consider Issues of Kyrgyz Republic Citizenship, was also issued, providing implementing rules for the new law.

Article 5 of the 2007 Law automatically recognizes as Kyrgyz nationals former USSR citizens who have permanently resided in the Kyrgyz Republic for the last five years (from the moment of approaching an organ of the Ministry of Interior) and who have not declared that they possess the citizenship of another State.²¹ Individuals falling within this category are required to approach a local government body to determine whether they qualify as Kyrgyz citizens and to be documented as such, but as long as they meet the stated criteria they will be recognised as Kyrgyz citizens. This is significant, considering that the process whereby citizenship is granted in Central Asia and elsewhere in the CIS region is usually highly centralized, with naturalization decisions in most cases taken by the President. The decentralized, non-discretionary procedure in Kyrgyzstan

²⁰ Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic [Kyrgyzstan], available at: <http://www.unhcr.org/refworld/docid/4693a5e514f.html>.

²¹ This means that from the moment the individual applies for determination of Kyrgyz citizenship, the authority competent to make the nationality determination counts backwards to see whether an individual contacted a department of the Ministry of Interior five years ago or more (usually to regulate their residence status).

has meant that a large number of cases have been processed in only a few years' time (nearly 45,000 citizenship determinations and replacements of USSR passports between 2009 and 2012). The procedure for citizenship determination is also characterized by a remarkable degree of flexibility and contains some important procedural safeguards, which will be described below.

Another innovation in the 2007 Law was the inclusion of simplified procedures for naturalization of foreign citizens and stateless persons. Article 13 sets out the ordinary naturalization procedure, under which foreign citizens and stateless persons who reach the age of 18 can apply to naturalize if they meet designated criteria.²² The key differences between Article 5 and Article 13 are that Article 5 is limited to former USSR citizens and recognizes them automatically as citizens, whereas the naturalization procedure of Article 13 does not limit its scope by former nationality but is a discretionary procedure which also sets out additional conditions (knowledge of the State or official language sufficient for communication, proof of source of subsistence and commitment to comply with the Constitution and legislation of the Kyrgyz Republic).

Article 14 establishes a facilitated naturalization procedure separate from the ordinary one set forth in Article 13. According to the simplified procedure in Article 14, foreign citizens or stateless persons need to prove only one year of permanent residence in the Kyrgyz Republic if they meet designated criteria,²³ but otherwise need to fulfil the other naturalization criteria.²⁴ In 2012, the Law was amended to grant the right to naturalization through a simplified procedure to former citizens who returned to reside permanently in the Kyrgyz Republic, as well as to foreign and stateless women married to Kyrgyz citizens and residing permanently in the Kyrgyz Republic. These categories of individuals are exempted from the residence requirement of Article 13.1 and also from the requirement to speak the State or official language. Although the amendment introduces an element of gender discrimination in the law by facilitating acquisition of citizenship for women married to nationals, it aims specifically to address the situation of Uzbek women who reside in Kyrgyzstan in violation of Uzbek and Kyrgyz migration rules and possess only expired Uzbek passports. Because of their failure to renew these passports and register with the Uzbek consular office in Bishkek, many of these women may be stateless due to an Uzbek law whereby citizens who reside abroad for five years without registering with the Uzbek authorities may have their citizenship withdrawn.

It is also important to mention that the 2007 law generally recognizes dual nationality, except for citizens of the neighbouring States of China, Uzbekistan, Tajikistan and Kazakhstan. However, in the case of citizens from these States, the Citizenship Regulations contain a safeguard against statelessness by providing that their passports and applications on renunciation of citizenship are forwarded to the consular offices of the relevant States only after the acquisition of Kyrgyz citizenship. Since the 2012 amendment to the Citizenship Law, the same exception applies to ethnic Kyrgyz, former nationals who have returned to reside in the Kyrgyz Republic, as well as to foreign and stateless women who are married to Kyrgyz nationals.

The requirement that a presumed pre-existing nationality be renounced before acquiring Kyrgyz nationality is similar to what is found throughout the CIS region and linked to the prohibition on dual nationality in most countries in the region. The requirement had previously posed acute problems, particularly for Uzbek nationals residing in Kyrgyzstan, who had to submit an application for renunciation of their Uzbek nationality, pay a high fee and wait for several years for an official confirmation before being able to apply for Kyrgyz nationality. In other cases, persons may have renounced their foreign nationality but failed to fulfil some other naturalization criteria and ended up stateless. The safeguard in the Kyrgyz citizenship legislation is thus a best practice.

²² These include: a minimum of five years of permanent and continuous residence in the Kyrgyz Republic; ability to speak the state or official language at a level sufficient for communication; a commitment to respect the Constitution and laws of the country; and a source of income.

²³ These include: an individual who has at least one parent who is a Kyrgyz national and who resides in the territory of the Kyrgyz Republic; an individual who was born in the Kyrgyz Soviet Socialist Republic and held the nationality of the former USSR; and an individual who is restoring his or her status as a national of the Kyrgyz Republic.

²⁴ Article 14 also offers facilitated naturalization to two additional groups. First, ethnic Kyrgyz who are nationals or residents of a foreign State can apply to acquire Kyrgyz nationality through the facilitated naturalization procedure on the same terms as for the other groups established in Article 14. Furthermore, Article 14 establishes an even more relaxed procedure, waiving all of the naturalization requirements set forth in Article 13 for the following categories of children: a child with one parent who is a Kyrgyz citizen (the application is to be made by the Kyrgyz parent proving consent of the other parent); a child whose only parent is a Kyrgyz citizen (the application is to be made by the sole Kyrgyz parent); a child or person with disabilities whose legal guardian or caretaker is a Kyrgyz citizen (an application is to be made by the legal guardian).

The procedure for determining Kyrgyz citizenship

Presidential Decree #473 of 2007 granted authority to bodies called Conflict Commissions in provincial Departments for Passport and Visa Control (DPVCs) of the Ministry of Interior of the Kyrgyz Republic to consider applications from the category of persons described in Article 5 (former USSR citizens with five years of permanent residence who have not declared that they possess the citizenship of another State).²⁵ Through the adoption in August 2013 of the Regulation on the Procedure for Considering Issues relating to the Citizenship of the Kyrgyz Republic, approved by Presidential Decree No 174 (hereinafter the “2013 Citizenship Regulation”), the Conflict Commissions were renamed Commissions for Citizenship Determination and their competence broadened from determining whether someone is a citizen of Kyrgyzstan to determining whether the person is a citizen of Kyrgyzstan, of a third State or stateless. The Commissions for Citizenship Determination are composed of at least three persons who make decisions at the local level as to whether an individual is or is not a Kyrgyz citizen or a stateless person under Article 5.²⁶

The 2007 Law and Presidential Decree #473 contain a number of other positive developments. Among these are flexible requirements for what may be considered proof of residence for the purpose of determining whether a person is a Kyrgyz citizen. According to Presidential Decree #473, applications to the Commissions for Citizenship Determination must include: a) the original and photocopy of documents confirming the identity of the applicant (in practice a passport, including the Soviet passport); b) a detailed biography; c) two photos; and d) a document which proves that the individual has resided permanently and continuously in the territory of the Kyrgyz Republic. With the adoption of the 2013 Regulation, birth certificates are also considered valid proof of identity.²⁷ However, individuals who possess neither a passport nor a birth certificate are required to go through the laborious process of establishing their identity through a court procedure for late birth registration before they can apply to the commissions.

