Agenda: Addressing statelessness and citizenship of refugees with special emphasis on the EU

INTRODUCTION to the agenda:

“With respect to persons under UNHCR’s statelessness mandate, this figure includes persons of concern covered by two separate Latvian laws. 174 persons fall under the Republic of Latvia’s Law on Stateless Persons of 17 February 2004. 224,670 of the persons fall under Latvia’s 25 April 1995 Law on the Status of Those Former USSR Citizens who are not Citizens of Latvia or Any Other State (“Non-citizens”). In the specific context of Latvia, the “Non-citizens” enjoy the right to reside in Latvia ex lege and a set of rights and obligations generally beyond the rights prescribed by the 1954 Convention relating to the Status of Stateless Persons, including protection from removal, and as such the “Non-citizens” may currently be considered persons to whom the Convention does not apply in accordance with Article 1.2.” “UNHCR and UNICEF urge action in Europe to end childhood statelessness” 14 February 2019.

This includes both stateless individuals and persons of undetermined nationality. UNHCR and UNICEF also estimate that, in 2017, there were 2 100 children registered stateless in Europe, a fourfold increase since 2010.3 Article 1 of the 1954 Convention Relating to 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’. Statelessness is a legal anomaly, which can prevent those concerned from accessing fundamental human, civil, political, economic, social and cultural rights. As a result, such persons often live in conditions of protracted marginalisation and discrimination, facing numerous difficulties, such as the inability to receive medical assistance, enrol in educational programmes, acquire property, obtain legal employment, marry or open a bank account. Even though statelessness can occur in various contexts, its most common causes include state succession, ill-defined or discriminatory nationality laws, and arbitrary deprivation of nationality. Statelessness can also be a consequence of forced displacement and forced migration and can result when people face difficulties accessing civil registration documents, including birth certificates, necessary to acquire or confirm nationality.

The European Migration Network (EMN) was entrusted by JHA Council Conclusions of 3 and 4 December 2015 with the creation of a platform to exchange information and good practices in the field of statelessness. This EMN Inform is an update to the EMN Inform on Statelessness in the EU, published in November 2016. It updates the information in the first Inform via an EMN Ad-Hoc Query which was jointly launched by the IE and LU NCPs in March 2019 in preparation for their jointly-organised technical conference in Dublin in May 2019.The Ad-Hoc Query and conference focused on the nexus between the granting of a stateless status and residence permits. This Inform also draws on the results of earlier work including ad-hoc queries launched by the LU EMN NCP in 2015 and the LU EMN NCP and COM in 2016 , and the policy brief resulting from the LU EMN NCP conference “Tackling statelessness: Exchange of Experiences and Good Practices” organised in Luxembourg on 15 April 2016. The Inform was updated with the collaboration of UNHCR and also draws on other sources of information which helped to fill certain gaps in the analysis.

Conventions in play:

The two most important international instruments addressing statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention provides the definition of a “stateless person” and constitutes the foundation of the international legal framework for addressing statelessness. The 1961 Convention is the leading international instrument that sets rules for the conferral and withdrawal of citizenship provided that certain conditions are met which aim to prevent and reduce statelessness. Not all the EU Member States are signatories of these conventions.

Judicial procedures used by the Member States for the determination of statelessness

In the case of Belgium, only the family courts, established in the seat of a court of appeal (in the jurisdiction of which the applicant has his/her place of residence or, for lack thereof, where the applicant finds him/herself) are the competent authority for the recognition of statelessness in accordance with the new article 632bis of the Judicial Code. The decision can be appealed to the Court of Appeal. During the procedure, the applicant is not entitled to a temporary legal status and does not derive any rights from his or her recognition as stateless. The burden of proof lies with the applicant, who has to prove that s/he never had the nationality of the countries with which the s/he has ties. The countries with which the applicant-stateless person has ties could be among others: 1) country of residence; 2) country of birth; or 3) country where family members have nationality. If not, the applicant has to prove that s/he has lost it and is unable to access it again. For the judicial procedure in Italy, the applicant does not need to provide specific documents to access the procedure, but they must be assisted by a lawyer for lodging the application before the Civil Court. Hearings are scheduled by the Judge taking into consideration the complexity of the case.

