Joint Submission to the

Human Rights Council

UNIVERSAL PERIODIC REVIEW

KYRGYZSTAN

49th Session

4th Cycle

April-May 2025

NATIONALITY FOR ALL
Advancing the right to a nationality in the Asia-Pacific region

The Central Asian Network On Statelessness

STATELESSNESS AND DIGNIFIED CITIZENSHIP COALITION ASIA-PACIFIC

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Main Submitting Organisation:

Nationality For All (NFA)

Co-submitting Organisation:

Statelessness and Dignified Citizenship Coalition – Asia Pacific (SDCC-AP)
Central Asian Network on Statelessness (CANS)

11th October, 2024

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at the 49th Session
of the Universal Periodic Review.

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Introduction

1. Nationality for All (NFA), the Central Asia Network on Statelessness (CANS), the Statelessness and Dignified Citizenship Coalition - Asia Pacific (SDCC-AP), make this joint submission to the Universal Periodic Review (UPR), on the right to nationality and human rights challenges on statelessness in Kyrgyzstan.

2. This submission focuses on:

    a) Ratification of the 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

    b) Implementation challenges to recent amendments.

    c) Administrative barriers in addressing statelessness.

3. Nationality For All (NFA) is a regional organisation working to promote the right to nationality and address statelessness in the Asia Pacific region. NFA works closely with stateless persons, persons affected by statelessness, grassroots organisations, activists, and national NGOs. NFA aspires to increase the proximity to power of persons with lived experience of statelessness through their meaningful participation in the statelessness ecosystem.

4. Central Asian Network on Statelessness (CANS) is a network of organisations in Central Asia engaging with governments, civil society, and international bodies towards the prevention and reduction of statelessness in the region. CANS contributes legal aid and expertise to resolve individual cases of statelessness, monitors statelessness situations in the region, and determines strategies to eliminate their root causes. Promoting education and research campaigns towards the eradication of statelessness, CANS encourages dialogue for information and experience exchanges.

5. Statelessness and Dignified Citizenship Coalition - Asia Pacific (SDCC - AP) is a newly formed regional coalition of civil society organisations and activists working together

to address statelessness and ensure the right to nationality for all in the Asia Pacific region. SDCC-AP works on mainstreaming statelessness in the Asia Pacific and its scope comprises solidarity building, peer learning, capacity strengthening, and advocacy.

Previous UPR of Kyrgyzstan under the Third Cycle

6. Kyrgyzstan has been reviewed under three cycles to date: first cycle at the fifteenth session in June 2010, second cycle at the twenty-ninth session in April 2015 and the third cycle at the forty-fourth session in March 2020.

7. In 2020, during the Third Cycle UPR, Kyrgyzstan received two recommendations on a consideration to ratify the Statelessness Conventions. All these recommendations were "noted" by Kyrgyzstan.[1] They include:

    - Recommendation 140.1 Consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Brazil);

    - Recommendation 140.1 Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Uruguay);

Kyrgyzstan's International Obligations

8. As a member state of the UN, the Kyrgyz Republic is obligated under the UN Charter to uphold principles laid down in the Charter as well as the Universal Declaration of Human Rights (UDHR). One such right is outlined in the UDHRs includes Article 15, which affirms the right to a nationality.[2] Many of these rights are also recognized as principles of customary international law.

9. Kyrgyzstan has ratified all core international human rights treaties, except the Statelessness Conventions, namely the 1951 Refugee Convention and its 1967 Protocol, the International Convention on Civil and Political Rights ('ICCPR'), the International Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'), Convention on the Rights of the Child ('CRC') and the Convention on the Rights of Persons with Disabilities ('CRPD'). The right to a nationality and other associated rights are reinforced by these instruments, including:

[1] UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Kyrgyzstan' <https://documents.un.org/doc/undoc/gen/g20/069/76/pdf/g2006976.pdf> accessed 9 October 2024.