Importantly, USSR passport holders can be confirmed as citizens of Kyrgyzstan whether or not they possess proof of permanent residence in Kyrgyzstan (*propiska*). Rather, the Commissions for Citizenship Determination look for proof that the individual concerned is habitually resident in Kyrgyzstan. The documents which may be considered as proof of residence in Kyrgyzstan include a passport with a registration stamp or a registration document, a military service book (*voennaia kniga*), certificates from places of work (*trudovaia kniga*), diplomas from educational institutions, and certificates from the place of residence.²⁸ Testimony from a residence committee or village chief, with the participation of a district police officer and three neighbours of the individual concerned, was included in the list of possible forms of evidence of habitual residence in the 2013

²⁵ Since 2009, the State Registration Service has become the successor agency to the DPVCs with regard to passport issuance and registration of citizens.

²⁶ According to Presidential Decree #473, paragraph 27, the following categories of persons are considered as falling under the competency of the Commissions: (1) Former USSR citizens who still possess a Soviet passport (1974 type) and who have permanently resided in the Kyrgyz Republic for the last five years (from the moment of addressing a department of the Ministry of Interior) and have not declared possessing the citizenship of another country; (2) former USSR citizens with Soviet passports (1974 type) with a stamp to indicate temporary residence in the Kyrgyz Republic (linked to the fact that they did not own property and were registered temporarily with family or friends) but who have permanently resided for the previous five years (at the moment of addressing a department of the Ministry of Interior) and do not possess a notification that they are citizens of another State; (3) persons who have lost their USSR passports (1974 type) but who held permanent or temporary residence in the Kyrgyz Republic and who habitually reside there; (4) persons who were unable to obtain Kyrgyz passports in the past, either because they did not fall under the criteria of the 1993 Citizenship Law or were orphans who were brought up by relatives or friends, and who are habitually resident in the Kyrgyz Republic. By the adoption of the 2013 Citizenship Regulations, two new categories were added (paragraph 51): (...) 4) Persons who permanently reside in the territory of the Kyrgyz Republic, possess Soviet passports (1974 type) with a notification of possession of citizenship of a CIS member State, and to this date remain without a national passport of this State. This category of persons is required to submit a note explaining why they do not possess a valid identity document in case the State concerned does not have a diplomatic or consular representation in Kyrgyzstan, or, in particular cases, a certificate of loss or lack of citizenship of a foreign State; 5) persons who reside permanently on the territory of the Kyrgyz Republic for five years or more, who possess expired passports of a CIS member State, and who are unable for reasons beyond the control of the person concerned to extend or replace this passport with a valid one. Such individuals are required to submit a declaration setting out the reasons for the failure to present a valid passport. Furthermore, in the new Citizenship Regulation, categories 1 and 2 above have been combined and the residence requirement has changed to “permanently or temporarily registered on the territory of the Kyrgyz Republic”. It is also worth noting that the requirement “at/from the moment of addressing the Agencies of Interior” does not appear in the new Regulation.

²⁷ See Para. 53 of the 2013 Citizenship Regulation.

²⁸ According to Para. 25 of Presidential Decree #473 of 2007.

Regulations.²⁹ This flexible approach to proof of residence has allowed individuals who did not qualify for citizenship under the 1993 law, because this law required proof of permanent residence (*propiska*), to acquire Kyrgyz citizenship.

Finally, it is worth mentioning that the 2013 citizenship regulations contain some important procedural guarantees pertaining to the process of determining if an individual is a citizen of Kyrgyzstan, a non-citizen or a stateless person. This includes a time limit of 10 days for checking a case in the Ministry of Interior information system, one month from the receipt of applications for determining whether an individual is a Kyrgyz citizen and two months if the application is received by a diplomatic representation or consular office. Importantly, applicants are also entitled to receive a reasoned response to their application and an explanation of the additional procedures to obtain a permanent residence permit.

Reduction of statelessness through implementation of the nationality framework

Since the 2007 Law entered into force, the Kyrgyz Government has collaborated with UNHCR to find ways to implement laws and policies on nationality to reduce statelessness. Three important initiatives have been undertaken to create awareness of further steps needed to resolve statelessness in Kyrgyzstan. Between 2009 and 2012, these initiatives helped approximately 45,000 people to replace old USSR passports and some 2,000 formerly stateless individuals to obtain citizenship by presidential decree, many with the assistance of UNHCR and its Kyrgyz NGO partners.

1. PILOT SURVEYS TO IDENTIFY THE PREVALENCE AND ONGOING CAUSES OF STATELESSNESS IN KYRGYZSTAN

After passage of the 2007 Law, the Kyrgyz Government requested UNHCR to conduct a survey to support recommendations on how to improve the identification of stateless persons and resolve their status. UNHCR commissioned Kyrgyz NGOs to conduct three field studies in 2007 and 2008 to this end. The NGOs were asked to concentrate their research on the border regions in the north and south of the country. The surveys found some 13,000 stateless persons in 18 districts in four provinces. They confirmed that most of these stateless persons had resided in Kyrgyzstan for many years and were an integral part of the Kyrgyz social fabric, with close family and cultural links to the country. However, they continued to face problems in acquiring Kyrgyz nationality, primarily because they did not have the right identity documents to establish their eligibility to confirm or acquire nationality through the improved legal framework. The surveys have helped the ongoing effort to improve the by-laws and administrative procedures relating to citizenship and documentation.

2. DEVELOPMENT OF AN INTER-GOVERNMENTAL STATELESSNESS STRATEGY

After UNHCR and its civil-society partners presented the results of their surveys and the recommendations arising from them to the Kyrgyz Government at a roundtable meeting in 2008, an inter-agency process was launched with the goal of resolving statelessness in the country. A first High-Level Steering Meeting on the Prevention and Reduction of Statelessness in the Kyrgyz Republic in 2009, jointly chaired by the State Registration Service of the Kyrgyz Government and UNHCR, led to the adoption of a National Action Plan to Prevent and Reduce Statelessness. The outbreak of violence in Kyrgyzstan in 2010 delayed deliberations and progress temporarily. However, a second High Level Steering Committee Meeting held in 2011 resulted in the adoption of a revised and updated National Action Plan to Prevent and Reduce Statelessness.³⁰

²⁹ Para. 53 of the 2013 Citizenship Regulation.

³⁰ The key actions that the Kyrgyz Government has committed to undertake to address statelessness include: the continued accelerated exchange of old Soviet passports by the State Registration Service; pursuit of a comprehensive survey on statelessness; awareness-raising among stateless persons of their rights and duties; drafting and adoption of by-laws and instructions to comply with the 2007 Law; the introduction of changes in the legislative and administrative frameworks in Kyrgyzstan to improve provision of birth registration to all children; development and adoption of a statelessness determination procedure; and steps to accede to the 1954 and 1961 Conventions.

The Action Plan was revised and updated further through a High Level Steering Committee Meetings in 2012, and progress was monitored at a fourth meeting in 2013. At UNHCR's 2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons, Kyrgyzstan pledged to "uphold a policy of prevention and reduction of statelessness and continue actively working in that direction in accordance with the National Action Plan (NAP) on Statelessness". A Citizenship Working Group established by UNHCR with the participation of government officials, civil-society partners and UN agencies meets regularly to work on the various law reform initiatives included in the National Action Plan.

3. LEGAL AID AND COMMUNITY OUTREACH

Since the Government of Kyrgyzstan approached UNHCR to undertake the surveys on statelessness in the northern and southern regions of the country in 2008, UNHCR has consistently worked with the Kyrgyz authorities and civil-society partners to address statelessness. For instance, in view of the lack of government resources to deal with the large number of people with USSR passports, UNHCR has provided capacity support to the departments of the State Registration Service in the South (Batken, Jalal-Abad and Osh provinces, where the largest numbers of stateless persons are believed to reside) and in the North (Chui province, including the country's capital, Bishkek), as well as to the Citizenship Commission under the President of the Kyrgyz Republic.

The support given to the Government has been complemented by strong partnerships with national legal-service NGOs in Bishkek as well as the south. These NGOs collaborate with UNHCR on campaigns designed to raise community awareness of the procedures for determination or acquisition of citizenship and for obtaining documents. They provide direct legal assistance to individuals applying for citizenship and documentation, including through mobile clinics in remote regions of the southern provinces. They also support UNHCR's efforts to address the gaps that remain in national laws and by-laws.