Challenges and Gaps:

Lack of Clear Data:

While there are many reasons and even international obligations for EU Member States to identify and protect stateless persons, we are aware of a number of challenges and gaps in this regard. They include the following: Lack of clear data There is a lack of clear data on stateless persons in Europe, mainly because of the problematic recording of statelessness in the different migration contexts. This has also been raised as a concern in the recent Communication from the European Commission “on the Protection of Children in Migration” . UNHCR reports approximately 400.000 stateless persons in the EU but the mapping studies that we and our partners have carried out in at least half the EU Member States show a wide diversity in registration practices between authorities and between countries, as well as gaps. This number includes a large number of persons in Latvia and Estonia, considered to be ‘non-citizens’ or ‘persons with undermined nationality’ who enjoy rights above those foreseen in the 1954 Convention. We also noticed that nationality verification efforts, supported by Frontex for

example, are often focused on assigning the person a nationality, while the person may come from a certain country but not be a national of that country. Some countries record someone as stateless based on that person's claim. Other countries only record someone as stateless based on documentary evidence of their statelessness, which is virtually impossible to do for stateless persons who are asked to prove a negative. Yet in other countries there simply is no practical possibility to register someone as stateless under the 'nationality' category. The increased number of asylum applicants recorded as stateless that I mentioned earlier comes from only 15 EU Member States in 2016. Thirteen countries did not report any stateless asylum applicants while it is highly likely that stateless persons also sought asylum there. This leads to the situation where stateless persons end up being recorded as nationals of the country they fled, or under a category like 'nationality unknown'. Indeed, the data shows an almost tenfold increase of the number of persons seeking asylum being recorded as nationality unknown, in 14 EU Member States using this category. The number went from 2,400 in 2012 to over 20,000 in 2016. We are not saying that all these persons are stateless but we do raise the question: who are these people, can their nationality, or lack thereof, be clarified? These are potentially complex cases for whom it is difficult to determine the country of origin. They deserve proper measures to assess their situation, instead of parking them in a rest category.

Lack of dedicated statelessness determination procedures

These gaps related to data collection. We also see problems around a lack of dedicated procedures that provide solutions for stateless persons. Twenty four of the twenty eight EU Member States have committed themselves to protecting these persons by becoming State Parties to the 1954 Convention relating to the Status of Stateless Persons. Only Cyprus, Estonia, Malta and Poland have not done so yet. In order to be able to know who should benefit from the protection of this Convention, States should know who the stateless persons are in the territory. As mentioned earlier, only a handful of countries in the EU operate a statelessness determination procedure that allows to clarify someone's statelessness, or nationality for that matter. These procedures result in a protection status for identified stateless persons, allowing access to rights under the 1954 Convention. We describe these countries in our Good Practices Paper on statelessness determination procedures . In the EU, they include France, Spain, Italy, the UK, Hungary and Latvia. In most EUMS, stateless persons have no way of being identified as such and accessing protection.

Misunderstandings

Another misunderstanding is that we are sometimes told by our interlocutors that stateless persons can access rights under alternative statuses, which are variants of the so-called 'tolerated stay'. We see however that these procedures lack the adequate safeguards to ensure the proper identification of all stateless persons. In addition, generally, the rights granted to persons with tolerated stay provide a level of protection that is below the minimum standards of the 1954 Convention. Last but not least, we are concerned about the lack of awareness and understanding of statelessness and of the risks thereof among staff who work with refugees and migrants. This includes police and border guard officials, asylum authorities, staff and deployees

of Frontex and EASO, civil registry officials, NGOs, lawyers and interpreters, and even our own UNHCR colleagues.
This leads to misconceptions around the implications of protecting stateless persons in the EU. Countries fear they will be flooded by persons claiming protection as stateless persons or that all those whose asylum claim fails will turn to the statelessness determination procedure. The experience in the handful of countries that operate statelessness determination procedures shows that this fear of a pull factor is unfounded. This shows the significant number of refugees and the relatively small and manageable numbers of stateless persons in the UK, France, and Hungary, all EU Member States that have a statelessness determination procedure in place.

Legal Overview of the issue:

The right to a nationality is of paramount importance to the realization of other fundamental human rights. Possession of a nationality carries with it the diplomatic protection of the country of nationality and is also often a legal or practical requirement for the exercise of fundamental rights. Consequently, the right to a nationality has been described as the "right to have rights." *See* Trop v. Dulles, 356 U.S. 86, 101–02 (1958). Individuals who lack a nationality or an effective citizenship are therefore among the world's most vulnerable to human rights violations.

In recognition of the importance of having a nationality, a number of regional and international human rights instruments include the right to a nationality. Article 15 of the Universal Declaration of Human Rights states that "[e]everyone has the right to a nationality" and that "[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." *See also* American Convention on Human Rights, art. 20. The right to a nationality is often articulated through protection of the rights of children and the principle of non-discrimination. For example, Article 7 of the Convention on the Rights of the Child states that every child has the right to acquire a nationality, while Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination requires States to "prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights . . . the right to nationality."