[2] Article 15, UN General Assembly, Universal Declaration of Human Rights ('UDHR'), 217 A (III), 10 December 1948, https://www.refworld.org/legal/resolution/unga/1948/en/11563 [accessed 11 October 2024]

a. CRC[3]: Article 2 (Non-discrimination); Article 3 (well-being and protection); Article 7 (preservation of identity and nationality), Article 28 (right to education)
b. ICCPR[4]: Article 12.2 (Freedom of movement); Article 16 (right to recognition); 24.3 (child's right to nationality)
c. ICESCR[5]: Article 2.2, 2.3(non-discrimination); Article 9 (social security); Article 10 (education of children);
d. 1951 Refugee Convention[6]: Article 33 (Non-refoulement principle)
e. CEDAW[7]: Article 9 (Nationality); Article 10 (Education); Article 12 (Health); Article 13 (Economic and social benefits); Article 15 (Equality before the law);
f. CERD[8]: Article 5 (d) (iii) (Right to Nationality)

10. Kyrgyzstan is not a party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

11. During the at the global High-Level Segment on Statelessness in 2020, Kyrgyzstan made four pledges:

- "By the end of 2020, the Kyrgyz Republic commits to adopt Regulation for determining the legal status of a stateless person.
- By the end of 2020, the Kyrgyz Republic commits to ensure birth registration and documentation by providing birth registration certificates of the Kyrgyz Republic to those children who do not have birth registration.
- The Kyrgyz Republic commits to bring the national legislation of the Kyrgyz Republic in the field of birth registration in accordance with international standards to ensure registration of birth of every child born in the Kyrgyz Republic.

[3] UN General Assembly, Convention on the Rights of the Child ('CRC'), United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, https://www.refworld.org/legal/agreements/unga/1989/en/18815 [accessed 11 October 2024]
[4] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, https://www.refworld.org/legal/agreements/unga/1966/en/17703 [accessed 11 October 2024]
[5] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966, https://www.refworld.org/legal/agreements/unga/1966/en/33423 [accessed 11 October 2024]
[6] UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, https://www.refworld.org/legal/agreements/unga/1951/en/39821 [accessed 11 October 2024]
[7] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979, https://www.refworld.org/legal/agreements/unga/1979/en/13757 [accessed 11 October 2024]
[8] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965, https://www.refworld.org/legal/agreements/unga/1965/en/13974 [accessed 11 October 2024]

- The Kyrgyz Republic commits to intensify its work on studying the experience of other State parties to the UN Conventions of 1954 and 1961 on statelessness to introduce statelessness status determination procedures."[9]

12. Over the reporting period, Kyrgyzstan was also reviewed by the Committee on the Elimination of Discrimination against Women ('CEDAW') (2021), and the Committee on Elimination of Racial Discrimination ('CERD') (2019), and the following relevant recommendations were made by them. The CEDAW Committee recommended that besides the ratification of the two Statelessness Conventions, the Statelessness Determination Process should be expanded to cover recent arrivals and identity documents should be issued to those individuals who identify themselves as stateless. The Committee further recommended to "*review* the Law on Citizenship and other relevant legislation and regulations to ensure that stateless women, women of undetermined nationality, Mugat or Lyuli women, and their children, have adequate access to birth registration and identity documents, including in rural areas, and to Kyrgyz nationality".[10]

13. The CERD Committee in 2019 also recommended the ratification of the international human rights treaties, which "have a direct relevance to communities that may be the subject of racial discrimination", such as the two Statelessness Conventions.[11] In 2018, the Committee recommended establishing a stateless determination procedure to have the status of all stateless persons ascertained and increase due process guarantees and other safeguards, such as "the right to appeal against decisions to remove citizenship".[12]

Kyrgyzstan's National Legal Framework

14. According to Article 2 of *Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic* (Citizenship Law), the citizenship laws of Kyrgyzstan are covered by the Constitution of the Kyrgyz Republic, international treaties to which the Kyrgyz Republic is a party that have entered into force as prescribed by law", the Citizenship

[9] UN High Commissioner for Refugees (UNHCR), High-Level Segment on Statelessness: Results and Highlights, May 2020, https://www.refworld.org/reference/confdoc/unhcr/2020/en/123427 [accessed 11 October 2024]

[10] Committee on the Elimination of Discrimination against Women (CEDAW), 'Concluding observations on the fifth periodic report of Kyrgyzstan', 29 November 2021, CEDAW/C/KGZ/CO/5, <https://documents.un.org/doc/undoc/gen/n21/351/71/pdf/n2135171.pdf>