Law reform enabling acquisition of nationality by registration

Brazil

- Brazilians abroad whose children were stateless because of a 1994 Constitutional Amendment joined together to form a **civil-society movement**, *Brasileirinhos Apátridas*, to achieve legal reform. The movement used a **clearinghouse website** to centralize the exchange of experiences and strategies.
- A **political ally** of the movement in the Brazilian Senate **drafted an amendment to the Constitution** that would reduce and prevent statelessness. To overcome a congressional stalemate, other partners joined the movement to increase political pressure for reform.
- **Strategic and creative use of the media** – both abroad and in Brazil – highlighted the cost of statelessness for the children and their families.
- The **2007 Constitutional Amendment** not only ensured that statelessness would be prevented from arising in the future, but also included a **special transitional provision** guaranteeing that all children who had been rendered stateless could acquire Brazilian citizenship and rectify their situation.
- After the 2007 Constitutional Amendment was passed, the *Brasileirinhos Apátridas* movement **publicized the new law** throughout the diaspora and **helped families** to ensure their children could acquire Brazilian nationality by registering with Brazilian authorities abroad.
- **Brazil acceded to the 1961 Convention on the Reduction of Statelessness** shortly after amending its Constitution.

Statelessness situation

Nationality matters in Brazil are regulated by the country's Constitution, rather than ordinary legislation. The Brazilian Constitution has always enshrined the *jus soli* principle by conferring Brazilian nationality to all children born in Brazil. However, the rules regarding conferral of Brazilian nationality through descent, pursuant to the *jus sanguinis* principle, have been subject to amendment. Until 1994, children born abroad to a Brazilian mother or father could acquire Brazilian nationality provided they registered with a Brazilian consular representation. From 1994 onwards, due to an amendment of Article 12 of the Brazilian

Constitution, Brazilian nationality could only be conferred on a child born abroad to a Brazilian father or mother if the child returned to reside in Brazil and applied for Brazilian nationality.

Brazil is not only a country of immigration but also of emigration. An estimated 3 million Brazilians were living abroad when the 1994 Constitutional amendment was passed. Between 1994 and 2007, an estimated 200,000 children of Brazilians abroad were rendered stateless as a result of the 1994 Constitutional amendment, particularly those born in countries with strict *jus sanguinis* traditions.



Born in Switzerland to a Brazilian mother and a foreign father, Irina (L) was only able to acquire Brazilian citizenship after the 2007 Constitutional Amendment was passed. © UNHCR / I. Canabrava

Civil society mobilization among the Brazilian diaspora to advocate for constitutional reform

The negative effects of the 1994 Constitutional amendment were immediately felt in the Brazilian diaspora. The children of some in this group were being born stateless, in some cases without any possibility of acquiring travel documentation to enable them to go to Brazil to meet the residency requirement for citizenship. Members of the diaspora began to lobby politicians in Brasilia to urge reform. One supporting Senator drafted a bill in 1999 to correct the shortcomings of the 1994 Constitutional Amendment. This bill was successfully passed in the Senate in 2000 and deposited before the Chamber of Deputies. Brazilians abroad began to rally around the reform bill to advocate for its passage. Slowly, a strong diaspora movement emerged.

Faced with a stalemate before the Brazilian Congress, the diaspora began to mobilize. A civil-society movement, *Brasileirinhos Apátridas*, was created by Brazilians living in Switzerland. Chapters of the movement were also established in Israel, Japan, Germany, Portugal, France and Hungary – all countries where children of Brazilians born abroad were being rendered stateless as a result of the 1994 Constitutional amendment. The movement created a website³¹ to serve as a clearinghouse for information and advocacy strategies.

A central element of the *Brasileirinhos Apátridas* approach was to engage with the media, both in the countries of the diaspora communities and in Brazil, to highlight the plight of the stateless children. By 2006-2007, the movement had begun to organize demonstrations in front of Brazilian consulates around the world to promote passage of the reform bill. When the United Nations Human Rights Council sat for its first session in early 2007, the movement drew the Council's attention to the contradiction between the Brazilian nationality provision that was rendering children stateless and the universal human right to a nationality.

³¹ The website of the “*Brasileirinhos Apátridas*” movement is still accessible at: <http://brasileirinhosapatridas.org>.

Meanwhile, UNHCR lobbied for the Brazilian Congress's accession to the 1961 Convention on the Reduction of Statelessness, disseminating widely the Portuguese version of the *Handbook on Nationality and Statelessness: a Guide for Parliamentarians*. Complementing the highly successful awareness-raising campaign of *Brasileirinhos Apátridas*, the handbook increased awareness of statelessness and nationality issues among members of Congress and helped pave the way for accession to the Convention.

In 2007, the Brazilian Congress finally scheduled hearings and a vote on the bill, which had been pending for seven years. Two members of the *Brasileirinhos Apátridas* movement, a former Vice-Consul of Brazil in Zurich and a well-known Brazilian journalist, represented the movement in Brasília, lobbying members of Congress and drawing sustained media attention to the issue.

These efforts paid off when the Brazilian Congress passed the bill, which paved the way for the passage and promulgation of Constitutional Amendment 54/07 on 20 September 2007 (the 2007 Constitutional Amendment).

Legislative and constitutional reform to reduce and prevent statelessness

Pursuant to the 2007 Constitutional Amendment, Article 12 of the Brazilian Constitution now confers Brazilian citizenship by birth to the following persons: (a) those born in Brazil, even of foreign parents provided they are not working in the service of their country; (b) those born abroad to a Brazilian father or mother working for the Brazilian Government; and (c) those born abroad to either a Brazilian father or mother provided they are either registered with a Brazilian authority abroad (i.e. a consulate) or who reside in Brazil before reaching majority and opt for Brazilian nationality any time after reaching majority. These provisions fully resolve the statelessness problems created by the 1994 Constitutional Amendment.

In addition, a special transitional provision sought to resolve the plight of the estimated 200,000 children who had been rendered stateless as a result of the 1994 Constitutional Amendment. According to the revised Article 12 (c) of the Constitution, children born abroad to a Brazilian father or mother between the date of the passage of the 1994 Constitutional Amendment and the date of entry into force of the 2007 Constitutional Amendment were also entitled to acquire Brazilian citizenship by birth, either by registering as nationals of Brazil at consulates abroad or by opting for Brazilian nationality upon reaching majority after residence in Brazil. In this way, the reform not only sought to prevent future cases of statelessness from arising but also to reduce statelessness caused by the 1994 Constitutional Amendment.

The *Brasileirinhos Apátridas* movement continued its community outreach activities. It publicized the 2007 Constitutional Amendment and the transitional provisions among Brazilian diaspora communities and helped individuals to ensure that their children could register with Brazilian authorities abroad to acquire nationality. The debate on nationality rules also served to sensitize the authorities to the issue of statelessness. Already a party to the 1954 Convention relating to the Status of Stateless Persons, within a month of the passage of the 2007 Constitutional Amendment Brazil had acceded to the 1961 Convention on the Reduction of Statelessness.

Ultimately, the most persuasive argument that led to the reforms and to Brazil's accession to the 1961 Statelessness Convention was that it was in the country's own interests. The reforms helped Brazil to ensure that its nationals living abroad and their offspring would have the opportunity to return and contribute their talents to their homeland's globalizing society.

