

TOOLKIT TO IDENTIFY AND ADDRESS STATELESSNESS



GERMANY

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European
Network on
Statelessness

TOOLKIT TO IDENTIFY AND ADDRESS STATELESSNESS IN GERMANY

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LIST OF ABBREVIATIONS

1954 Convention	1954 Convention Relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ICCPR	International Covenant for Civil and Political Rights
ICEDAW	International Convention on the Elimination of all forms of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
SDP	Statelessness determination procedure
UNHCR	United Nations High Commissioner for Refugees
BAMF	<i>Bundesamt für Migration und Flüchtlinge</i> (Federal Office for Migration and Refugees)
BMI	<i>Bundesministerium des Innern und für Heimat</i> (Federal Ministry of the Interior)

1. TERMINOLOGY

In this guide we use the following terms as defined below.

Citizen/national: these terms are used to mean the same thing, i.e. a legal bond between a person and a state which usually allows an unrestricted right of residence on the territory, full civil and political rights, access to national identity and travel documents, and the ability to freely leave and return to the territory.

Own country / home country / country of former habitual residence: these terms refer to a country in which a stateless person was born or has previously lived. Habitual residence means stable, factual residence, which covers 'those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of on-going residence there'.¹

Host country: refers to a country in which a stateless person lives and is seeking to be recognised and granted residence, protection status, and/or nationality.

In situ statelessness (vs migratory statelessness): *in situ* statelessness refers to the situation in which a person is stateless even though they have long-established ties to a country, often because they have long-term residence or were born in that country. Generally, their statelessness is the result of issues in the framing and/or implementation of nationality laws, and they should be recognised as nationals of this country (if they wish this). This contrasts with migratory statelessness, which refers to statelessness that occurs as a cause or a consequence of displacement, usually amongst people who have migrated from one country to another (or their children); the preferred remedy for them may be recognition and protection as stateless people and/or acquisition of the nationality of the host country.

Jus soli citizenship/birthright citizenship: citizenship that is acquired as a result of being born on the territory of a state. In some countries, acquisition of citizenship may be dependent on other conditions, such as one parent having lawful residence in the country (restricted *jus soli*).

Jus sanguinis citizenship: citizenship that is acquired based on the citizenship of a person's parents or ancestors.

Asylum-seeker: refers to a person who is requesting asylum or another form of international protection, usually because they fear persecution or serious harm. Many asylum-seekers are refugees but have not yet been recognised as such.

Refugee: under the 1951 Convention relating to the Status of Refugees, a refugee is a person who has a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'

A person *is* a refugee if they meet this definition (or if they are a Palestinian in certain circumstances)² whether or not the person has been officially recognised as a refugee. Regional or national legislation may also have different definitions and protection frameworks that are wider than the international definition of the 1951 Convention.

¹ See UNHCR [Handbook on Protection of Stateless Persons](#) (2014), Para 139 (hereinafter 'UNHCR's Statelessness Handbook').

² Pursuant to Article 1D of the Refugee Convention and other international law and UN resolutions. See [Palestinians and the Search for Protection as Refugees and Stateless Persons](#) (ENS & BADIL, 2022).

Stateless person: a person ‘who is not considered as a national by any State under the operation of its law’ (1954 Convention relating to the Status of Stateless Persons, Article 1). A person who meets this definition *is* stateless, whether or not their statelessness has been officially recognised.³

Undetermined or unknown nationality: refers to a situation where a person’s nationality or lack of nationality is not yet confirmed. These terms should be used with extreme caution for the shortest possible time and should always trigger a formal determination of the person’s nationality or statelessness. People who identify themselves as stateless should generally be recorded as stateless and referred to an appropriate procedure to determine their statelessness (or nationality), in line with international law. In Germany, population data not only includes the category ‘stateless’, but also people having ‘unclear’ (*ungeklärt*) nationality and ‘without indication’ (*ohne Angabe*). People whose statelessness has not been officially determined are often categorised as having ‘unclear’ nationality, which prevents them from accessing the protection they are entitled to under the 1954 Convention.

Statelessness determination procedure (SDP): a legal process by which an individual, usually in a migratory context, is officially recognised as a stateless person and granted stateless status in a host country (including residence and socio-economic rights).

Nationality determination procedure: a process by which an individual’s nationality is determined (usually in the country in which they were born) and which may also determine that the person has *no* nationality. This procedure should be applied to children soon after birth for the purposes of determining and recording their nationality.

2. INTRODUCTION TO STATELESSNESS IN GERMANY

The legal and policy framework on statelessness in Germany has both positive and negative aspects. Germany is a State Party to all relevant regional and international human rights instruments, except for the European Convention on the Avoidance of Statelessness in Relation to State Succession (which it has signed but not acceded to) and the UN Convention on the Rights of Migrant Workers and their Families. Germany retains two key reservations to the 1954 UN Convention Relating to the Status of Stateless Persons concerning identity documents and social security entitlements.⁴

Germany does not have a Statelessness Determination Procedure (SDP), but statelessness can be identified if it arises during another administrative procedure, such as an application for international protection under the responsibility of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* (BAMF)), or, if international protection is refused, under the responsibility of the local foreigners' office (*Ausländerbehörde*). The local foreigners' office may issue a form of lawful stay known as ‘*Duldung*’ or ‘tolerated stay’ (§ 60a AufenthG), which allows a person to remain in Germany for the time they cannot be removed. However, this documents an irregular stay, the obligation to leave still exists, and it enables access only to very basic assistance and restricted employment. Statelessness can also be identified during an application for a travel document, or for other kinds of residence permit, such as family reunification or study permits. However, without a dedicated mechanism to formally

³ A distinction between *de jure* and *de facto* statelessness is not made in this guide, as it is not relevant for the purposes of determining whether a person is stateless under the 1954 Convention. The term *de facto* stateless is not defined in international law and it is recommended to avoid it, as broader interpretations of the term have been used to unduly exclude from protection persons who are stateless under Article 1(1) of the 1954 Convention. For example, a person who should be considered stateless in accordance with a State’s law but is not in practice recognised as a national by the authorities of that State, is considered stateless ‘under the operation’ of that State’s law.

⁴ These reservations relate respectively to Article 27 (identity documents) and Article 23 (public relief) of the 1954 Convention.

determine statelessness and grant statelessness status, stateless people are not granted any protection status nor rights, unless also recognised as refugees.

Population data in Germany is comprehensive, but without an SDP, estimates for the stateless population remain inaccurate. The Federal Statistical Office publishes a wide range of statistics. There is a 'stateless' category in its data collection system but there are also overlapping categories, such as 'unclear nationality', 'without indication', and 'Palestinian'. As of the end of 2023, there were 29,495 recorded stateless people in Germany and 96,260 people listed as having 'unclear' nationality or 'without indication'. UNHCR reports 28,964 stateless people as of 2023. The number of stateless people born in Germany has risen from 3,550 to 4,860 since 2014, while the number of stateless people born to German nationals abroad has more than doubled since 2014. A quarter of stateless people in Germany are children and young people under 18. Nearly half of the people registered as stateless at the end of 2022 were born in Syria (mainly Kurds and Palestinian refugees), 5% were born in Lebanon, and 16% were born in Germany.⁵ Most stateless people and people with 'unclear nationality' or 'without indication' born in Germany were born in the federated state of North Rhine-Westphalia. Most people holding a travel document for stateless people live in North Rhine-Westphalia. Most stateless people live in Berlin, followed by Hannover, Essen, Munich, and Frankfurt am Main. More detailed statistics and information can be found in the [Statelessness Index profile for Germany](#).

