

ILPA information sheet

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

Shauna Gillan ILPA Legal Officer 020-7490 1553 shauna.gillan@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Statelessness

September 2014

The first global forum on statelessness was held from 15 to 17 September 2014 at the Peace Palace in The Hague. The global forum, which was organised by UNHCR and Tilburg University, is part of UNHCR's campaign to end statelessness within ten years.

What is statelessness?

The most widely accepted definition of statelessness is that set out in Article 1(1) of the 1954 UN Convention on the Status of Stateless persons:

“For the purposes of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law”.

The reference to “*by operation of its law*” recognises that while the laws of a country may suggest that a person is not stateless, if that country in practice fails to recognise a person as its national then other States should treat them as stateless. Stateless persons are persons without what Hannah Arendt called “the right to have rights” that a nationality entails. A state may recognise a person as its national, but still persecute them, in which case the person would be a refugee, not stateless.

Are there stateless persons in the UK or born to British national parents?

Yes. Some of the stateless persons in the UK are migrants. Some, such as the Kuwaiti Bidoon or the Burmese Rohingya have never had a nationality. Others have been stripped of their nationality. The UK can strip persons of their British nationality leaving them stateless in two circumstances: where they have acquired that nationality through fraud and, since 28 July 2014 as a result of the coming into force of section 66 of the Immigration Act 2014, where the person only became British as an adult, through naturalisation (not through registration) and the Secretary of State is satisfied that depriving them of their nationality would be conducive to the public good because they have done something seriously prejudicial to the vital interests of the UK and she has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory. Some British nationals, whether in the UK or overseas, have children who are stateless. A British national who was

him/herself born overseas cannot pass on his/her nationality at the time of birth of his/her child and if another country does not make provision for the child, the child will be stateless.

What global conventions exist on statelessness?

There are two conventions: the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness. The 1954 Convention contains many provisions very similar to the 1951 UN Convention Relating to the Status of Refugees, including near-identical exclusion clauses. Like the Refugee Convention it is concerned with the formal recognition of persons, in this case as stateless, and with setting out their basic rights and entitlements, including to a stateless person's travel document. There is no obligation to give the stateless person a nationality and no right to a nationality set out in the Convention but there is an obligation upon states to "facilitate" the naturalisation of stateless persons.

How are stateless persons protected in the UK?

The UK Government, following consideration of a mapping exercise of stateless persons in the UK carried out by the UNHCR and the UK charity Asylum Aid, established a statelessness determination procedure which started to operate on 6 April 2013. This makes provision for persons to be recognised as stateless and given leave. So far only a very small amount of work has been done and very few persons have been recognised as stateless but it is hoped that with the recruitment of new staff the pace of decision-making will increase.

The 1961 Convention is concerned with provisions to reduce statelessness: both preventing it in the first place and addressing it where it occurs. It contains a bar on depriving persons of their nationality where this would leave them stateless, save in the very limited circumstances which are those within which the UK has constructed section 66 of the Immigration Act 2014. It is also concerned with provisions such as affording nationality to stateless children born on the territory. The UK affords such children nationality where they are born in the UK and reside for five years continuously in the territory, whereas other children born in the UK must reside continuously for 10 years to be allowed to become British. It also addresses giving nationality to children born abroad to parents who are nationals, and giving nationality to babies found abandoned on the territory.

What factors contribute to statelessness in the world today?

Many different factors contribute to statelessness. Discrimination against women with respect to passing on their nationality to their children is one. Persecution is another. This can affect both persons still living in the country in which they were born and those in exile – States sometimes deny a nationality to particular ethnic groups, for example. When states such as the former USSR or the Yugoslavia split up, there may be persons who as a result of laws or simply practical difficulties cannot claim the nationality of any of the successor States. Developments such as the growth of international surrogacy arrangements can mean that where the laws of different countries do not fit tidily together babies fall through the cracks and are born stateless. Lack of birth registration in many countries contributes to children not being able to prove their nationality and discrimination may result in persons from particular ethnic groups struggling to prove their nationality. Thus, a combination of preventative and remedial measures are needed to address statelessness and achieve UNHCR's aim of eradication.