Acquisition of nationality through naturalization

Russian Federation

- A highly effective set of reforms were introduced in the 2002 Law on Citizenship, which drew on the **technical advice of international legal experts** on how to address statelessness in the context of State succession.
- **A facilitated naturalization procedure**, available from 2003 to 2009, allowed former USSR citizens to acquire Russian nationality. More than 650,000 stateless persons acquired Russian nationality through naturalization between 2003 and 2012.
- In 2009 the **2002 Law “On Citizenship” was amended** to extend the list of persons eligible to **acquire citizenship through the simplified procedure**.
- At UNHCR’s 2011 Ministerial Meeting, the **Russian Government pledged to introduce procedures to facilitate acquisition of citizenship** and issue residency permits to additional categories of stateless persons.
- **Additional amendments** to the Russian Citizenship Law that were adopted in November 2012 filled remaining gaps in the law to reduce statelessness.

Statelessness in the Russian Federation

The break-up of the former Soviet Union left millions of people stateless in the newly-independent Russian Federation. Pursuant to Article 13.1 of the 1991 Federal Law on Citizenship (1991 Citizenship Law) former Soviet citizens who were permanent residents in the Russian Federation on the day the law took effect were considered to be Russian citizens, but were entitled to make a declaration that they did not wish to be considered as citizens within a year from the entry into force of the Law. In addition to this, stateless persons who resided permanently in the territory of the Russian Federation or another former Soviet republic had the opportunity to register as citizens within a year of the law entering into force (Article 18(e)).

The same opportunity was extended to foreign citizens and stateless persons who had either acquired Russian citizenship by birth or had an ancestor who was a Russian citizen by birth, regardless of their place of residence. Through a 1993 amendment, the law also allowed former USSR citizens who took up residence in the territory of the Russian Federation after 6 February 1992 to acquire Russian Federation citizenship by registration, with a three-year deadline to do so, later extended to 31 December 2000. The Russian citizenship of the vast majority of the population living in the Russian Federation after its independence was thus secured, as was the citizenship of many individuals who had ties with Russia.



Nina Babakhanova, a formerly stateless woman from Azerbaijan, holds her new Russian Federation passport, three years after applying for legal aid. © A. Kostenkova

Individuals who could not prove that they were permanently resident in the Russian Federation but who held temporary residence status or had no legal residence were not entitled to acquire Russian citizenship. Over the course of the Russian Federation's first decade as an independent State, the practical application of the Federal Law was complicated by related laws regarding the regulation of residence in the Federation. Before new passports of the Russian Federation were given, citizenship of the Russian Federation was established by inserting stickers (*vkladysh*) into an individual's former USSR passport. Once new Russian Federation passports were developed, a series of deadlines were given for individuals to exchange their former Soviet passports for new Russian Federation passports. Many individuals did not comply with these deadlines and continued to use their former Soviet passports as identity documents.

Furthermore, after 1992, the Russian Federation continued to attract many migrants from other former constituent republics of the Soviet Union, which had also become independent States. By the end of the 1990s, many former Soviet citizens in the Russian Federation had not undertaken affirmative steps to regulate their citizenship status there or in other States they had ties with. Some had automatically become citizens of other newly-independent States, sometimes without knowing it, while others remained stateless because their personal circumstances were such that they failed to qualify for nationality anywhere.

Reform of the Federal Law on Citizenship of the Russian Federation

By 1999, little time remained for those wishing to acquire Russian nationality through registration as the process was to close at the end of 2000. Aware that many former Soviet citizens remained without regularized status in the Russian Federation, the Government began proceedings to reform the 1991 Citizenship Law and harmonize it with the Russian Constitution of 1993.

The complex interplay of nationality laws in the former Soviet Union and the former Yugoslavia had revived the interest of the international legal community, particularly in the Council of Europe, to strengthen legal norms to guarantee the right to a nationality and to prevent statelessness in the context of State succession.³² A Citizenship Commission established by the Russian Government to review the 1991 Citizenship Law invited Council of Europe nationality law experts as well as UNHCR's statelessness specialist to participate in a series of four meetings in Moscow and Strasbourg. The meetings, conducted between 1999 and 2001, discussed reform of the 1991 Citizenship Law. This consultative process gave UNHCR an opportunity to ensure that the reform process would help to reduce and prevent statelessness.

The new Federal Law No. 62-FZ on Citizenship of the Russian Federation entered into force on 1 July 2002 (2002 Citizenship Law). Additional amendments to the law were passed in November 2003, with the objective of facilitating the acquisition of Russian Federation citizenship by former USSR citizens residing in the Russian Federation.

The key provision that resulted in the reduction of statelessness concerned Article 14.4,³³ which was introduced through the 2003 amendments. It was a temporary measure to facilitate the acquisition of Russian nationality through naturalization of former Soviet citizens on the basis of a temporary or permanent residence permit at the time the 2002 Citizenship Law took effect. This facilitated procedure for naturalization was extended three times by law and was in effect from 2003 through the end of June 2009. It is significant in that it waived the requirements that were most difficult to fulfil for citizens of the former USSR residing in the Russian Federation with undetermined nationality status, namely, proof of uninterrupted residence for five years, proof of means of self-sufficiency, and Russian-language proficiency. Applicants were also exempted from paying naturalization fees.

Implementation of the simplified naturalization procedure

Article 14.4 of the 2002 Citizenship Law required those who qualified to submit individual applications for naturalization, enabling the Russian Government to closely track the numbers of those who took advantage of this simplified procedure. According to statistics provided by the Russian Government to UNHCR, during the six-year time frame of the procedure a total of 2,679,225 people acquired Russian nationality through naturalization, of whom 575,044 were stateless.³⁴ After the simplified naturalization procedure expired in 2009, stateless individuals were naturalized in 2010 and 2011 under the regular naturalization procedure, but at a much lower rate, thereby demonstrating the value of the simplified procedure.³⁵

In total, more than 650,000 stateless persons acquired Russian nationality between 2003 and 2012. This represents one of the most successful efforts at reduction of statelessness in the past decade.

³² This resulted in the adoption of the European Convention on Nationality and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession. The Russian Federation signed the European Convention on Nationality in June 1997, but has yet to ratify it.

³³ Federal Law No. 62-FZ of 31 May 2002 "On Citizenship of the Russian Federation" [Russian Federation], 1 July 2002, available at: <http://www.refworld.org/docid/3ed72d964.html>. Note that because Article 14.4 was introduced as a temporary measure through an amendment in 2003 and was only valid until 2009, the language of this provision is not included in the current text of the law available on Refworld.

³⁴ The remaining 2,104,181 persons who acquired Russian nationality through naturalization were found to have possessed another nationality. In many instances, where these individuals had migrated to the Russian Federation from other former Soviet Republics they may have automatically acquired nationality of another successor State to the former Soviet Union, sometimes without knowing it, but intended to reside permanently in the Russian Federation.

³⁵ The number of stateless persons who acquired citizenship in the Russian Federation in 2010 and 2011 was 19,000 and 15,144, respectively.

Addressing the remaining gaps perpetuating statelessness in the Russian Federation

Despite the success of the simplified naturalization procedure, there remained a number of stateless persons with unregulated status in the Russian Federation as a result of gaps in legislation governing the interrelated issues of nationality, identity documentation and temporary and permanent residence. Many individuals were unable to take advantage of Article 14.4 of the 2002 Law on Citizenship because it was limited to former USSR citizens who had proof of temporary or permanent residence in the Russian Federation in 2002. This required proof of identity as well as proof of legal stay in the Russian Federation. The authorities continued to extend the validity of expired former Soviet passports throughout the time that the facilitated naturalization procedure was in place.³⁶ Many individuals, however, no longer possessed former Soviet passports and did not, or were unable to, regularize their residence in the Russian Federation because of the administrative requirements linked to acquisition of temporary or permanent residence permits. Apart from the condition that a document proving identity and nationality had to be submitted, applicants were also requested to submit documents to prove that they had not been convicted of a crime in the permanent place of residence, documents to prove that they were able to support themselves financially and, for children under the age of 18, a birth certificate or passport. In addition to this, applicants generally needed to prove that they had somewhere to live in the place of proposed residence. As a result, many stateless individuals in the Russian Federation were caught in a vicious cycle, unable to regularize their residence status and in turn prevented from applying for Russian citizenship.