Although statistical data is comprehensive relative to other countries, statelessness has not been comprehensively surveyed or mapped in Germany. Additional confusion surrounds the exact number of stateless people as the category 'stateless' in the national data collection system does not include people from the Occupied Palestinian Territories and people registered as having 'Soviet' citizenship, among other potentially overlapping categories. There are also issues with the identification and recording of statelessness in the refugee context, as authorities routinely categorise asylum seekers who arrive without passports with an imputed nationality or as 'stateless' or 'unclear nationality', without verifying their actual nationality status. Almost 80,000 people with tolerated stay on the grounds of missing travel documents are registered as having a nationality, while almost 20,000 people were granted tolerated stay on the grounds that their identity has not been established. This indicates that the number of people who are stateless or at risk of statelessness in Germany could be significantly larger.

3. WHAT IS STATELESSNESS AND WHY IS IT A PROBLEM?

To be stateless is not to be recognised as a national of any country. Stateless people have specific rights under international law, many of them parallel to the rights of refugees. The two main international instruments addressing statelessness are the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Other international and regional declarations and agreements are relevant in some contexts.

Article 1 of the 1954 Convention defines a stateless person as someone 'who is not considered as a national by any State under the operation of its law'. This definition is also considered to be customary international law. [UNHCR's Handbook on Protection of Stateless Persons](#) confirms that this definition requires consideration of legislation and the way that laws and policies are applied in practice.

Germany has incorporated the 1954 Convention into domestic law, including the definition of a stateless person. However, the German translation of the definition is ambiguous and unclear with regards to the 'operation of the law' element, as the full definition under German law translates into English as 'a person that no State, on the

⁵ Federal Office of Statistics, Press release No. 091, 9 March 2023: https://www.destatis.de/EN/Press/2023/03/PE23_091_125.html

basis of its law, sees as its national'. In addition, the definition of a stateless person is incorrectly cited in the administrative guidelines on the Residence Act and Nationality Act. In the administrative guidelines on the Residence Act, a stateless person is defined as follows: "Foreigners are only stateless pursuant to the Convention (1954 Convention) if they can verifiably prove that they do not have the nationality of the possible countries (de-jure-statelessness), but not persons whose nationality is undetermined or whose legally existing nationality is illegally not considered by the respective State such as by refusal to issue a passport (*de-facto* statelessness) [*"Staatenlos i. S. d. Übereinkommens sind nur Ausländer, die nachweislich keine Staatsangehörigkeit eines in Betracht kommenden Staates besitzen (de-jure-Staatenlose), nicht aber Personen, deren Staatsangehörigkeit ungeklärt ist, oder deren rechtlich vorhandene Staatsangehörigkeit von ihrem Herkunftsstaat rechtswidrig, etwa durch Verweigerung der Ausstellung eines Passes, nicht berücksichtigt wird (de-facto-Staatenlose)*], Rn. 3.3.5.0."].

In the administrative guidelines on the Nationality Act, a stateless person is defined as: "A person is stateless, if no State in accordance with its laws sees the person as its national" [*"Staatenlos ist eine Person, die kein Staat nach seinem innerstaatlichen Recht als Staatsangehörigen ansieht"*], Rn. 8.1.3.1.].

This leads to disputes in Germany about whether statelessness deriving only from the application of the law in practice is encompassed in the definition or if this falls outside of the scope of the 1954 Convention. The wording 'on the basis of the law' means that, in practice, authorities may incorrectly limit their assessment to the text of the law and not include consideration of the implementation of the law in line with UNHCR Guidance, which states that the examination should be a mixed question of fact and law. A related issue is that government agencies have access to guidance for determining statelessness for some affected populations but not others. For example, there is BMI guidance on determination of statelessness for Palestinian refugees from Syria and Lebanon but not for Syrian Kurds, so the latter may be incorrectly imputed Syrian nationality.

While the definition of a stateless person applies to all government agencies, there are inconsistencies in its application, as it is considered an 'administrative category' rather than a legal status. Other administrative categories include 'unclear nationality' and 'without indication'. According to German law (BVerwG v. 25.7.2000 - 9 C 42.99), such categories can only be used for a limited time, but there is no clear time limit or obligation to determine identity and nationality. A further issue is that the interpretation of the definition of a stateless person often varies between local authorities as they are not bound by prior decisions of other authorities when registering statelessness. As such, a new procedure under a different competent authority may lead to a new, potentially different, assessment of an individual's identity and nationality status.

Summary of Germany's main international obligations relating to stateless persons:

- 1954 UN Convention relating to the Status of Stateless Persons: Germany is a party to this Convention, which focuses on the protection of stateless persons with reservations to Articles 23 (public relief) and 27 (identity documents).
- 1961 UN Convention on the Reduction of Statelessness: Germany is a party to this Convention, which aims to prevent and reduce statelessness by ensuring access to nationality and related rights.
- 1997 European Convention on Nationality: Germany is a party to this Convention, which establishes principles for the acquisition and retention of nationality and the prevention of statelessness. It has reservations to Article 7 permitting loss of nationality in certain circumstances.
- EU Return Directive: Germany is bound by this Directive, which ensures humane treatment and respect for the rights of persons subject to return.
- Other international and regional human rights treaties to which Germany is a party include ICCPR, ICESCR, CRC, ICEDAW, ICERD, CRPD, ICPPED, ECHR, CFR.

International and regional conventions have direct effect in German law, meaning that individual rights can be invoked and applied to protect stateless people.

Unaddressed, statelessness is a cause of denial of access to fundamental rights and opportunities. It often means that people cannot reach their full potential because they are prohibited from working, unable to access education and/or healthcare, and unable to participate fully in society or democratic processes. They are often forced to live in poverty and may be subjected to unlawful detention, exploitation, and discrimination. These circumstances and other experiences may have severe impacts on their mental health and their overall wellbeing. Finding solutions for stateless people brings many benefits for individuals and societies. In addition to protecting fundamental human rights, the recognition and resolution of statelessness contributes to social and economic development.⁶

The absence of an SDP in Germany makes access to fundamental rights very difficult in practice. A common challenge stateless people face when seeking to resolve their immigration and/or nationality status in Germany is that no administrative procedure has the determination of statelessness as an objective, and evidentiary requirements to be identified as stateless are difficult to meet. In refugee status determination procedures, stateless people must prove their statelessness by showing a 1954 Convention identity or travel document issued by another country. Moreover, a residence permit is necessary to apply for a travel document (§§ 5ff AufenthV), which is another procedure during which statelessness may be identified. Therefore, such procedures remain inaccessible to stateless people or people with undetermined nationality who have not yet been identified and registered.

Other obstacles derive from the lack of procedural rules and guidelines on identification and determination of statelessness in Germany. There is a specific guideline to clarify identity and nationality, which foresees five different levels of proof, from official documents and certificates (levels one to three) to other forms of proof, such as (expert) testimonies (level four), and a statement by the applicant (level five). To be able to submit level four or five evidence, it is necessary to show that it is 'impossible' or 'unreasonable' to present levels one to three. These terms are not defined in law and there are no guidelines on their interpretation, for example to explain that it is often impossible for stateless people to provide a birth certificate. In practice, the authorities tend to insist on level one to three evidence and claim that the applicant has not complied with their duty to cooperate if they are unable to produce such documentation. This leads to prolonged situations in which people have no confirmed identity and nationality status to be able to apply for a residence permit. In such situations, it is necessary to communicate with administrative authorities and courts that apply these procedural rules and are competent to establish that specific proof is impossible or unreasonable to obtain. In cooperation with the administration and courts, appropriate steps can be identified for the individual to attempt to obtain proof, so that statelessness can be recognised and the evidentiary process can either progress to another level or be concluded.