Despite recognition of the right to a nationality, there are currently at least 10 million people who do not have a nationality and are therefore stateless. *See* UNHCR, Ending Statelessness. While statelessness is a global problem, it is particularly prevalent in South East Asia, Central Asia, Eastern Europe, the Middle East, and several countries in Africa. *See* UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom* (2011), at 22. Estimates show that the countries with the greatest number of stateless persons residing within their borders are Cote d'Ivoire, Estonia, Kuwait, Latvia, Myanmar, Russia, Syria, Thailand, and Uzbekistan. *See* UNHCR, *Global Trends: Forced Displacement in 2016* (2017), at 60-63.

The 1954 Convention relating to the Status of Stateless Persons (1954 Statelessness Convention) was drafted in order to guarantee the protection of these individuals' fundamental

rights. Article 1(1) of the 1954 Statelessness Convention defines a stateless person as "a person who is not recognized as a national by any State under the operation of its law." This definition has subsequently become a part of customary international law. *See* UNHCR, E*xpert Meeting – The Concept of Stateless Persons Under International Law (Summary Conclusions)* (2010), at 2 (commonly referred to as the UNHCR Prato Summary Conclusions).

The 1954 Statelessness Convention is similar in structure to the 1951 Convention Relating to the Status of Refugees. This is because the 1954 Statelessness Convention was originally intended to be a Protocol to the 1951 Refugee Convention. *See, e.g.,* Equal Rights Trust, *The Protection of Stateless Persons in Detention under International Law* (Working Paper 2009), at 19. It is not surprising, therefore, that the 1954 Statelessness Convention addresses the same rights as those covered in the 1951 Refugee Convention, with a few distinctions. The 1954 Statelessness Convention applies some of the same exclusion clauses as those found in the 1951 Refugee Convention. For example, the 1954 Statelessness Convention does not apply "to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance." *See* 1954 Statelessness Convention, art. 1(2)(i).

The 1954 Statelessness Convention also recognizes the rights of stateless persons to education, housing, access to the courts, employment, and public relief, among other rights. In some cases, such as in access to the courts and access to public relief and primary education, stateless persons are to be treated in the same way as nationals. *See id.* at arts. 16, 22-23. In other areas, including wage-earning employment and housing, stateless persons are to be given the same treatment as non-citizens in the same circumstances. *See id.* at arts. 17, 21. Recognizing that many stateless persons lack documentation, Article 27 requires States to issue identity documents to stateless persons on their territory, while Article 28 obliges States to issue travel documents to stateless persons unless there are compelling reasons such as national security or public order for not doing so. *See id.* at arts. 27-28.

A major limitation of the 1954 Statelessness Convention, and where it departs significantly from the 1951 Refugee Convention, is the protection afforded in Article 31. Article 31 prohibits the expulsion of stateless persons lawfully in the territory of a State party save for grounds of national security or public order. *See id.* at art. 31(1). Article 31 also requires that the expulsion of stateless persons on these grounds be "in pursuance of a decision reached in accordance with due process of law." *See id.* at art. 31(2). The issue with Article 31 is that it limits its protection to stateless persons *lawfully* on the State's territory. Because many stateless persons lack identity and travel documents, they have no means of gaining lawful entry into a State and thus are ineligible for protection from expulsion. This is in sharp contrast to Article 31 of the 1951 Refugee Convention, which recognizes the difficulties refugees often face in acquiring valid travel documents and prohibits States from penalizing refugees who enter their territories illegally. *See* 1951 Refugee Convention, art. 31(1).

Article 32 of the 1954 Statelessness Convention requires States to "as far as possible facilitate the assimilation and naturalization of stateless persons." More detailed provisions for the acquisition of nationality as well as the prevention of statelessness in the first place are found in the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention). Article 1(2) of the 1961 Statelessness Convention describes the conditions a State may place on granting nationality and stipulates that a State may require a period of habitual residence but it may not exceed five years. The 1961 Statelessness Convention also provides that children should acquire the nationality of the State in which they are born if they would otherwise be stateless and that a State may not deprive an individual of their nationality if doing so would render the individual stateless. *See* 1961 Statelessness Convention, arts. 1, 8.

Nationality can be a contentious issue, however, as the acquisition and deprivation of nationality implicates other areas of the law including a State's sovereign right to determine who may enter and remain within its territory. Consequently neither the 1954 nor the 1961 Statelessness Conventions are widely ratified and a large number of States have domestic laws that deprive individuals of access to a nationality on a discriminatory basis and/or do not adequately protect the human rights of stateless persons on their territory.