As it became clear that the facilitated naturalization procedure under Article 14.4 would not resolve all remaining cases of statelessness in the Russian Federation, the Government Commission on Migration Policy was reactivated in 2008 to find new solutions. Leading Russian civil-society experts, including UNHCR's implementing partners,³⁷ participated in the commission. The Committee on Constitutional Supervision of the State Duma was concurrently deliberating a separate draft bill to the same end. Acknowledging that a formal, durable solution needed to be found, the Russian Government pledged at the December 2011 Ministerial Meeting to introduce additional procedures to facilitate acquisition of Russian Federation citizenship and residency permits for certain categories of stateless persons.³⁸

The Russian parliament passed additional amendments to its 2002 Citizenship Law in November 2012 (2012 amendments).³⁹ This reform established procedures for facilitated naturalization for certain groups of individuals, including stateless former Soviet citizens, and addressed the challenge that arose from Article 14.4 of the 2002 Citizenship Law by eliminating any requirement that applicants for citizenship produce proof of residence registration in the Russian Federation. The procedures for facilitated naturalization are similar to those provided for under Article 14.4 of the 2002 Citizenship Law; in other words, they waive the requirement for proof of uninterrupted residence for five years, proof of means of self-sufficiency and Russian-language proficiency. In addition, Article 41.1.e of the amended law extends facilitated naturalization to former USSR citizens who acquired Russian Federation passports that had been subsequently revoked due to a determination that the passports were issued by administrative error.

Although it remains to be seen how the obstacle of the loss or non-possession of USSR passports will be addressed in practice, the 2012 amendments to the Citizenship Law confirm the Russian Federation's intention of resolving statelessness in its territory.

³⁶ This was first done through Government Resolution No 731 "On the extension of the validity of 1974-type USSR passports until 1 January 2006." Even after this deadline, the Russian authorities confirmed to UNHCR that they would accept expired Soviet passports as relevant identification for the purpose of acquiring nationality through the simplified naturalization procedure through 2009.

³⁷ For a more detailed discussion of the law reform deliberations, please see the blog entry on the European Network on Statelessness's website by Svetlana Gannushkina, Chair of the Civic Assistance Committee and a Member of the Council of the Memorial Human Rights Centre, entitled "Innovations in Russian Legislation on Citizenship" from 20 March 2013, available at: <http://www.statelessness.eu/blog/innovations-russian-legislation-citizenship>.

³⁸ The full text of the Russian Federation pledge is included in UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons* (Geneva, Palais des Nations, 7-8 December 2011), available at: <http://www.unhcr.org/4ff55a319.html>.

³⁹ Federal Law № 182-FZ dated 12 November 2012 "On introducing amendments to the Federal Law On Citizenship of the Russian Federation."

Turkmenistan

- **The political and operational initiative of the Turkmenistan Government** to resolve the protracted situation of thousands of former USSR citizens with undetermined nationality was demonstrated through its strong involvement in an **identification and registration campaign**.
- **The authorities gained technical expertise through collaboration with UNHCR** on the identification and registration of 11,000 long-term refugees for naturalization (2004-2005).
- **An initial registration drive in 2007-2010** by the Turkmenistan authorities found some 4,000 individuals of undetermined nationality. The registered individuals **completed and filed applications for naturalization or residence status** (depending on their personal circumstances) for the Government's review.
- **A dialogue** on statelessness between the Turkmenistan Government and UNHCR, which began in 2008, led to the **adoption in 2010 of an Action Plan for Joint Activities on Prevention and Reduction of Statelessness** between the Government of Turkmenistan and UNHCR.
- **The Government re-launched the registration campaign in 2011 as a collaborative multi-stakeholder process. Stationary and mobile registration teams** consisting of representatives of the Government and civil society, and including legal experts, **were deployed** to assist individuals with the registration and application process.
- **UNHCR established contacts and relationships with embassies and representatives of Commonwealth of Independent States (CIS) countries** to help in verifying whether certain individuals were considered nationals of their States.

Profile of those with undetermined nationality, including stateless persons, in Turkmenistan

More than two decades after the break-up of the Soviet Union, a large number of people continue to live in Turkmenistan with irregular residence status and without valid identification documents. The majority moved to Turkmenistan during Soviet times or in the years immediately following the dissolution of the USSR and have links to other former Soviet republics. Most of these people are of undetermined nationality, with the great majority believed to be stateless. While some live in cities, most reside in agricultural areas in the northern and north-eastern regions bordering Uzbekistan. These people have links with multiple countries on the basis of birth, descent, past residence or marriage, making verification of their nationality status a complex task. Turkmenistan does not allow dual nationality and, according to nationality regulations adopted in 1993 and in force since that time, anyone

applying for Turkmen citizenship must submit a certificate confirming that they do not possess the nationality of other countries with which they have a link.

Individuals with ties to Uzbekistan face particular challenges. Turkmenistan and Uzbekistan finalized the demarcation of their border in early 2000 and many residents in Turkmenistan's north-east border region were left without an established nationality of either State. Uzbekistan's nationality law requires the country's nationals who establish permanent residence abroad to register with an Uzbek consulate within five years of their departure. Failure to do so results in withdrawal of Uzbek citizenship. Many individuals of Uzbek origin in Turkmenistan were not aware of this provision and did not take the necessary steps to preserve their Uzbek nationality.



Formerly stateless individuals in Turkmenistan acquire nationality following a UNHCR supported registration exercise in Ashgabat. © UNHCR/ B. Baloch

2004-2005 registration campaign to naturalize ethnic Turkmen refugees

From October 2004 to February 2005, the Turkmen Government and UNHCR conducted a joint registration exercise (2004-2005 Refugee Registration Campaign) to identify and register all the refugees who had settled in Turkmenistan a decade or so earlier. Most were ethnic Turkmen who fled armed conflict in Tajikistan for Turkmenistan between 1992 and 1997, although some were ethnic Turkmen from Afghanistan who had been granted residence permits in 1994.

UNHCR offered technical advice to the Turkmen Government during the 2004-2005 Refugee Registration Campaign, for instance by providing inputs on the type of biographical data to be collected. UNHCR also provided logistical and material assistance, including software, cars, laptops, cameras, printers and copying machines to help mobile units reach the affected population and conduct the registration. Once the exercise was completed, negotiations were conducted with the Government to find the best durable solution for these individuals. The Presidential Decree of August 2005 resulted in the naturalization of 16,298 persons who had been registered, of whom 11,200 were refugees.

Turkmen Government's initiative to resolve statelessness and collaboration with UNHCR

With the experience gained from the 2004-2005 Refugee Registration Campaign, the Turkmen Government took the initiative to identify those of undetermined nationality in Turkmenistan, with the goal of regularizing their status and reducing statelessness. Government officials adopted a plan to identify the following categories of individuals:

- Those who possessed Turkmen nationality pursuant to the provisions of the 1992 Nationality Law.
- Those who possessed the nationality of another country, including individuals who held valid passports or certificates from foreign authorities attesting to their nationality of another State.
- Those who were stateless.

Depending on an individual's circumstances, the goal of the identification and registration campaign was to provide documentation confirming Turkmen nationality of those who possessed it; grant permanent residence status to those who were nationals of other countries; and provide stateless persons the opportunity to apply for naturalization in Turkmenistan.

The Turkmen authorities had already begun to identify and register persons of undetermined nationality in 2007. They adopted a streamlined process whereby all individuals whose bio-data was registered would concurrently fill out relevant applications to establish their nationality, regularize their status or apply for naturalization. The Government established mobile groups of migration officials to travel to settlements, register individuals and fill out application forms electronically, which, once completed on the spot, would be printed, signed and filed.