If a child is born in Germany to parents who have not been able to prove their identity and nationality, the child must also undergo a procedure to establish their own identity and nationality (as part of the process to establish their parents' identity and nationality). In theory, at birth, the registry office must confirm that the child has or has not acquired a nationality and establish whether the identity and nationality status of the parents is clarified. In practice, it is unclear whether authorities who register the birth determine the child's nationality or statelessness and to what extent. Authorities have very little awareness of the legislation providing for access to nationality for stateless children born in Germany. Moreover, there is no time limit to determine the child's identity or nationality status, leading to many stateless people born in Germany reaching adulthood without having resolved their identity and nationality status. In these cases, it is crucial to contact the administrative authorities competent in nationality law, as they are also responsible for providing advice on any grounds or conditions for acquiring nationality. Specifically, communication with these authorities is necessary to clarify the requirements for applying for German citizenship

⁶ See UN Human Rights Council resolution of 12 July 2023 recognising some of the many complexities of statelessness, the harm it causes, and calling for states to take action to fulfil the right to a nationality (The right to a nationality: equality in nationality rights in law and in practice, A/HRC/53/L.28/Rev.1).

under the Law on the Reduction of Statelessness and to ensure that steps are taken to establish a child's statelessness before or during the citizenship application process.

For more information, see:

ENS's leaflet [Statelessness: What do you need to know?](#)

ENS's [Short Guide for Refugee Response Actors](#).

For more recent figures, see UNHCR's annual [Global Trends Report](#).

Hear from people with lived experience of statelessness [here](#).

Stateless people in Germany: Stories

Mith

36-year-old Mith has been living in Germany for 11 years. He arrived from Bangladesh without identity documents in 2012. He belongs to the Rohingya minority, who have been persecuted in Myanmar for decades and denied citizenship since the 1980s. Mith says that bureaucratic difficulties in Germany have affected him psychologically to the extent that he can no longer sleep or work properly. Having lived in other parts of Germany, he now works as a waiter in Hamburg. He wants to marry his fiancée in Bangladesh, but this would be difficult without a nationality. Naturalisation in Germany is also proving difficult. Despite living in Germany for many years, he has been told by the authorities that the proof of identity he has submitted is not sufficient for naturalisation. His dream is to become German, to have a good job, to vote, and, after living alone all this time, to bring his fiancée to Germany to marry.

Amira

Amira is a Kurdish refugee from Iraq. She arrived in Germany with her family when she was three. Her birth was never registered in Iraq, so she does not have a birth certificate nor any documents proving her links with Iraq. She has refugee status and permanent residence in Germany. Due to her lack of identity documents, she has been unable to complete her studies and vocational training. Her applications for German citizenship have been rejected due to not having a birth certificate, despite many failed attempts to obtain one from the Iraqi authorities. The Iraqi Embassy has confirmed it has no jurisdiction over her and her family. Despite this, her testimony has not been deemed sufficient by the German authorities to clarify her identity and statelessness. After more than 20 years, the German authorities maintain that she has links to another country and due to her Kurdish background and now require her to prove that she is not a national of Türkiye or Iran, despite her family having no connection to either country.

Mirza

30-year-old Mirza was born stateless in Germany due to gender discrimination in Iranian nationality law, which prevented his mother from passing on her Iranian nationality to him at birth. Mirza's entitlement to acquire German nationality on the basis of being born stateless in Germany was never identified or examined. His family was unaware of this entitlement and none of the authorities they encountered identified the problem. Mirza has lived in Germany his whole life, but he still only has a 'tolerated stay' permit and therefore can only access a temporary work permit and faces many other obstacles in his life.

Laila

Laila came to Germany as a child fleeing the war in Lebanon in the 1980s. Due to the war, her birth was certified by a midwife, but not officially notarised or certified, so she does not have a recognised birth certificate. In 1990, the family received a permanent residence permit and travel documents for stateless people. However, both were revoked in the 2000s because the German authorities suspected that they had Turkish ancestors. The Turkish authorities deny this and have confirmed that Laila is not a national of Türkiye. Nevertheless, despite having lived in Germany for 36 years, she is now faced with repeated threats to withdraw her work permit, heavy fines, and deportation. She feels she cannot plan for the future or a family of her own, as her unresolved identity would be passed on to her children.

4. IDENTIFYING STATELESSNESS

Statelessness arises in a wide range of circumstances and may directly or indirectly be caused by:

- Discrimination based on sex, sexual or gender identity, ethnicity, religion, or other factors
- Gaps or restrictions in nationality laws, often but not necessarily linked to state succession
- Conflicts of nationality laws between various countries
- Issues relating to state sovereignty and incomplete recognition of statehood
- Obstacles in civil registration procedures and practices, particularly birth registration
- Arbitrary deprivation of nationality, including for political reasons⁷
- Armed conflict (inability to access birth registration or documents due to conflict, etc)
- Climate change resulting in forced displacement and/or destruction of states⁸
- Other laws, policies, practices, or circumstances not listed above, especially when adequate safeguards to prevent statelessness are not in place

Some States cause statelessness, or cause it to continue, through ostensibly neutral or in some cases allegedly positive laws and policies that result in statelessness and/or the failure to protect stateless people. For example, a nationality law that restricts nationality to people who were resident in a country at a particular time is neutral on its face, but it excludes people who have a strong connection to that country but who were not resident at the requisite time.⁹ It is important to be aware that States are sometimes hostile towards stateless people, deny that state action or inaction has caused statelessness, or are unaware of the ways in which laws and policies result in statelessness or cause hardship for stateless people.

⁷ Deprivation of nationality is often used as a punishment for human rights advocacy or opposition to government oppression, and increasingly in Europe as a counter-terrorism measure, even when it leads to statelessness. See e.g. SALAM DHR, ISI & Hawiati, [Arbitrary Revocation of Nationality in Bahrain: a Tool of Oppression](#) (2021); ENS, [Statelessness Index Thematic Briefing: Deprivation of nationality and the prevention of statelessness in Europe](#) (2021).

⁸ See e.g. Michelle Foster, Nicola Hard, H  l  ne Lambert and Jane McAdam, [Preventing Statelessness and Nationality Loss in the Context of Climate Change](#) (ENS, 2022).

⁹ See e.g. Neha Jain, [Manufacturing Statelessness](#), *American journal of international law*, 2022, Vol. 116, No. 2, 237-288; and see [R \(on the application of Marouf\) v Secretary of State for the Home Department](#) [2023] UKSC 23 (finding the UK's Syrian resettlement scheme's exclusion of Palestinians living in UNRWA areas of operation is lawful).

In Germany, statelessness largely occurs in the migratory context or resulting from the situation of minorities who migrated to Germany from the former Soviet Union and the former Yugoslavia and who face discrimination in access to identity documents and nationality. The most common reason for statelessness remaining unresolved in Germany is either the lack of avenues to establish identity and confirm nationality status when documentary evidence is missing or the lack of awareness and understanding of statelessness itself.