[11] Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the fifth to the seventh periodic reports of Kyrgyzstan, adopted by the Committee at its eighty-second session' 19 April 2019, CERD/C/KGZ/CO/5-7, <https://documents.un.org/doc/undoc/gen/g13/428/03/pdf/g1342803.pdf>

[12] Committee on the Elimination of Racial Discrimination (CERD), 'Concluding observations on the combined eighth to tenth periodic reports of Kyrgyzstan' 30 May 2018, CERD/C/KGZ/CO/8-10, <https://documents.un.org/doc/undoc/gen/g18/142/63/pdf/g1814263.pdf>

Law and regulatory legal acts of the Kyrgyz Republic.[13]

15. The Citizenship Law includes provisions based on both *jus sanguinis* and *jus soli* forms of citizenship.[14] According to Article 12, a child with at least one parent who is a citizen of Kyrgyzstan is automatically considered a Kyrgyz citizen, regardless of where the child is born.[15] In February 2023, amendments were made to the law, eliminating the previous requirement for written consent when one parent is a foreign national.[16] Currently, if one parent is a Kyrgyz national and the other is a foreign national, the child is recognized as a Kyrgyz citizen unless both parents jointly submit an application to renounce the child's Kyrgyz citizenship when the child acquires another citizenship at birth.[17]

16. Additionally, the definition of a stateless person under Article 3 of the Citizenship Law was revised to be more consistent with the definition in the 1954 Convention relating to the Status of Stateless Persons.[18] The 2023 amendments also removed the previous burden of proof that was placed on stateless individuals.

17. In 2023, there were amendments to the national laws of the Kyrgyz Republic to align them with international standards and provide more safeguards to stateless individuals and prevent intergenerational statelessness. Amongst the changes, the definition of stateless persons has been amended and is now in congruence with Article 1 of the 1954 Statelessness Convention.[19] Furthermore, the law has guaranteed universal birth registration, including the children of stateless parents are now eligible to obtain a birth certificate and former citizens of Kyrgyzstan can now regain Kyrgyz citizenship without any requirements regarding their length of residence in the country or proof of current income.[20]

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[13] Article 2, Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic (including amendments dated February 22, 2023), 21 May 2007, https://www.refworld.org/legal/legislation/natlegbod/2007/en/72655 [accessed 11 October 2024]

[14] *Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic (2007).*

[15] *Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic (2007) Chapter 2, Article 12(1).*

[16] 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' <https://www.unhcr.org/centralasia/wp-content/uploads/sites/75/2023/05/UNHCR-Kyrgyz-Statelessness-ENG-2023.pdf>.

[17] *Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic (2007) Chapter 2, Article 12(2).*

[18] 'STATELESSNESS IN THE KYRGYZ REPUBLIC: ANALYSIS OF NATIONAL LEGISLATION | United Nations in Kyrgyz Republic' <https://kyrgyzstan.un.org/en/251622-statelessness-kyrgyz-republic-analysis-national-legislation> accessed 11 October 2024.

[19]'Ground-Breaking Law Means Every Child in Kyrgyzstan Will Have Right to a Birth Certificate' (*UNHCR*, 26 May 2023) <https://www.unhcr.org/news/press-releases/ground-breaking-law-means-every-child-kyrgyzstan-will-have-right-birth> accessed 9 October 2024. 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9).

[20] 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9) 7.

Statelessness in Kyrgyzstan

18. By the end of 2019, Kyrgyzstan became the first country in the world to resolve all cases of stateless individuals in the country by assisting more than 13,000 individuals in gaining their citizenship.[21] However, towards the end of 2022, the country reported 203 stateless individuals to the UNHCR, indicating that the number of recognized stateless persons continues to rise, despite the country's progress in addressing the issue.[22] The majority of stateless people in Kyrgyzstan identified are former Soviet citizens or individuals residing in the region who have not yet obtained citizenship from any of the new successor states.[23] Official data on stateless persons in Kyrgyzstan includes only those who possess a permanent residence permit and an official document confirming their stateless status.[24] Currently, there is no legislation in place for the collection of quantitative data on stateless individuals in Kyrgyzstan.[25]

Ratification of the Statelessness Conventions

19. Several international treaty bodies, and the UPR mechanisms (see paras 12, 13) have recommended Kyrgyzstan to ratify the two Statelessness Conventions as part of its obligations to protect and promote human rights. This would demonstrate Kyrgyzstan's willingness to comply with these international recommendations, fostering stronger cooperation with the UN and other international organisations, and uphold its commitment and leadership on the issue of resolving statelessness in the region.