Turkmenistan initiated this programme with the skills, experience and materials it had acquired from working with UNHCR on the 2004-2005 Refugee Registration Campaign, as well as some additional material support. Between 2007 and 2010, the Government registered approximately 4,000 persons with undetermined nationality. The authorities, however, had not been able to reach all of the affected population and needed additional resources not only to identify and register all relevant individuals, but also to conduct the necessary analysis of their individual cases to resolve their irregular status.

After initiating this identification and registration drive, the authorities approached UNHCR to discuss how to increase the scale of their efforts and improve related processes. In 2008, UNHCR began to contribute to the Inter-Ministerial Working Group on the Improvement of Legislation, an inter-agency forum to develop recommendations for the improvement and harmonization of legislation and administrative practices related to refugees and stateless persons. In February 2009, a Roundtable on Statelessness, organized by UNHCR and the National Institute for Democracy and Human Rights, brought together government officials who exchanged ideas on solutions to statelessness in Turkmenistan. UNHCR then convened a Regional Statelessness Conference for Central Asia in December 2009, which was held in Ashgabat.

As a result of these capacity-building activities, the Turkmen Government adopted the Action Plan for Joint Activities on Prevention and Reduction of Statelessness in Turkmenistan in December 2010. This created a framework for collaboration with UNHCR on completing the identification and registration of individuals with undetermined nationality and then reviewing and revising the relevant laws.

2011 identification and registration campaign

The 2011 identification and registration campaign (2011 Campaign) was designed to scale up and complete the Government's efforts from 2007 to 2010. It was undertaken as a joint initiative between the Turkmen Ministry of Foreign Affairs (MFA), the State Migration Service of Turkmenistan (SMST), the Ministry of Interior, the Ministry of National Security and UNHCR. Additional stakeholders brought into the project included UNHCR's national NGO partner, Keik Okara, which operated legal clinics and assisted individuals through the registration process; local authorities and village administrators, who assisted in sensitizing the targeted populations and facilitated the work of the registration teams; and the embassies of CIS countries, which confirmed whether persons identified through the registration process were nationals of their States.

Coordination was achieved through the creation of a Task Force consisting of a UNHCR national protection staff member, the Head of the Citizenship Unit of the SMST and the Deputy Director of Keik Okara, as well as an Advisory Board made up of UNHCR Country Representative, the Head of the Consular Section of the MFA, deputy ministers of the SMST and the Director of Keik Okara. The campaign unfolded in three distinct phases, as outlined below:

PHASE 1: PRE-REGISTRATION: TRAINING AND AWARENESS-RAISING

The objectives of the pre-registration phase included recruitment and training of staff to undertake the registration campaign and raise awareness of the issues among local authorities. This phase also involved briefing representatives of CIS countries to prepare them to respond to queries on the nationality of registered individuals with ties to their countries.

UNHCR and the Turkmen Government organized training for the SMST officials, NGO representatives and legal-clinic lawyers who would undertake the campaign. These individuals were instructed on interview techniques and the questions to be asked when filling out the electronic registration and application forms. Acting on lessons learned during prior registration exercises, staff for the teams were recruited from local populations so that they possessed the language skills to communicate with the affected individuals.

An information campaign was also launched in this initial phase. Leaflets and posters were produced in both the Turkmen and Russian languages. SMST, UNHCR and Keik Okara staff travelled throughout the country to hold discussions with local authorities and raise their awareness of the campaign. The local authorities were also requested to help distribute information materials and disseminate information on the dates when registration would take place.

PHASE 2: REGISTRATION PHASE

The registration phase of the 2011 Campaign took place from 6 May to 3 July 2011, with some individuals continuing to register until August 2011. During this phase, stationary and mobile teams were deployed to 70 registration points covering all provinces as well as the capital, Ashgabat. The two districts of Dashoguz and Lebap in the north and north-east region along the Uzbek border received the most registration teams.

Fifty-five employees conducted the registration. Of these, 24 were from the SMST, while the rest came from Keik Okara, with seven of the latter being lawyers from the organization's legal clinics. Each stationary or mobile team included one SMST authority and one representative of Keik Okara.

Stationary registration teams were placed in the centre of each province to receive, interview and register affected persons living there and in the surrounding districts. Mobile teams were deployed to rural areas. One registration team was based in each rural district centre to assist those living in the vicinity. For those affected persons living farther away, the executive authorities in each sub-district organized transportation to bring them to the mobile teams operating at the district level. Individuals with undetermined nationality filled out citizenship application forms, whereas individuals with documentary proof of nationality of another State filled out applications for permanent residency.

PHASE 3: POST-REGISTRATION PHASE: REVIEW OF APPLICATIONS AND CONTACT WITH EMBASSIES TO OBTAIN CONFIRMATION OF NATIONALITY OR NON-NATIONALITY

As information from the registration phase was collected and forwarded to the SMST in Ashgabat, the Turkmen authorities began to make background and security checks of those who had submitted applications. This started in June 2011 and is continuing.

At the same time, the Turkmen authorities began to review applications, while UNHCR and Keik Okara helped registered persons obtain confirmation of nationality or non-nationality. UNHCR and Keik Okara organized "reception days" at the embassy of each CIS country with consular representation in Ashgabat. During these

events lawyers accompanied individuals to meet embassy officials to consult on their individual cases. For individuals with ties to CIS countries that did not have consular representation in Ashgabat, the Turkmen Government provided UNHCR with a list of applicants from these countries. UNHCR then liaised with its offices in the relevant countries for assistance in contacting the competent authorities for confirmation of a person's citizenship. UNHCR transmitted the results of such enquiries back to the Turkmen officials in Ashgabat. Initially, UNHCR covered the costs of obtaining such proof and applications for citizenship, but in 2013 negotiated a waiver of the naturalization fee.

Results

In July and October 2011 the Turkmen President signed two successive decrees granting citizenship to 1,590 and 1,728 stateless persons, respectively. All of the 3,318 individuals who were naturalized in 2011 had submitted citizenship applications under the 2007-2010 registration drive.

During the 2011 campaign, approximately 8,300 individuals with undetermined nationality were registered. Of these, UNHCR and its partners had assisted 6,158 people by the end of 2013, helping them to file their naturalization applications and requests for confirmation of their citizenship status. The remaining 2,143 individuals registered in 2011 were awaiting confirmation of their citizenship from embassies. Some 680 cases from the 2007 registration remained unresolved.

On 25 October 2013, another presidential decree resulted in the grant of Turkmen citizenship to 609 stateless persons. Most of these individuals had been registered during the 2007-2010 registration drive and some in the 2011 exercise.

As the review of the applications from the 2011 Campaign remains ongoing, the Turkmen Government and UNHCR are continuing to pursue the goals of their joint action plan. Turkmenistan acceded to the 1954 Convention relating to the Status of Stateless Persons in December 2011 and the 1961 Convention on the Reduction of Statelessness in August 2012. In June 2013, a new Citizenship Law was adopted, incorporating several safeguards to prevent statelessness. An additional 786 stateless individuals were naturalized during a side event at a conference on statelessness and migration that was organized by the Government of Turkmenistan, UNHCR and IOM in June 2014. This has brought the total number of formerly stateless individuals who received Turkmen nationality between 2011 and 2014 to approximately 5,000.