Legal Protections

The following instruments address the right to a nationality:

- 1951 Convention Relating to the Status of Refugees and 1967 Optional Protocol Relating to the Status of Refugees
- 1954 Convention Relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness
- 1997 European Convention on Nationality
- African Charter on the Rights and Welfare of the Child (art. 6)
- American Convention on Human Rights (art. 20)
- American Declaration of the Rights and Duties of Man (art. 19)
- Arab Charter on Human Rights (art. 24)
- Convention on the Elimination of All Forms of Discrimination against Women (art. 9)
- Convention on the Elimination of All Forms of Racial Discrimination (art. 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (art. 18)
- Convention on the Rights of the Child (arts. 7 and 8)
- Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession
- International Covenant on Civil and Political Rights (art. 24(3))
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (art. 6(g) and (h))

- Universal Declaration of Human Rights (art. 15)

Acquisition of Nationality

Nationality can be acquired in one of three ways: by birth on a State's territory (*jus soli*), by descent from a State's national (*jus sanguinis*), or by naturalization. The citizenship laws of each State dictate whether the State applies *jus soli* or *jus sanguinis* and explain the requirements for naturalization. In States that apply pure *jus soli*, an individual acquires the citizenship of that State by being born on the State's territory, regardless of the citizenship or immigration status of the individual's parents. *See, e.g.,* 8 U.S.C. § 1401. In other States, such as the United Kingdom, an individual acquires citizenship by birth on the territory, provided that the individual's parents were "legally settled" in the United Kingdom at the time of the individual's birth. *See* British Nationality Act, 1981 c. 61, § 1 (United Kingdom). In States that apply *jus sanguinis*, it does not matter where an individual is born; if at least one of the individual's parents is a citizen of the country, citizenship will pass from the parent to the child. *See* Act of 15 February 1962 on Polish Citizenship, § 2 (Poland). A number of States, however, provide that only the father may pass his nationality on to his children. (See **Causes of Statelessness** below.) Finally, States such as the United States, apply both *jus soli* and *jus sanguinis* – that is, children born on U.S. territory are automatically U.S. citizens, as are children born abroad to U.S. citizen parents. *See* 8 U.S.C. § 1401.

De Jure vs. De Facto Statelessness

The definition of a stateless person provided in the 1954 Statelessness Convention – "a person who is not considered a national by any State under operation of its law" – describes the situation of the *de jure* stateless. *See* 1954 Statelessness Convention, art. 1(1). Thus, the obligations imposed on States by the 1954 Statelessness Convention apply only to *de jure* stateless persons, although the Final Act included a non-binding recommendation that States take measures to protect the rights of *de facto* stateless persons. *See* UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1.

There has been much debate within the international community concerning the definition of *de facto* statelessness. A generally applied definition of a *de facto* stateless person has been "a person unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection." *See, e.g.,* Gábor Gyulai, Hungarian Helsinki Committee, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe* (2007), at 8. Thus, *de facto* stateless persons technically have a nationality, but for a variety of reasons do not enjoy the rights and protections that persons holding their nationality normally enjoy.

The debate regarding this definition has surrounded the ambiguity of the term "effective nationality." Traditionally, the divide has been over whether a person's nationality could be ineffective inside as well as outside the individual's country of nationality. This debate unfolded during the 2010 UNHCR Expert Meeting on the Concept of Statelessness under International Law, where participants ultimately concluded that the term "*de facto* statelessness" should refer to persons "outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country." *See* UNHCR, *Expert Meeting – The Concept of Stateless Persons Under International Law (Summary Conclusions)* (2010).

In the above context, "protection" refers to "the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality." *See id.* A person's inability or unwillingness to seek the protection of the country of that individual's nationality is often the result of a well-founded fear of persecution, meaning that refugees are considered *de facto* stateless. It is important to note, however, that not all *de facto* stateless persons are refugees.

Questions a Resolution must Answer:

1) What is the definition of statelessness?
2) Do climate refugees fall under de facto statelessness or de jure statelessness?
3) What kind of protocol and procedures needs to be adopted by the EU to tackle the situation?
4) Are the existing legal instruments sufficient to maintain order and safety of refugees?
5) On what basis and in what proportion and parameters shall per country accept refugees into their territory?
6) What measures and privileges should be granted to refugees to ensure a proper life?

Letter from Executive Board:

Greetings Delegates,

I hope you have read the background guide provided above. This letter will address what we as the executive board expect from the delegates attending the committee. Delegates, we expect you to address the timeline given as genuine facts in the committee as we are in a present simulation, you need to have a good amount of research on your country policy and substantial research on the possible solutions to this problem. We also expect you to be active with submission of directives to impact the committee in favorable ways!

Delegates, we as the executive board will ensure the active participation of the committee in the crisis provided and will encourage everyone to co- operate cordially with the executive board in order to make this committee a success!

Looking Forward to a Great Committee, Executive Board.

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