20. The 1954 Convention on statelessness is the "primary international instrument that aims to regulate and improve the status of stateless persons and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination."[26] The 1961 Convention on Statelessness complements the 1954 Convention and provides for safeguards to prevent statelessness in different contexts, both of which make the foundation of international legal instruments to address a

[21] 'Ground-Breaking Law Means Every Child in Kyrgyzstan Will Have Right to a Birth Certificate' (n 12).
[22] Global Trends: Forced Displacement in 2022" (United Nations High Commissioner for Refugees, June 14, 2023), 202, https://www.unhcr.org/global-trends-report-2022.
[23] Marjorie Farquharson, Statelessness in Central Asia, UN High Commissioner for Refugees (UNHCR), May 2011, https://www.refworld.org/reference/regionalreport/unhcr/2011/en/83784 [accessed 11 October 2024]
[24] Marjorie Farquharson, Statelessness in Central Asia, UN High Commissioner for Refugees (UNHCR), May 2011, https://www.refworld.org/reference/regionalreport/unhcr/2011/en/83784 [accessed 11 October 2024]
[25] 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9) 23.
[26] UNHCR, 'Nationality and Statelessness: Handbook for Parliamentarians' 10 <http://archive.ipu.org/PDF/publications/statelessness_en.pdf>.

global challenge like statelessness.[27] It is imperative that States ratify such conventions and align their national legislations and policies such that those who are stateless live a life of dignity and their rights are respected.

21. The Kyrgyz Republic, through undertaking the 2023 amendments in the law, has tried to align their national legislation to international standards, despite not formally ratifying either of the Statelessness Conventions. However, there are gaps that persist in the national legislation. For instance, stateless individuals do not enjoy the same socio-economic rights as other individuals, and one way to guarantee protection is through making legislative amendments in line with the safeguards mentioned in the two Statelessness Conventions. An analysis of the legislation in its current form provides that while Kyrgyzstan follows international commitments *per se*, there is still work to be done in terms of fulfilment of socio-economic rights, such as the right to education, health and social security of all stateless persons comparable with the citizens of the country. For instance, UNHCR notes that the domestic legislation *On the Legal Status of Foreign Citizens in the Kyrgyz Republic,* Articles 9 and 24[28], does not guarantee all stateless individuals living in the territory of the Kyrgyz Republic the right to health on an equal basis with the citizens, as they are required to pay a fee.[29] Furthermore, to ensure better integration of stateless persons, there can be further safeguards by providing stateless persons the right to social security in line with the citizens.[30]

22. Furthermore, the non-refoulement principle has been established in international law, not just as customary, but is also protected under core international treaties, to which Kyrgyzstan is a party to.[31] For stateless individuals, the treaty which establishes this right, is the 1954 Convention on Statelessness, which elaborates that the only grounds of "expulsion" for stateless individuals are on grounds of national security or public order.[32] This application of this principle in the most exceptional circumstance is imperative as stateless persons do not have another country to move to or return

[27] 1961 Convention, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf
[28] Kyrgyzstan: Law of Kyrgyz Republic on the Legal Status of Foreign Citizens, 14 December 1993, https://www.refworld.org/legal/legislation/natlegbod/1993/en/147104 [accessed 11 October 2024]
[29] UN High Commissioner for Refugees (UNHCR), UNHCR Submission for the Universal Periodic Review – Kyrgyzstan – UPR 35th Session (2019), July 2019, https://www.refworld.org/policy/upr/unhcr/2019/en/123096 [accessed 11 October 2024]
'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9) 39.
[30] ibid 40.
[31] UN High Commissioner for Refugees (UNHCR), The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, -, 31 January 1994, https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625 [accessed 11 October 2024]
[32] Article 31, 1954 Convention on Statelessness

to.[33] The ratification of the Conventions on Statelessness and their adoption to national legislation will guarantee that stateless persons are not expelled from countries based on minor violations of the law.[34]

Implementation Challenges to the Recent Amendments

23. The 2007 *Law on Citizenship* was amended in February 2023 introduced more safeguards to prevent and reduce statelessness and guaranteed universal birth registration of every child, including those born to undocumented or stateless parents who were previously not able to obtain a birth certificate.[35]

24. Furthermore, under the new law, children born on the territory of Kyrgyzstan will be granted citizenship if either or both parents are foreign citizens and the parents' country of citizenship does not confer citizenship to the child.