Another reason for the intergenerational perpetuation of statelessness in Germany is that there is no determination of nationality or statelessness at birth. Additionally, there is a lack of awareness of discriminatory nationality laws that can lead to statelessness at birth and give rise to a right to acquire German nationality. The law providing for acquisition of nationality at birth by stateless people in Germany is rarely applied in practice, partly due to the limited awareness of the relevant law (on the reduction of stateless) among the authorities, legal representatives, and parents, as well as the poor identification of statelessness. As a result, of the at least 4,000 minors registered as stateless, only 40 acquired nationality in Germany in 2023.

Nationality and discrimination based on sex, gender, and/or sexual or gender identity

In numerous countries, nationality laws discriminate based on sex, gender, and/or sexual or gender identity, sometimes preventing women or LGBTQI+ parents from passing on their nationality to their children or discriminating in other ways that may lead to statelessness. For more information, see a list of countries whose nationality laws discriminate against women and a blog article relating to discrimination based on sexual or gender identity and childhood statelessness.

HOW TO IDENTIFY STATELESSNESS

Sometimes statelessness is relatively obvious; other times, it is 'hidden'. For example, a person who has been deprived of nationality for political reasons will often be aware that they are stateless (and may or may not have documentary evidence to prove it). In some situations, however, statelessness may remain unidentified for many years, particularly when a child is born outside their parents' country of nationality and the laws of their home country require registration in order to acquire nationality. Such children's statelessness may go unrecognised for many years, and as a result children may face challenges in accessing basic rights. Some people may not know that they or their children are stateless.

There are many indicators that may identify that a person is or may be stateless, including, for example:

- Have never had a valid passport or an identity card
- Have never had birth certificate or official documents from their country of birth
- Not able to be registered as a national in their home country
- From a stateless population or a country with a large stateless population (e.g., Rohingya, Bidoon, Palestinian, Kurd, Roma, Syria, Myanmar, Thailand, etc)
- Born in a country which no longer exists, is not universally recognised by other governments, and/or is occupied by another State
- Cannot obtain identity documents for themselves or their children
- Country of birth or former habitual residence refuses to renew travel or identity documents or allow return
- Difficulties reuniting with family members because they cannot obtain identity or travel documents
- Could not go to school, work, access healthcare, get married or register their child's birth or nationality
- Detained for removal but not accepted for return to a country of birth or former residence

Statelessness can be identified in various official procedures. Adequate training is vital for all those who work in procedures or institutions in which statelessness can be identified. Relevant procedures in Germany include:

- Application for a travel document under Article 28 of the 1954 Convention
- Naturalisation procedures
- Birth registration procedure (in theory, but in practice statelessness is not identified by birth registration authorities)
- Asylum procedure (statelessness can be proven with 1954 Convention travel or identity documents only)
- Residence status procedures
- Immigration detention and removal procedures
- Appeal and judicial review procedures relating to any of the above

This list is not exhaustive. At the identification stage, what is most important is to at least record any initial indications of statelessness. Where a statelessness determination procedure does not exist, indications of statelessness should still be recorded and the individual should then be informed about and referred to the relevant procedure in their case (e.g. international protection, residence permit, nationality application), and/or to a competent legal adviser. Whilst some stateless people may not be aware that they are stateless, others will have known for a long time but may have never been formally recognised as stateless. Many stateless people may find it difficult to talk about their lack of nationality and other circumstances, especially if they have never had documentation and/or have had experiences of being disbelieved by authorities. The aim of the below questions should not be to give an individual the impression that the interviewer is trying to determine whether they are telling the truth about their statelessness or lack of documentation, but rather to assist in identifying whether the person is stateless and where the proof of their statelessness may lie. Many stateless people may have suffered traumatic experiences in their home countries, during journeys, or in host countries. This should be considered when conducting interviews with people who are or may be stateless; trauma-informed interviewing techniques should be used whenever possible.¹⁰

¹⁰ For example, see: [Trauma Informed Interviewing Techniques](#): A toolkit for attorneys and other professionals working with immigrant children (Stanford Center for Health Education & University of Texas at Rio Grande Valley); and [Disclosing and identifying international protection needs in the Middle East and North Africa](#): Training Module, Part 3: Trauma-informed, victim-centered approaches (Center for Human Rights, Gender and Migration & MENA Community Protection Network (supported by UNHCR)).

How can a person not know they are stateless? How can they be assisted?

Kea is a 50-year-old woman who was trafficked at age 13 from her home country to another country in Asia. She was sold into 'employment' as a maid, worked for very little pay, and experienced physical abuse. She never went to school and cannot read. On a visit to Europe with her employer, Kea seeks sanctuary in a church. A church worker accompanies Kea to a refugee charity. In an initial interview, Kea finds it very difficult to talk about her problems. She has no identity documents but knows which country she lived in until age 13. She has seen that her employer has a passport that has Kea's picture in it and is similar to his own passport. Kea was not involved in obtaining this passport and thinks it was obtained based on false information. She has never heard of statelessness.

Kea's lawyer takes time over several trauma-informed interviews to build trust with Kea, explain the law and procedures relating to seeking asylum and recognition as a stateless person, and check that Kea understands. The lawyer writes twice to the embassy of Kea's country of birth asking if Kea is considered a national of that country. She gets no response. A consular officer explains over the phone that, without identification documents, Kea cannot enter the embassy and will not be considered a citizen. They will not take any steps to confirm that Kea is from that country, nor accept her return. An expert report states that the circumstances Kea describes are consistent with objective reports and known facts. There is no lawful basis on which Kea would be considered a national of her employer's country, employers can easily purchase passports for migrant domestic workers in that country, and Kea would be unable to access protection if returned there. The report also states that, based on previous similar cases, it is highly unlikely that nationality of Kea's country of birth could be confirmed.

Upon application by the lawyer on her behalf, Kea is granted asylum and recognised as stateless.

Questions to consider and potentially ask to identify or elicit proof of statelessness or nationality include:

Question	Information to look out for
Where and when was the person born?	
Does the person come from a country at high risk of statelessness, affected by state succession or a land dispute?	In particular, but not limited to: Afghanistan; Eritrea; Kosovo; Serbia; Bosnia and Herzegovina; North Macedonia; Montenegro; Ukraine; Russia and former USSR states; Lebanon; Myanmar; Palestine; Western Sahara; Sudan; South Sudan; DRC, Bangladesh; Ivory Coast; Burma; Thailand; Syria; Kuwait; Uzbekistan; Saudi Arabia; Cambodia; Iraq.
Does the person belong to a specific group which is known to be affected by statelessness?	For example: Rohingya, Roma, Kurdish, Sahrawi, Kuwaiti Bidoon, Palestinian, Sinti.
Was their birth registered and do they have a birth certificate? If so, is this proof of nationality?	If not, risk of statelessness.
Does the person come from a country where birth registration is not routine or is complicated?	If yes, risk of statelessness.
Where has the person lived since birth? Of what country does the person consider themselves to be a citizen (if any)?	
Do the authorities of that country or any other country consider the person to be a citizen?	
Has the person ever applied for nationality in any country? What was the outcome?	

