



Mapping
Statelessness
in the United Kingdom

Executive Summary: Key Findings and Recommendations

Executive Summary

The research maps the number and profile of stateless persons in the UK and puts a human face on their situation. It also examines the UK's legal obligations to stateless persons under international law and analyses the impact of current policy and practice. Based on these findings the report makes recommendations for improvement. While the work owes a debt to previous studies, this is the first time that this hidden issue has been subject to such comprehensive quantitative and qualitative research.

The 1954 Convention on the Status of Stateless Persons defines a stateless person as “a person who is not considered as a national by any State under the operation of its law”. In practice many stateless persons are left without legal residence, consular protection, or the right to return to their country of origin. No Government takes responsibility for their protection. For those who have fallen through the cracks in this way, the consequences are serious.

The UK is one of a select group of 37 States that have ratified both the 1954 Convention and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention aims to regulate the status of stateless persons and to ensure the widest possible enjoyment of their human rights, and is complemented by the relevant provisions of international human rights treaties.

The 1961 Convention's purpose is to prevent statelessness, thereby reducing it over time. Although the Universal Declaration of Human Rights confirms that everyone has a right to a nationality, it does not set out a specific nationality to which a person is entitled. Responsibility for conferring nationality lies with individual States, and the UK has criteria in domestic law for the conferral and withdrawal of nationality. Against this background, the 1961 Convention sets out additional standards that States have agreed to ensure further international cooperation and agreement to prevent and reduce statelessness.

The UK was one of the first States to ratify and implement the 1961 Convention. This research finds that the UK generally complies with its obligations in this area, although there are specific areas where improvements in British nationality law could be made.





Despite the UK's obligations under the 1954 Convention and international human rights law, UNHCR and Asylum Aid found that stateless persons without leave to remain in the UK often go unidentified and those without leave to remain often live at risk of human rights infringements. The researchers interviewed stateless persons who had been destitute for months, had been detained by immigration authorities in spite of evidence that showed there was no prospect of return, or had been separated for years from their families abroad. Some had been forced to sleep on the streets. Some had seen their accommodation and support repeatedly cancelled and reinstated. Almost all of this group were prohibited from working.

Few were in a position to break this cycle. In the absence of a dedicated and accessible procedure to identify people who are stateless, they are left in legal limbo for years.

The available data indicates that the number of stateless persons stuck in such limbo in the UK is relatively small, but appears to increase at between 50-100 persons annually. In the absence of an accessible procedure that identifies stateless persons, however, as well as problems with the reliability of published statistics on statelessness and other data, it is possible that this estimate is at the bottom end of the scale.

Nonetheless, the research found that difficulties faced by stateless persons are deeply entrenched and need to be addressed.

Key Findings

The UK currently lacks specific law, policy and procedures to address many of the challenges confronting stateless persons. This gap impacts on many stateless persons on the territory, from their first contact with immigration control to the prospects of finding a permanent solution to their predicament either in the UK or in another State. The key findings of the research are:

1

There are flaws in the way data on stateless persons is recorded and presented. This means it is currently impossible to provide an accurate estimate of the total number of stateless persons in the UK.

The categories used by the UK Border Agency to record its contact with stateless persons are numerous, overlapping and confusing. As well as preventing an accurate count of stateless persons, this increases the risk that some stateless persons are not identified and that, as a result, their protection needs are not met.

2

A relatively small stateless population stuck in limbo in the UK can be identified by cross-referencing published figures with more detailed data provided by the Home Office and UK Border Agency for this research.

Despite recent improvements, the last published immigration statistics of August 2011, give an inconsistent and incomplete picture of the numbers of stateless persons who come into contact with immigration control.

Disaggregation of the published data shows that stateless persons with travel documents and visas are able to arrive in and depart from the UK without posing any particular challenge to immigration control. The research identifies around 150 to 200 people each year who claim asylum and are recorded as being stateless by the UK Border Agency. This group is granted asylum or complementary protection at a far higher rate than the average, reflecting the fact that stateless persons often face discrimination and the denial of their human rights in their countries of origin. The disaggregated statistics, however, show that removal only occurs in around 10 per cent of cases of stateless persons whose asylum claims are unsuccessful. The remaining group are small in number but are left in limbo, with no right to stay in the UK and no State to which they can return.

3

The absence of a statelessness determination procedure prevents the proper identification of stateless persons.

There is currently no dedicated and accessible procedure in the UK to which individuals can apply for recognition of their statelessness. A number of other European States have such a procedure. This gap is a major obstacle that prevents the UK Border Agency from being able to identify those who are stateless and cannot leave the UK, and to distinguish such persons from individuals who do have a nationality or the right of residence elsewhere and who can depart. Furthermore, the lack of such a procedure prevents a more accurate estimate of the number and profile of stateless persons in the UK. While there is the opportunity for stateless persons to apply for a 1954 Convention Travel Document, in practice this is accessible to only a small number of stateless persons, as any applicant is required to have six months leave to remain before being eligible to apply.

Stateless persons for whom the UK is the most appropriate country to provide a long-term solution are no longer granted leave to remain in the UK.

4

Between 1998 and 2002, stateless persons were granted indefinite leave to remain in the UK as a matter of policy, in cases where the UK was the most appropriate country of residence. By 2002, however, the policy had changed and applications for leave to remain on the basis of statelessness are now refused. This contrasts with the practice of a number of other European States and leaves many stateless persons with no option but to seek asylum. If their asylum claim is refused, they are expected to leave the UK in common with all other unsuccessful asylum-seekers. Any further support and accommodation is conditional on their cooperation with voluntary return, regardless of whether there is any country of nationality to which they can return.