Viet Nam

- The **Prime Minister of Viet Nam issued a directive in 2000** recommending consideration of the naturalization of the stateless former Cambodian refugees in the country.
- **High-level outreach by UNHCR raised awareness** of the statelessness issue among other UN agencies and the diplomatic community in Viet Nam, helping **to build consensus** that resolution of the problem was a priority.
- **Building on the political will** to resolve the situation, **UNHCR provided technical and operational advice** to the Government through workshops to facilitate the naturalization of stateless Cambodians. These workshops helped to **develop an Operational Plan** that proposed relaxation of the naturalization criteria for this group.
- Examples of the **relaxed naturalization requirements** included: acceptance of all former Cambodian refugees as stateless (ending the requirement for individual statements relinquishing former nationality); acceptance of sworn testimony on the date and place of birth in place of the requirement for birth certificates; and waiver of the naturalization fee.
- UNHCR conducted a **comprehensive assessment of gaps in Viet Nam's nationality laws** that gave rise to statelessness. This led to the **identification of statelessness among Vietnamese women** with failed marriages who renounced their nationality upon marrying foreigners without acquiring a new nationality as another issue in need of resolution.
- Raising awareness of international standards on the prevention of statelessness helped spur the Vietnamese Government to adopt the **revised 2009 Nationality Law, which included numerous safeguards against statelessness**.

Statelessness situations

Viet Nam became host to tens of thousands of refugees from neighbouring Cambodia after the Khmer Rouge took power in 1975. When UNHCR ceased its assistance to Cambodian refugee camps in 1994, it was estimated that approximately 9,500 former Cambodian refugees remained in Viet Nam.⁴⁰ Approximately 2,500 of them continued to live in the former UNHCR camp sites, while an estimated 7,000 others were believed to have integrated into urban communities in Ho Chi Minh City. Many of the Cambodian refugees in Viet Nam were of ethnic Chinese descent. At the heart of their uncertain future was the fact that Cambodia did not consider them its nationals, rendering them stateless. UNHCR's

country office and the Vietnamese Government discussed the need to find a durable solution for this group. In 2002, the Prime Minister issued a directive recommending that Viet Nam consider naturalizing the remaining former Cambodian refugees residing in Viet Nam.

The plight of the former Cambodian refugees prompted the Vietnamese Government to look at gaps in the nationality law that gave rise to statelessness. For its part, in 2005 UNHCR tapped the Surge deployment scheme to engage a protection officer to focus on statelessness in Vietnam.

⁴⁰ Political negotiations to resolve the Cambodian conflict through the Paris Conference on Cambodia in 1989 and 1990 resulted in the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict signed by Cambodia and 18 other countries under the auspices of the United Nations Secretary-General in October 1991. In this Agreement, Cambodia undertook to create an environment conducive to the voluntary return and integration of Cambodian refugees from abroad and the United Nations was requested to assist in the repatriation of Cambodian refugees. Those who had fled Cambodia in the 1970s were deemed no longer in need of international protection.



Tran Hoang Phuc, formerly stateless for 35 years, is surrounded by other formerly stateless people who have questions about the rights conferred by their new red family books. © UNHCR / K. McKinsey

Statelessness among Vietnamese women who left Viet Nam to marry foreigners was found to be another pressing issue in need of a solution. In 2005, the Vietnamese and French Governments co-convened an international conference addressing the phenomenon of “economic marriages” of Vietnamese women to foreigners.⁴¹ The Vietnamese Ministry of Justice estimated that between 1997 and 2005, more than 180,000 Vietnamese women had married foreigners, and that at least 10,000 additional marriages to foreigners occurred each year from 2005 to 2009. Most Vietnamese women moved abroad to marry their foreign husbands. It was the norm that a woman would acquire the nationality of her new husband in the new country of residence. Because most countries in Asia prohibit dual nationality, some Vietnamese women renounced their Vietnamese nationality to apply to acquire the nationality of their foreign husbands.

However, an estimated 10 per cent of the marriages between Vietnamese women and foreign men resulted in divorce. Vietnamese women who had renounced their Vietnamese nationality and either failed to finalize the process to acquire the nationality of their foreign husbands or automatically lost their newly acquired foreign nationalities upon dissolution of their marriages found themselves stateless. In 2006, the Vietnamese Government estimated that at least 3,000 women had returned to Viet Nam due to such circumstances and were stateless. They were accompanied by at least 3,000 children born abroad who had undetermined nationality.

UNHCR identified three priorities for preventing and reducing statelessness in Viet Nam: resolving the nationality status of the former stateless Cambodian refugees living in Viet Nam; devising solutions for those women who had renounced their Vietnamese nationality upon marriage to a foreigner that rendered them stateless; and promoting reform of Vietnamese nationality legislation in order to fill legal gaps and thereby prevent new cases of statelessness.

⁴¹ The publication of presentations (« *Receuil des Interventions* ») made at this regional conference entitled: « *Les aspects pratiques du Droit international privé des personnes, de la famille et des biens* » convened in Hanoi from 25 to 17 May 2005 is on file with UNHCR's Statelessness Unit.

International engagement and technical assistance to promote reform to address statelessness

Once the main statelessness situations in Viet Nam had been identified, the next step was to seek reform of the nationality law and related policies. This was achieved in part through the discreet but significant engagement of the international community with the Vietnamese Government. UNHCR played a central and consistent role in channelling technical advice and political encouragement to this end. The period 2006-2008 presented a particular watershed. In 2006, UNHCR undertook high-level outreach with the Vietnamese Government to raise awareness on statelessness, including through letters from UNHCR's Regional Bureau Director, Assistant High Commissioner – Protection, and the High Commissioner. UNHCR successfully placed statelessness on the agendas not only of the international diplomatic community in Viet Nam but also of other UN agencies operating in the country. As a result, talking points encouraging the Government to resolve statelessness were included in the brief of the United Nations Secretary-General when he visited the country in May 2006.

The same year, the Vietnamese Government expressed its renewed resolve to naturalize the stateless former Cambodian refugees. This triggered a second phase of UNHCR engagement at a more technical and operational level, with a series of workshops and meetings between UNHCR and government stakeholders. Several meetings were held in 2006, but a breakthrough came at a multi-stakeholder workshop in November 2007. Participants in this workshop identified obstacles that prevented stateless Cambodian refugees from benefitting from the ordinary naturalization procedures available under Vietnamese law and suggested the adoption of exceptional procedures to overcome these challenges.

This workshop concluded with the development of an Operational Plan for naturalizing stateless Cambodian refugees. The plan was approved by Viet Nam's Deputy Prime Minister on 4 December 2007. This paved the way for a series of subsequent meetings in 2008 of a Working Group created to implement the Operational Plan. The group was composed of officials from the Vietnamese ministries of Foreign Affairs, Justice and Public Security as well as the Office of the Government and Office of the President of State.⁴²

Policy reform to reduce statelessness among former Cambodian refugees

According to the Vietnamese nationality law at the time, applicants for naturalization were required to produce the following: proof of renunciation of foreign nationality, a birth certificate, a curriculum vitae, a judicial background certificate, a certificate of proficiency in the Vietnamese language, a certificate of continuous residence in Viet Nam for a certain period, information on the applicant's domicile/occupation/income, and funds in payment of an processing fee. But most of the stateless former Cambodian refugees could not meet these requirements. Having fled Cambodia more than three decades earlier, this population had become aged; many were also illiterate and indigent. Given the circumstances under which they fled Cambodia, most did not have personal documentation, such as birth certificates.

The greatest obstacle, however, was the requirement for proof of renunciation of foreign nationality. Some individuals had attempted to approach the Cambodian Government on this point. Although Cambodia did not recognize the former refugees as Cambodian citizens, it refused to issue documents confirming that they had relinquished their former nationality, as required by the Vietnamese law.

The Operational Plan provided solutions to all of these obstacles to naturalization. Regarding the requirement to prove renunciation of foreign nationality, the Vietnamese Government initiated bilateral discussions with its Cambodian counterpart to seek certification that all those in this group were not considered Cambodian nationals.⁴³ The Cambodian Government responded that it had no records of these people and confirmed it did not consider them to be Cambodian nationals. The Vietnamese Ministry of Foreign Affairs concluded that

⁴² The Working Group designated relevant authorities at both the central and local levels in Ho Chi Minh City and the two provinces of Binh Dong and Binh Phuoc, where stateless Cambodian refugees continued to reside in the former UNHCR camps.