Does the person have proof of having a nationality, such as a certificate of citizenship, a valid national identity card or a passport? If not, why not?	
Does the person come from a country where women do not have the right to pass their nationality on to their children in the same way as men? If yes, have they inherited their father's nationality?	See a list of countries whose nationality laws discriminate against women. If the person did not acquire nationality from the father (e.g. because he is stateless or unknown), this is in indicator the person may be stateless.
Was the person able to go to school, work or register their marriage or the birth of their children in their country of origin or usual place of residence?	If not, this may indicate a risk of statelessness.
Does the person hold toleration on the ground of missing travel documents or on the ground of unclear identity?	If yes, this may indicate a risk of statelessness.
Does the person have, or did they have, one or several nationalities?	If not, risk of statelessness.
What nationality(ies) did the person's parents and grandparents have? Were there barriers to inheriting these nationalities?	Consider if they belonged to any groups affected by statelessness, or if there were barriers to proving family links.
Have any family members been deprived of their nationality, for example for political reasons? If yes, was the person's nationality affected?	
Does the person have a valid or expired identity document? If not, have they tried to obtain identity documents from another country?	If the person has tried to obtain identity documents and was refused or a response was delayed, risk of statelessness.
Has the person faced any challenges in obtaining or renewing their passport or national identity card?	
Has the person ever been excluded from access to certain rights or services on the grounds of their nationality (or lack of nationality)?	
Has the person started procedures with the relevant authorities to obtain identity documents? Do they have evidence of these steps? When did they start these steps? Have they had a reply from the authorities? If not, have they tried again? How many times? Are they in fear of persecution if they return? Have they submitted an asylum request?	Applicants should enclose evidence that any State with which they have links does not consider them to be its citizen. For more information on taking into account the fear of persecution and the procedure for determining statelessness, see Section 5.
What nationality was registered by the authorities when the person arrived in Germany?	Officials often record a presumed nationality, an adequate assessment of whether the person has the nationality recorded should always be conducted.
Did the person have access to a statelessness determination procedure in another country? If yes, what was the relevant authority's decision?	
Does the person know that it is necessary to register their child with civil authorities and the conditions for birth registration? Can the mother pass on her nationality to the child? Did she encounter problems registering the child's birth (in Germany and with the authorities of her country)?	Risk of statelessness for children of beneficiaries of international protection.

Has the person been repeatedly detained in a host country, but no embassy acknowledges the person as a national?	If yes, risk of statelessness.
In the case of a pregnant woman, is she concerned about the nationality of her unborn child? In the case of a young mother, has she faced problems registering her child? On the child's birth certificate, are both parents included, or just one of them?	Risk of statelessness if the child is unable to acquire the mother's nationality at birth.
Was the child born abroad to same-sex parents? Is there discrimination in the country of origin which would give rise to the withdrawal or denial of nationality?	If the country(ies) of the parents' nationality prohibits same-sex marriage and partnerships, it may refuse to transcribe the birth certificate or issue an identity document. If that occurs, risk of statelessness.

Further questions are available on the Stateless Journeys website, [for adults](#) and [for children](#). It is also important to research about statelessness in the person's home country, which can help identify whether the person's circumstances indicate they may be stateless. Country of origin information that has specific information on statelessness may assist with this research, including the country position papers published by ENS on the [Stateless Journeys website](#) and research reports published by [Asylos](#).

Additional information about the law, policy, and practice on statelessness in Germany is available in the [Statelessness Index](#), while jurisprudence from courts in other countries is available in the [Statelessness Case Law Database](#).

5. ROUTES TO PROTECTION

After identifying that a person is or may be stateless, it is important that they are referred to an appropriate procedure to have their statelessness (or nationality) officially determined. Assessing whether a person is stateless can be simple or complex, depending on the circumstances. There are various legal procedures available depending on the situation and background of the person. The individual should be fully informed about all possible options from the outset so that they remain an agent of their situation as much as possible throughout. Actively referring someone to or accompanying someone through a procedure requires that they are fully informed at each step and given a choice about how they would like to progress.

During administrative procedures in Germany, it is important that stateless people and those supporting or assisting them contact the responsible authority to fully understand what is required to regularise and recognise the status of the applicant. Where the requirements cannot be met or if the authority is not receptive or responsive to arguments provided, it is possible to prepare a legal action (three months after the application including on grounds of omission to act). Such legal action costs around 1000 EUR, which needs to be paid upfront and is non-refundable if the legal action is taken back or dismissed.

ENS's participatory action research with member organisations and their clients shows the value of legal advisers and others engaging actively with stateless people who are seeking protection or recognition as nationals.

“Through the encouragement of a participatory approach to casework and involving children and families in decisions about the strategies taken to resolve their nationality problems, the project has sought to provide a platform for affected children and their families to tell their stories and give their views on what needs to change.... [T]his approach works. Several cases in the research resulted in positive outcomes for the children and families concerned. In all cases, families and children reported feeling heard, supported, and informed about their cases, even where systemic or other external factors affected or delayed positive outcomes”.¹¹

If a stateless person is also a refugee, they may have access to other routes to international protection, such as Refugee Status Determination (for more information on stateless refugees, see Section 7). In addition, some stateless people may be eligible for protection through other routes such as Temporary Protection (e.g., for those fleeing Ukraine),¹² human rights claims in national court proceedings (for example by invoking international norms like the European Convention on Human Rights), and/or child-specific routes to protection or nationality (by invoking claims under the Convention on the Rights of the Child or the Convention on the Reduction of Statelessness, among others). Some may also be eligible for work permits, student visas, or family-based residence permits, although these procedures do not necessarily lead to identification of statelessness. In case a person is not eligible for any residence permit, it may be possible to apply for ‘tolerated stay’.

States have specific obligations towards children under international law including to consider their best interests as a primary consideration and ensure they can acquire a nationality. More information about this is included in Section 9.

States should not require stateless people to already have a residence permit in order to apply for protection. Imposing such a requirement prevents stateless people from accessing protection or causes inordinate delays in finding adequate solutions.

Germany lacks a dedicated procedure to identify and determine statelessness and facilitate timely access to protection. Statelessness remains an incidental issue addressed through other administrative and related judicial procedures, including requesting travel documents, applications or extensions of residence permits (such as family reunification or study), or if born stateless in Germany. Statelessness may be determined as part of an application for international protection under the responsibility of the Federal Office for Migration and Refugees (BAMF) or, if international protection is refused, under the responsibility of the local foreign office (*‘Ausländerbehörde’*). The local foreigners’ office may issue ‘tolerated stay’ (*Duldung*) after a decision to not confer a residence permit, granting exceptional leave to remain for as long as the individual cannot be removed, but the obligation to leave still exists. The law provides for a right to stay for those with *‘Duldung’* status who have been living in the country for more than five years since 1 January 2022. This then entitles them to apply for longer-term residence permits, and eventually, a route to settlement. The Supreme Federal State authorities may also order a residence permit on humanitarian grounds to be issued on the basis of international law (§§ 23 ff. AufenthG). Provisions of international human rights treaties ratified by Germany, such as the European Convention on Human Rights and the Convention on the Rights

¹¹ [Addressing the Risks of Statelessness among Children in Migration in Europe: Report on the findings of participatory action research by ENS members in five European countries](#) (2022), p. 19.

¹² See [ENS's Ukraine page](#) and the [Statelessness Index](#) country surveys for further information.

of the Child,¹³ among others, can be invoked before a national court if they are self-executing and if an individual right may be derived from it. However, these procedures do not have the specific objective of determining statelessness.

