

DETENTION AND RETURN

Protecting stateless people from arbitrary detention

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WHAT'S THE ISSUE?

The failure to identify statelessness and protect stateless people can **put children at risk** and cause **serious human rights violations**.

- **Detention in reception context:** Stateless refugees are sometimes required to stay in reception centres for prolonged periods due to uncertainty about their nationality, and in some cases are detained or have unlawful restrictions on freedom of movement, violating standards of the recast [Reception Conditions Directive](#) and other law.
- **Detention for purposes of removal:** Stateless people whose statelessness is not identified are at risk of being unlawfully detained for long and repeated periods for the purposes of removal, even if they are not able to return to a country of origin or previous residence because they are not nationals.
- **Refoulement:** Stateless refugees from countries like Iraq, Syria, or Ethiopia whose statelessness is not identified in refugee status determination procedures may, at the end of an armed conflict have their refugee status withdrawn (ceased), and subsequently face a risk of being detained and/or forced to return to their country of former residence (if accepted) to face serious discrimination and/or persecution.

WHAT CAN I DO AS A FRONTLINE REFUGEE PRACTITIONER?

The 4 Rs: Recognise, Record, Refer, and Read up!

1. [Recognise](#) statelessness

Do not assume that everyone has a nationality or that everyone who is stateless knows they are stateless. Be aware that some people may think of 'nationality' as their ethnicity or community group, rather than citizenship. When considering whether a person's detention is or would be lawful, consider whether questions about citizenship and the risk of statelessness have been adequately addressed in screening and/or status determination procedures, or if indications of statelessness were recorded, and explore further if needed. For example:

- Do the authorities of the applicant's home country or any other country consider them to be a citizen, and do they have a right to return with the same range of rights associated with citizenship?

- Is the applicant part of a group that the government of their country of origin does not recognise as citizens, such as [Kurds from Syria](#) or Iraq or [bidoon people from Kuwait](#)?
- Is the applicant from a territory that is not recognised by all countries as a State and/or where recognition of statehood does not imply full sovereignty or effective nationality of that State, for example [Palestine](#) or [Western Sahara](#)?
- Have previous return attempts failed, and does this indicate that the country of potential return does not consider the applicant to be a national?
- Have there been delays or difficulties in acquiring travel or identity documents to allow the applicant's return, and does this indicate that the country of potential return does not consider the applicant to be a national?

More questions are available here: [Identifying Statelessness: Screening questions](#).

2. [Record statelessness/risk of statelessness](#)

- If you identify that a person may be stateless in the context of reception, or if the person claims to be stateless, record this important information on any paperwork relating to this person.
- If a form does not have fields allowing you to accurately record this information, make a note somewhere on the form about it, so that there is a record, and inform the person of this and that it may be important in future.
- Also keep copies of any relevant documents in your file so that they can be accessed later if needed.
- Where standard forms or checklists do not contain a dedicated section to record this information, ask the relevant person within your organisation to amend these to include ways to accurately record (risk of) statelessness on all relevant forms.
- In the refugee status determination context, it must be determined whether the applicant is stateless and what this means for them. If they are stateless, this should be clearly recorded in all relevant documentation, so that upon being granted refugee status, their statelessness is acknowledged and the person is referred to adequate procedures to determine statelessness (if available). This will be vital to ensure that the person will not face removal attempts later on that could lead to arbitrary detention, even if at some future point most refugees can return home.

3. [Refer people to expert advice, support, and information](#)

Identify organisations that specialise in statelessness and nationality in your country of work and see if they can help. Some of [our members](#) may be able to assist. Download and use our [guide/poster](#) for refugee response actors and our [short guide](#) for refugees and asylum seekers. In some cases, determining whether a person is stateless requires specialist knowledge that is not available in the public domain, and an expert should be instructed to prepare a report confirming whether the person is stateless.

4. [Read up about statelessness and detention](#).

Learn more about birth registration and preventing childhood statelessness here:

- Watch this [short video about statelessness and detention \(No One Will Notice\)](#)
- [ENS: Protecting stateless persons from arbitrary detention](#)

- [UNHCR tool for the identification and protection of stateless persons in detention](#)
- [Equal Rights Trust Guidelines to protect stateless persons from arbitrary detention](#)
- Our [Statelessness Index](#).

WHAT NEEDS TO CHANGE AT THE POLICY LEVEL?

- States must improve procedures for the [identification and registration of statelessness](#).
- [Establish robust statelessness determination procedures](#), both as standalone procedures and within refugee status determination procedures.
- [Improve laws and guidance](#) to prevent the arbitrary detention of stateless people. Ensure that statelessness is considered as a relevant fact in detention and return decisions, and that if a person claims to be stateless, they are protected from detention, provided with information and legal assistance, referred to a statelessness determination procedure to establish their nationality or entitlement to protection under the 1954 Convention relating to the Status of Stateless Persons, and issued identification and basic rights upon release.
- [Raise awareness](#) with immigration detention and return actors (including officials, judges, lawyers and NGOs) on the specific situation and protection needs of stateless people and ensure they have access to information and resources about statelessness.

MORE BACKGROUND INFORMATION AND ADDITIONAL RESOURCES

Violations of international law: There are clear international and European legal standards protecting people from unlawful detention. In many cases these are reflected in safeguards against discrimination and arbitrariness in national legal frameworks. But these safeguards are often not implemented because of the failure to identify statelessness and protect stateless people.

Repeated and/or prolonged unlawful detention: The nature of statelessness means that very often, a stateless person has no country to which they can return. If statelessness is not identified, and there is no route to legal residence in Europe, these people can be subjected to repeated, unsuccessful removal attempts. In many countries, this can also mean suffering repeated or prolonged periods of detention, which is unlawful if it is for the purpose of removal, but removal is not imminent or there is no longer a reasonable prospect of removal.

Lack of statelessness determination: In many countries, the lack of a dedicated statelessness determination procedure (SDP) and/or robust determination of statelessness in refugee status determination procedures contributes to stateless persons being unlawfully detained or returned to a country of which they are not a national. In some countries, some people are identified as stateless but not granted refugee status or subsidiary protection (or another form of legal residence). There may be no legal pathway for them to regularise their status. This protection gap can leave people stuck in limbo, and in some cases, detained indefinitely with no actual prospect of removal.

Get more information

[European Network on Statelessness](#)
[Stateless Journeys](#)
[Statelessness Index](#)
[UNHCR's Ending Statelessness site](#)
[UNHCR's Self-Study Module on Statelessness](#)
[Institute on Statelessness and Inclusion](#)
[Statefree](#)

Attend a course at the [Institute on Statelessness and Inclusion](#) or the [University of Melbourne](#).

Organisations in Europe can [contact ENS](#) about training opportunities.

You can also [sign up to our mailing list/newsletter](#), [follow us on social media](#) and support the [Stateless Journeys campaign](#).

Follow us on social media



'THE WAITING IS THE WORST PART OF DETENTION. IT'S LIKE YOU DON'T HAVE ANY CONTROL ANYMORE, YOU JUST SIT AND WAIT. YOU WAIT FOR SOMEONE ELSE TO TELL WHO YOU ARE AND WHAT IS YOUR COUNTRY.'

~ STATELESS MAN FROM PAKISTAN INTERVIEWED IN POLAND IN 2015