⁴³ This was pursued during the annual meeting between the foreign ministries of Cambodia and Viet Nam in 2007, where the Vietnamese Government inquired about the Cambodian Government's position vis-à-vis the Cambodian refugee population in Viet Nam.

the entire Cambodian refugee population remaining in Viet Nam was stateless and waived the requirement for a certificate of renunciation of foreign nationality.

With respect to the other naturalization requirements, the Vietnamese Government agreed to accept sworn statements attesting to applicants' parentage and date and place of birth, rather than demanding the submission of birth certificates. It waived fees for individuals from this group and permitted elderly individuals to pass a simple verbal interview in spoken Vietnamese to satisfy the language requirement. In addition, the Central Government agreed to work with local and district officials in Ho Chi Minh City and Binh Doung and Binh Phuoc provinces to review individual applicants' circumstances related to their curriculum vitae, judicial background certificate, certificate of continuous residence in Viet Nam and other information on domicile, occupation and income.

Between 2008 and 2009, inter-ministerial working groups were established at the local level in Ho Chi Minh City and Binh Doung and Binh Phuoc provinces to implement the Operational Plan to naturalize the former Cambodian refugees. The Government decided to concentrate first on naturalizing the approximately 2,000 people still living in camps in the two provinces and Ho Chi Minh City. The three local working groups developed action plans for each province/city that included a census to verify the names of the individuals living in the former UNHCR camps. They also established mobile teams to conduct an information campaign and distribute and collect naturalization applications.

In July 2010, the Vietnamese Government held the first naturalization ceremony, granting Vietnamese citizenship to 287 former Cambodian refugees who continued to reside in the former UNHCR refugee camp in Ho Chi Minh City.⁴⁴ An additional 2,000 stateless Cambodian refugees residing in the former UNHCR camps in Binh Doung and Binh Phuoc provinces also acquired Vietnamese nationality through naturalization by the end of 2010.⁴⁵ As the Vietnamese Government reviewed and approved naturalization applications from the camp-based applicants, UNHCR supported five micro projects through the Vietnamese Ministry of Labour, Invalids and Social Affairs (MOLISA) to promote the local integration of this group of new citizens. The projects covered the provision of vocational-training equipment and kindergarten education as well improvements to road infrastructure to ease travel between the camps in the provinces and Ho Chi Minh City.

Law reform to prevent and reduce statelessness, including among Vietnamese women who marry foreigners

In addition to seeking to reduce statelessness among former Cambodian refugees, the Vietnamese Government also resolved to address statelessness among Vietnamese women who had married foreigners. It aimed to do so by reforming its nationality law and incorporating a number of safeguards against statelessness. Throughout the workshops and meetings with the Vietnamese Government from 2006 to 2008, UNHCR raised awareness of international legal standards that contribute to the prevention and reduction of statelessness. With this information, the Vietnamese Ministry of Justice and Ministry of Foreign Affairs led a process in consultation with the Department of Consular Affairs, the Ministry of Public Security in the Department of Immigration and other local bodies to reform its 1998 nationality law. The reformed Vietnamese Nationality Law entered into force on 1 July 2009.⁴⁶

⁴⁴ See UNHCR, *Viet Nam ends stateless limbo for 2,300 former Cambodians*, 19 July 2010, available at: <http://www.unhcr.org/4c447a796.html>.

⁴⁵ See UNHCR, *Statelessness: Former refugees win citizenship, and now dream of home ownership*, 15 September 2011, available at: <http://www.unhcr.org/4e7204db6.html>.

⁴⁶ *Law on Vietnamese Nationality* [Viet Nam], No. 24/2008/QH12, 13 November 2008, available at: <http://www.unhcr.org/refworld/docid/4ac49b132.html>. Please see also *Decree No. 78/2009/ND-CP of September 22, 2009, detailing and guiding a number of articles of the Law on Vietnamese Nationality*, available at: <http://www.unhcr.org/refworld/docid/4b470b2d2.html>.

The 2009 Nationality Law introduced a number of improvements that are significant for the prevention of statelessness for all Vietnamese abroad, including Vietnamese women who marry foreigners. With the passage of the law, no longer will there be an automatic loss of Vietnamese nationality should a Vietnamese citizen acquire a second, foreign nationality. This eliminates the danger of rendering an individual stateless, should that individual lose an acquired second nationality, but only if the individual has not had to renounce his or her Vietnamese nationality to acquire a new nationality. Furthermore, Article 13 of the 2009 Nationality Law provides that Vietnamese citizens abroad who had not yet lost their Vietnamese nationality pursuant to the prior nationality law can retain their Vietnamese nationality so long as they register with the overseas Vietnamese consular authorities by July 2014, with the deadline subsequently removed by legislative amendment in June 2014.⁴⁷

According to both the 1998 and 2009 Nationality Laws, the act of marriage, divorce or annulment of unlawful marriage between a Vietnamese citizen and a foreigner does not alter the Vietnamese nationality of either the concerned individual or any minor children. As had been documented, however, several thousand Vietnamese women had been rendered stateless upon marriage to foreigners because they elected to renounce their Vietnamese nationality in the hopes of acquiring the foreign nationality of their spouses. Unfortunately, the 2009 nationality law maintains the possibility of loss of Vietnamese nationality through renunciation in its Article 27 without incorporating a safeguard to ensure that this would only be effective where the concerned individual has definitively acquired another nationality.

Nevertheless, to address the situation of Vietnamese women who become stateless through marriage to a foreigner, Article 7(2) of the 2009 law makes clear that the “State adopts policies to create favourable conditions for persons who have lost their Vietnamese nationality to restore Vietnamese nationality.” Article 23(1) (f) of the law facilitates the restoration of Vietnamese nationality, particularly for those “having renounced Vietnamese nationality for acquisition of a foreign nationality but failing to obtain permission to acquire the foreign nationality.” A procedure for applying to restore one’s Vietnamese nationality is set forth in Article 24.

Specific provisions to facilitate the naturalization of the stateless Cambodian refugees are contained in Article 22 of the 2009 law. It provides that “stateless persons who do not have adequate personal identification papers but have been stably residing in the Vietnamese territory for 20 years or more by the effective date of this Law [1 July 2009] and obey Vietnam’s Constitution and laws will be permitted for naturalization in Vietnam under the order, procedures and dossiers specified by the Government.”

Promoting the 2009 Nationality Law provisions to restore nationality and reduce statelessness

After the 2009 Nationality Law entered into force, UNHCR partnered with MOLISA to devise projects to implement the new nationality restoration provisions to reduce statelessness among Vietnamese women who had lost their nationality upon marriage to foreigners and had returned to Viet Nam without having acquired another nationality. With funding from the European Union, MOLISA and UNHCR conducted surveys in various cities in Viet Nam to obtain a better understanding of how statelessness arises from mixed marriages between Vietnamese and foreigners. A series of awareness campaigns was organized with local authorities as well as the affected communities to publicize the new procedure in Article 23 for restoration of Vietnamese nationality. MOLISA’s actions were coordinated with organizations at the local level, such as the women’s, youth and labour unions. This project included some vocational training and counselling to bolster the reintegration of women and children who had returned to Viet Nam from abroad.

⁴⁷ See Law on Vietnamese Nationality No 56/2014/QH13, 24 June 2014. Additional positive developments in the 2009 law include Article 18, a progressive provision according to which all “abandoned newborns and children found in the Vietnamese territory whose parents are unknown, have Vietnamese nationality.” Furthermore, the new law introduced limited circumstances in which foreigners could apply to acquire Vietnamese nationality as a second nationality, for example foreigners with a Vietnamese parent or child or someone who would contribute to the benefit of Vietnamese society, including Viet Nam’s development and defence.