'Tolerated stay' is often granted to people registered with undetermined identity and nationality status and to people who do not have travel documents. It may also be granted to people who have been registered with a nationality, for example on the basis of their testimony, but nationality has not been verified, proven, or confirmed. The determination of identity and nationality status is therefore crucial in procedures regarding expulsion or right of residence.

Due to the shortcomings in the procedures available to determine statelessness and a tendency not to recognise statelessness, applicants are often assumed to have a nationality that they are unable or unwilling to confirm in order to prevent their deportation. People whose statelessness has not been officially determined are often categorised as having 'unclear' nationality, which prevents them from accessing the protection they are entitled to under the 1954 Convention. In such cases, procedures to obtain residence permits, travel documents or to acquire nationality can be initiated in which statelessness has to be proven and can be recognised. In communication and cooperation with the administrative authorities it is necessary to obtain a written list of necessary proof and documents that are expected to be provided by a person to prove their statelessness. This might include documented attempts to obtain a document from an embassy or consulate, among others.

Germany grants protection under the EU Temporary Protection Directive to stateless people fleeing Ukraine who enjoyed international protection as refugees or an equivalent level of national protection in Ukraine before 24 February 2022. Travel documents for refugees and travel documents for people granted complementary protection can be shown as evidence. Germany also grants temporary protection to stateless people who held permanent residence status in Ukraine before 24 February 2022 and who are unable to return safely and permanently to their country or region of origin. Other stateless people, including those who only held temporary residence in Ukraine, are not entitled to temporary protection and are advised about alternative residence status possibilities, in particular the right to claim asylum. For more information, see the [Statelessness Index Survey for Germany](#).

¹³ Prof. Dr. Friederike Wapler, Umsetzung und Anwendung der Kinderrechtskonvention in Deutschland, 25.09.2017, S. 7 : <https://www.bmfsfj.de/resource/blob/120474/a14378149aa3a881242c5b1a6a2aa941/2017-gutachten-umsetzung-kinderrechtskonvention-data.pdf>.

What procedure should a stateless person be referred to?

Stateless person	Procedure
Stateless people who are also refugees	Should apply for international protection . If recognised, they should apply for a travel document for refugees with a note clarifying nationality status as stateless or if possible for a travel document for stateless people.
Stateless people with tolerated stay / without residence permits	Should apply for a residence permit .
Stateless people who cannot obtain a travel document from their country of residence	Should apply for a travel document for stateless people (NB a residence permit must be acquired FIRST in order to apply for a travel document).
Stateless people with a residence permit, not recognised as refugees	Should apply for a travel document for stateless people (a travel document for stateless people is considered proof of identity and statelessness in naturalisation procedures).
If stateless people with proof of statelessness (other than a travel document, for example a birth certificate or other proof) fulfil the conditions for naturalisation	They should apply for naturalisation .
Stateless people born in Germany for whom the safeguard to prevent statelessness at birth under the Nationality Act does not apply	Must apply for naturalisation before the age of 21, based on five years of continuous, legal residence (Article 2 of the Law on the Convention on the reduction of statelessness – StaatenMindÜbkAG).

PROTECTION OF UNACCOMPANIED AND SEPARATED CHILDREN

Unaccompanied and separated children face major difficulties in proving their nationality and are thus at an increased risk of statelessness. Family tracing can help in locating their parents, but when the family cannot be found, the challenge is even greater. In some cases, children born abroad to a single mother are prevented from acquiring her nationality due to gender discriminatory nationality laws.¹⁴ When applying procedures to determine whether an applicant is stateless or not, often States do not adapt procedures consider the specific vulnerabilities of this category of applicants.

There are no specific procedures to resolve undetermined identity and nationality status of unaccompanied and separated children, except foundlings who are considered German nationals. In practice, unaccompanied and separated children are registered with the nationality of their perceived country of origin and there are no procedures to determine or confirm their identity and nationality status nor to obtain proof of identity and nationality. A legal assistance provider or guardian supporting a separated minor is advised to apply for asylum, residence or a travel document for stateless persons and at the same time, to apply for recognition of identity and statelessness/nationality on behalf of the child.

Stateless people face challenges in accessing procedures to regularise their status. Indeed, there is no obligation for the authorities in German law to consider a claim of statelessness. Due to Germany's federal system, the

¹⁴ For more information see the Global Campaign for Equal Nationality Rights: <https://www.equalnationalityrights.org/>

determination of statelessness is at the discretion of the local foreigners' office or in some cases specific offices of the Federated State Interior Ministry, in charge of the applicant's residential area. Statelessness may also be identified through Administrative Court proceedings.

Stateless people are not granted specific rights as a result of their recognition as stateless. They are subject to the same provisions as those applicable to other foreigners staying in the country and access to education, healthcare, housing and work will depend on their residence permit or tolerated status.

Stateless people may be eligible for temporary residence if they cannot be removed within a stipulated timeframe. In practice, people tend to remain with 'tolerated stay' and are often recorded as 'nationality unclear'. Tolerated stay is usually granted for three months, or six months in cases of particular hardship. It may be extended on a three-monthly basis if the person cooperates with the authorities, and the right to work may be granted under certain conditions. A person with tolerated stay may receive subsistence under the Asylum Seekers' Benefit Act if they cannot meet their own subsistence (although they initially receive less than asylum seekers). After 36 months (§ 1 Abs.1 Nr 4 und 2 Abs.1 AsylbLG) of uninterrupted stay they can access support similar to asylum seekers, including healthcare, maternity services, and limited cash for basic personal needs. There is a specific form of 'tolerated stay' for those with 'unclear identity' who cannot provide identity documents or do not cooperate with the authorities. This permit does not provide the right to work nor freedom of movement. People with '*Duldung*' status who have been living in the country for more than five years since 1 January 2022 are entitled to apply for longer-term residence permits and, eventually, a route to settlement.

People recognised as stateless will be issued a travel document according to the 1954 Convention, but this is not accessible to people with 'tolerated stay'. Stateless people can apply for family reunification if they meet certain conditions, and their family members must provide evidence of language and/or integration tests.

The European Convention on Human Rights can be invoked to protect stateless people's residence rights, right to work, and international protection, among other rights, but the national courts are responsible to interpret and apply them in a specific case.

Additional information is available in the [Statelessness Case Law Database](#), the [Statelessness Index](#), and the report [Addressing the Risks of Statelessness among Children in Migration in Europe](#).

6. DETERMINING STATELESSNESS

Determination of statelessness should always be undertaken by the relevant competent decision-making authority. Some important considerations include:

WHO HAS THE BURDEN OF PROOF IN STATELESSNESS DETERMINATION?

UNHCR's Statelessness Handbook confirms that the burden of proving that a person is stateless should be **shared** between the individual and the host country government. **The individual should take reasonable steps** to demonstrate that they are stateless. Once they have provided any evidence which is reasonably available to them, including their own statement, **government officials should take reasonable steps to confirm the individual's statelessness**. In some circumstances, a greater share of the burden of proof should formally shift to the government, as should be the case with children, especially unaccompanied or separated children.

In Germany, in administrative procedures, the burden of proof is on the applicant, who must cooperate (*'Mitwirkungspflicht'*) and take all reasonable steps to secure any available documentation (e.g. certificate, document, medical certificate, voluntary DNA test, etc.) to prove their identity and clarify their situation. Failure to do so can result in penalties, such as reductions in social security entitlements. The authorities have the obligation to inform the applicant about the proof required and the specific duties and responsibilities of the applicant. They are not obliged to gather information on relevant facts concerning the individual abroad.