Stateless persons in the UK who have not been granted leave to remain are at risk of human rights infringements.

5

Stateless persons without leave to remain in the UK interviewed for this research described the consequences of their legal limbo. Some told of long periods without food and nights spent on the streets. Several were separated from their immediate family, including one father who has not seen his four children in 10 years. Many were subject to lengthy periods in immigration detention, with no prospect of removal. As one person told our researchers: “I have no ID, no work, no education, no freedom”. Another interviewee likened his plight to that of “a bird with nowhere to rest on the ground, but which can’t spend his whole life in the sky”.



Key Recommendations

1

The UK should implement an accessible procedure to identify stateless persons on its territory.

The most effective way to ensure the UK meets its international obligations to stateless persons under the 1954 Convention and in human rights law is through the adoption of an accessible and efficient statelessness determination procedure that identifies stateless persons on UK territory as quickly as possible. Where such a procedure establishes that an individual does in fact possess a nationality permitting return, this could help facilitate the operation of immigration control. Likewise, such a procedure could identify a nationality to which a stateless person may be entitled, or a state where a stateless person may be entitled to return and reside, and where their human rights will be respected.

2

The UK should review its approach to the identification of stateless persons, and adopt a position in accordance with forthcoming UNHCR Guidelines on the definition of “stateless person” in international law.

Currently, in both immigration and nationality law, the burden of proof is placed on the individual to substantiate any claim that he or she is stateless, rather than being shared between the State and the individual. This research found that many applicants were frustrated in their efforts to obtain proof from foreign authorities or consular authorities in the UK, which regularly refused to respond to enquiries or to formally provide notification that an individual was not considered one of their nationals. The qualitative research found that, even when such confirmation was provided, the UK Border Agency would sometimes continue to attribute that nationality to the individual.

UK Border Agency guidelines and the decisions of the courts alike provide some guidance on whether a foreign State considers an individual to be a national under the operation of its law. Neither, however, fully corresponds to the conclusions of expert meetings convened in 2010 and 2011 to help develop UNHCR Guidelines. The UK’s approach to this issue should be reviewed in the light of the forthcoming Guidelines.

3

The UK should grant leave to remain to stateless persons in appropriate circumstances.

In the past, stateless persons without leave to remain were, in defined circumstances, granted indefinite leave to remain in the UK. This was the first step by which they could acquire a nationality and end their statelessness. The research has shown that a return to a policy granting leave to remain to stateless persons in appropriate circumstances would also ensure respect for stateless persons’ rights under the 1954 Convention and international human rights law. Such an approach is reflected in current practice among those States that have statelessness determination procedures, as it enables stateless individuals to live with dignity and security. In a small number of cases, however, it may not be appropriate to grant leave to enter or remain. For example, where a stateless person enjoys the right of residence in another State and is able to return and live there with full respect for their human rights. As discussed above, an effective statelessness determination procedure could help identify such cases.

The UK should ensure that its law, policy and practice relating to stateless persons and those who cannot as a matter of fact return to their country of nationality complies with its international human rights law obligations, particularly in relation to access to employment, social assistance and healthcare.

4

The absence of an efficient procedure to effectively identify stateless persons, or the possibility for stateless persons without leave to remain to regularise their immigration status, results in many individuals facing a number of human rights challenges. These are particularly pressing where individuals are at risk of destitution. At present there is no clear and immediate route out of destitution for these stateless persons, as nearly all are subject to immigration legislation and policy that prohibits both access to mainstream benefits and employment. To counter this, provisions relating to social assistance (including section 4 support) and access to employment should take into account the particular circumstances of stateless persons, and be applied in accordance with the UK government's obligations under international human rights law.

The UK Border Agency should amend its guidance on immigration detention to expressly identify an individual's statelessness as a factor that will weigh against detention, on the basis that it is likely to indicate that there are no reasonable prospects of removal.

5

A third of participants interviewed for the research had been detained under immigration powers. As well as amending existing guidelines in order to better protect stateless persons who are at risk of arbitrary and prolonged detention, there is a need for improved training of UK Border Agency personnel on how statelessness affects the presumption against detention, and how statelessness can sometimes become apparent only through the process of documentation for removal.

The UK should build on the protections in British nationality law that already prevent and reduce statelessness, specifically with reference to obligations under the 1954 and 1961 Conventions and the Convention on the Rights of the Child.

6

The statistical evidence showed that British nationality law, which includes specific provisions designed to meet obligations under the 1961 Convention, is generally effective at preventing statelessness at birth. There is, however, evidence of a small number of stateless children who were born on the territory and remained stateless for five years before being able to register as British citizens as of right. Furthermore, there is no accelerated or prioritised route through which stateless persons on UK territory can naturalise as British citizens. These are both areas that should be reviewed in the light of the UK's international obligations.

Statelessness

This executive summary sets out key conclusions and recommendations of **UNHCR** and **Asylum Aid's** joint study *Mapping Statelessness in the United Kingdom*. In this detailed study, UNCHR and Asylum Aid have comprehensively reviewed all available statistical information and scrutinised UK law and policy in order to shed light on the complex and hidden issue of statelessness. Thirty seven interviews were held with stateless persons in nine cities across the UK in order to try to put a human face on their situation.

The full report is available on the UNHCR and Asylum Aid websites. Other information about statelessness can be found at: www.unhcr.org/statelessness

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