25. However, despite this positive legislative change, it has been noted that the main state agency has not supported its implementation, even though the law has been in effect since September 2024. Specifically, the agency has not upheld the guarantee of citizenship for children born in Kyrgyzstan to foreign parents when the parents' countries do not grant citizenship to the child.[36] This implementation on the ground needs to be immediately rectified.

Administrative Barriers to Address Statelessness

26. The current laws in Kyrgyzstan on statelessness, contain provisions for providing residence permits to stateless persons. The provision stipulates that to attain this permit, the stateless individual is required to submit documentation, that includes an identification document, birth certificate, "a certificate of the absence of a criminal record in the territory of the state in which he lived before entering the territory of the Kyrgyz Republic", a document from the Member State certifying that the individual is stateless, among other documents.[37] In terms of a temporary residence card, a stateless individual can only apply for one for either undertaking labour activities, or to "study at an educational institution and the authorised state body in the field of education and science", or for the implementation of investment activities

[33] 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9) 42.
[34] ibid 42.
[35] 'STATELESSNESS IN THE KYRGYZ REPUBLIC: ANALYSIS OF NATIONAL LEGISLATION | United Nations in Kyrgyz Republic' (n 11).
[36] 'The Ministry of Digital Development Does Not Agree with the Proposal to Grant Kyrgyz Citizenship to Children of Foreigners Born in the Country' (*AKu Express*, 23 September 2024) <https://kg.akipress.org/news:2169019> accessed 11 October 2024.
[37] 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9) 32.

in the State.[38] Furthermore, in order to obtain a permanent residence permit, stateless persons are required to spend five years in the country before they can obtain one. Such requirements, for both temporary and permanent residency, are often extremely onerous and are difficult to fulfil by stateless individuals, leaving their status in limbo.

27. Further challenges that are faced by stateless individuals is the limited scope and applicability of the Stateless Status Determination Procedures (SDPs). The SDPs apply only to certain individuals, mainly "former citizens of the USSR or CIS countries permanently residing in the territory of the Kyrgyz Republic".[39] This prevents other stateless individuals from applying to the relevant state authority in the Kyrgyz Republic to have their status recognized and obtain residency in the country. SDPs are essential for accurately identifying stateless individuals and safeguarding their rights in compliance with the 1954 Convention relating to the Status of Stateless Persons. Without SDPs, undocumented stateless people in the Kyrgyz Republic face insecurity regarding their legal status and risk losing their right to remain in the country. The lack of recognition leaves these individuals vulnerable to discrimination, mistreatment, and even the threat of deportation (refoulement), which violates international law. Therefore, it is crucial to establish and implement SDPs that align with international standards as soon as possible.

28. Finally, there are administrative barriers that restrict the freedom of movement of stateless persons. There is currently no travel documentation for stateless individuals which is internationally recognised. Without such documentation, stateless individuals face significant restrictions when attempting to travel across borders, limiting their ability to move freely outside of the country.

Recommendations

1. Ensure that the right to obtain an identity card is established for stateless individuals regardless of whether they have a residence permit.
2. Strengthen Kyrgyz Republic legislation by introducing provisions that permit any stateless individual to apply for status recognition and obtain legal residency in the country.
3. Strengthen the application of the non-refoulement principles for stateless persons, leaving expulsion to the most exceptional circumstances after safeguards have been ensured.

[38] ibid
[39] 'Statelessness in the Kyrgyz Republic: Analysis of National Legislation, Second Edition' (n 9) 17.

4. Accede to and ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
5. Develop and issue an internationally recognized travel document for stateless persons such that freedom of movement is not hampered.
6. Modify the law to reflect that all stateless persons have the right to healthcare and social security similar to citizens in the Kyrgyz Republic.
7. Develop a formal statelessness determination procedure.