The obligations of both parties are mutually interrelated and have mainly been shaped by jurisprudence. According to case law, it is accepted that where facts are difficult to establish or evidence difficult to obtain, the burden of proof is shared between the applicant and the government (although this practice seems to be little applied and is mainly encouraged by the courts). Reasonable steps are considered to be any that can be made by the applicant personally - e.g. repeated presentation at an embassy is unreasonable if it is clear that this would be unsuccessful, after repeated failed attempts. The Federal Administrative Court has stated the individual should present, e.g.: information on the previous residence and place of birth; own name and family members' names in direct line to great-grandparents, when these are known; evidence of an attempt to naturalise in the State of origin, unless this is unreasonable due to discrimination or danger to life and limb; proof of identity through relatives or registries, and proof that they lived as a stateless person in the State of origin, as far as this is reasonable. When some facts, such as impossibility to leave, may be difficult to establish, or some documents difficult to obtain, the burden of proof is shared between the applicant and the government.

There are some nuances depending on the administrative procedure. The burden of proof to prove statelessness is the same before the immigration and nationality authorities. In naturalisation procedures, while in law there is no difference between proving nationality and statelessness, the law foresees that difficulties to prove statelessness and refugee status need to be taken into account.¹⁵ However, there is no guidance on how specific difficulties in proving statelessness status can be considered.

In refugee status determination procedures before the asylum authority, statelessness can only be proven by official foreign identity or travel documents for stateless people. In procedures before the immigration authority, statelessness can be proven through an identity document or other proof of identification. At this stage, difficulties proving statelessness or refugee status can be taken into account, but reasonable doubts about the identity persist if relevant documents are missing.

With regards to acquisition of nationality, the identity of stateless people must also be proven at the first stage through official identity or travel documents. At the second stage, other official documents can be taken into account only if this constitutes an impossible or unreasonable burden. Under the same circumstances, other types of evidence can be considered at the third stage: information of any kind, interviews of witnesses and experts, official documents and files, or, if this is impossible or unreasonable, through examination of all information in general (BVerwG, Urt. v. 23.09.2020, Az. 1 C 36.19).

Specific guidance on which documents shall be accepted for proof of statelessness of people of Palestinian origin from Syria and Lebanon is provided by the German Federal Ministry of the Interior.¹⁶

¹⁵ BMI: Vorläufige Anwendungshinweise des Bundesministeriums des Innern zum Staatsangehörigkeitsgesetz (StAG) in der Fassung des Zweiten Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes vom 13. November 2014 (BGBl. I S. 1714), 01.06.2015, Ziff. 8.1.2.2 und 8.1.3.1:
https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/verfassung/stag-anwendungshinweise-06-15.pdf?__blob=publicationFile&v=6.

¹⁶ BMI: Personen mit palästinensischer Volkszugehörigkeit, Reiseausweise für Staatenlose, Feststellung der Staatenlosigkeit, Festlegungen im AZR und in ausländerrechtlichen Dokumenten, 18.06.2020:
https://www.asyl.net/fileadmin/user_upload/dokumente/29501w.pdf

Important notes:

- **Contact with officials of any country of origin/former residence should only be undertaken if it is safe to do so** – i.e., *not* if the individual fears persecution in that country.
- **Authorities should inform** people who are or may be stateless of any options to apply for recognition of statelessness and/or international protection or for a residence permit based on statelessness.
- **The nationality of a child should never be assumed.** A determination of the child's nationality should always be conducted, as the nationality may not be the same as their parents or of the country in which they were born.
- **Children and people who are traumatised, had limited access to formal education, and/or do not have a legal representative** are often less likely to understand what evidence could be useful to demonstrate statelessness. The host country government should assist them appropriately.
- **The individual should always have the right to an interview**, particularly when the evidence submitted does not clearly establish that they are stateless.

WHAT IS THE STANDARD OF PROOF FOR DETERMINING STATELESSNESS?

The UNHCR Statelessness Handbook confirms that the standard of proof for determining statelessness should be the 'reasonable degree of likelihood' standard (which also applies in refugee status determination). This is also sometimes referred to as a 'real risk' or a 'real possibility' standard. Applying a higher standard of proof would undermine the object and purpose of the 1954 Convention.¹⁷

The 'reasonable likelihood' standard is lower than the 'balance of probabilities' standard that applies to many civil matters, and much lower than a criminal standard of proof ('beyond reasonable doubt'). A 'reasonable likelihood' may refer to something that is of relatively low risk of occurring. It is something that *reasonably could occur*, or where there is a 'real risk' that it could occur.

How to apply the 'reasonable likelihood' standard of proof in statelessness determination?

Kam was born at home, and her birth was not registered. She is part of an ethnic minority group which faces serious discrimination in her country of birth. She was not allowed to attend school or work. There was no way for Kam or anyone in her family to obtain identity documents as people of her ethnicity are not considered citizens. Numerous people, including police officers, are known to have committed abuses against people of Kam's ethnicity, with impunity. As a young adult, Kam travels to Europe and applies for asylum. She has no documents to prove who she is, nor where she was born and grew up. She is generally consistent in her statements about her life, though she sometimes gets confused about dates and the order in which things happened. She doesn't know some things she is asked about, like certain landmarks and the words to the national anthem of her home country. But her statements show knowledge of the community in which she grew up. Objective reports confirm serious discrimination and abuses of people of Kam's ethnicity and that they are not considered citizens in her country of origin.

It should be considered that it is reasonably likely that Kam is (1) stateless and (2) that she is at risk of persecution, and thus a refugee if the treatment she fears is considered to amount to persecution. Kam should not be required to enquire at the embassy of her country of birth for confirmation of whether she is considered a national because she is claiming asylum from that country.

¹⁷ UNHCR's Statelessness Handbook, Paragraph 91.

Different standards may apply to certain aspects of assessing whether a person is eligible for protection as a stateless person. For example, if a host country official alleges that a stateless person is excluded from protection under one of the criminality-based 1954 Convention exclusion clauses, this may require the government to prove, to a higher standard, that the exclusion applies. The 1954 Convention refers to ‘serious reasons for considering that’ the person should be excluded.

The applicable standard of proof for proving that one has a particular nationality may be the higher civil standard (‘balance of probabilities’). Where the ‘balance of probabilities’ standard applies, this merely means that the individual needs to show that they *probably* have a particular nationality.

In theory, only the standard of proof ‘beyond reasonable doubt’ is in place in Germany, but in practice, judges seem to apply a less rigid approach in statelessness and asylum cases. Although some guidance has been provided through the jurisprudence of the Federal Administrative Court on what constitutes proof of statelessness or nationality status, there is no clear, binding guidance on how to determine statelessness. In each federal state, the local foreigners’ office follows the Land’s (local federated state authority) guidelines based on General Administrative Regulations for the Nationality Act, which mentions stateless people (on acquisition of nationality, prevention of statelessness, vulnerable groups and loss of German nationality). The General Administrative Regulations for the Residence Act provide some instructions on the procedures for collecting evidence and the obligation to participate in the procurement of documents, although they are not sufficiently explicit and specific.

Administrative guidelines on the Nationality Act indicate that evidentiary difficulties must be taken into account, but the standard of proof is the same for determining identity and nationality.¹⁸ In contrast, administrative guidelines on the Residence Act provide that when a person cannot prove their legal status with documents, it is sufficient to demonstrate that the person’s statelessness is credible.¹⁹ In practice, the standard of proof for waiving the requirement of official documents such as passports or birth certificates is that a person proves that it is impossible or unreasonable to obtain such proof. If successful, the standard of proof is reduced in theory to ‘credible evidence’ of statelessness, including the possibility that a statement of an applicant is sufficient proof. There is no time limit to establish identity and nationality status. Registration under the administrative category ‘undetermined nationality’ is only temporary in theory. In law, the standard of proof is the same across different administrative procedures, but competent authorities are not bound by decisions of any other authority that identified statelessness and may undergo a separate evidentiary procedure.

WHAT EVIDENCE MAY BE USEFUL TO PROVE STATELESSNESS?

The evidence that will be available and relevant for a person to demonstrate that they are ‘reasonably likely’ to be stateless varies considerably depending on the circumstances. In some cases, a person will have no evidence other than their testimony, and that should suffice in many cases. In other cases, a person may have many documents, some of which may help prove statelessness. It is important to assess the person’s individual circumstances as well as the laws, practice, and circumstances of the countries with which the person has a relevant link.

¹⁸ BMI, Allgemeine Verwaltungsvorschriften zum Staatsangehörigkeitsgesetz, 01.06.2015, § 8.1.3.1, p. 18: https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/verfassung/stag-anwendungshinweise-06-15.pdf?__blob=publicationFile&v=6.

¹⁹ BMI, An die für das Aufenthaltsrecht zuständigen Ministerien und Senatoren der Länder - “Personen mit palästinensischer Volkszugehörigkeit”, Reiseausweise für Staatenlose, Feststellung der Staatenlosigkeit, Festlegungen im AZR und in ausländerrechtlichen Dokumenten, 18.06.2020, § 3.3.4.9, p. 27: https://www.asyl.net/fileadmin/user_upload/dokumente/29501w.pdf.

Evidence that may be useful to demonstrate a person's identity, place of origin or former habitual residence, and statelessness includes – but is not limited to:

- statements of relevant people who know them (e.g. from a stateless community)
- the individual's own statements about why they are stateless
- identity documents (e.g. birth certificate, extract from civil register, national identity card, voter registration document)
- passports or other travel documents (valid or expired)
- evidence of refusal of entry into a country of potential nationality
- parent's or applicant's marriage certificate
- citizenship certificate
- documents relating to renunciation of nationality, or any other legal documents or court decisions
- identity and travel documents of family members
- confirmation of registration with UNRWA, GAPAR, or some other relevant agency²⁰
- applications or correspondence relating to efforts to acquire or obtain proof of a nationality, including for example letters or emails to or from government officials, including embassies and consulates [where safe/appropriate to engage in such communication]
- statements or affidavits by people who accompanied the individual to an embassy or contacted an embassy or other institution to make enquires about nationality or identity
- school certificates or evidence relating to inability to attend school
- military service records
- medical records (including hospital / midwife birth records)
- employment records or evidence proving impossibility to be employed
- social welfare records or other evidence of restricted access to social services
- records relating to failed efforts by the individual to travel to a country of possible nationality or former habitual residence or failed efforts to remove the individual to another country, or any other relevant documentation issued by immigration authorities or border control
- a list of people who have been deprived of citizenship or other evidence of deprivation of nationality relating to the applicant, a family member, or an associate

Evidence that may be useful to assess in relation to the relevant country(ies) includes, but is not limited to:

- news articles or reports that discuss statelessness relevant to the person's situation in the country of origin
- extracts of relevant nationality laws, ideally combined with an expert report or other evidence to provide appropriate context and comment on their implementation in practice and any differences between regions
- expert reports about the nationality laws, birth registration, and related practices of relevant countries and/or relating to their specific circumstances

This is not an exhaustive list. Often there will not be much evidence. Other types of evidence may be relevant in some situations. Some of these pieces of evidence will clearly carry more weight than others, and much may depend on whether an official believes a person's testimony. As with refugees, stateless people should be given the benefit

²⁰ Note that while UNRWA registration may indicate a person's Palestinian origin and confirm eligibility to receive UNRWA services within UNRWA's area of operations, registration with UNRWA does not prove nationality or residence status, nor is such registration proof, on its own, that a person necessarily falls within or is excluded from the scope of the 1951 Convention or the 1954 Convention. See ENS & BADIL report, note 2.

of the doubt: i.e., the statements of a person applying for recognition as a stateless person should be accepted unless there are strong reasons and evidence to indicate that their testimony is not accurate with respect to material factors. Some stateless people will know what evidence is available to support their claims (if any) and be able to explain their situations chronologically and coherently, while others will not.²¹

ROBUST STATELESSNESS DETERMINATION PROCEDURES AND RIGHTS OF STATELESS PEOPLE

The UNHCR Statelessness Handbook confirms that procedures to determine statelessness should be formalised in law to ensure fairness, transparency, and clarity of the procedure.²² Although many States do not officially have statelessness determination procedures in place, it is nevertheless important to ensure that certain procedural safeguards are guaranteed in any other procedure where statelessness can be determined, so that the dignity and safety of stateless people is ensured. Therefore, at least the following safeguards should be incorporated or ensured:

- Information on eligibility criteria and the determination procedure is accessible
- Right to have an interview with a decision-making official is respected
- Applicants have access to good quality interpretation and translation
- Applicants have access to legal assistance; free legal aid is guaranteed to people in need
- Decisions are based on individual merits with reference to accurate country information
- Decisions are issued in written form, with reasoning
- Right to appeal is guaranteed and accessible in practice
- UNHCR and any national monitoring bodies have adequate access to monitor the procedure

Stateless people in Germany can obtain free legal aid for court proceedings on the same basis as any other foreigner by demonstrating financial need. Aid for obtaining consultation does not exist in all federate states, is very limited (currently covering 80 EUR per case), and is not granted for issues related to immigration or status-related issues. In court proceedings, applicants for free legal aid must also demonstrate sufficient prospects of success, which can present a barrier in practice.

To access legal aid, a person must be registered in the local registry, which constitutes a practical obstacle for those with irregular status or 'tolerated stay' (although they are not excluded from legal aid by law) as the evidence required may not be easily accessible to them (e.g. proof of income or address, or a rental agreement). These people may also be afraid to apply for free legal aid due to their insecure residence status or the fact that the courts responsible for granting an application for legal aid can inform the immigration authorities of the presence of people without a residence permit. Refugee Councils, NGOs (e.g. ProAsyl), as well as university refugee law clinics and faith-based organisations (e.g. Caritas and Diakonie, Der Paritätische, die AWO, das DRK, Zentralrat der Juden in Deutschland) provide legal assistance to foreigners, including stateless people. Stateless people are treated under the same conditions as other foreigners when it comes to free legal representation and assistance, although the available procedures and assistance are not designed for statelessness-related issues.

The official language for administrative procedures is German and no free interpretation services are available to applicants, but interpreters are provided in courts. Friends or family may support the applicant. Interviews are not mandatory but are permitted and are often carried out. All administrative decisions are given in writing with reasoning.

²¹ Further information about how to adequately evidence a statelessness application is available in this [Best Practice Guide](#) (relating to in the UK, but relevant in other countries; see Section C16 in particular).

²² UNHCR's Statelessness Handbook, paragraph 71.

In all procedures where identity and nationality, including statelessness, need to be established, statelessness alone does not lead to any rights while an application is pending as well as after completion of a procedure, as they pursue a different objective. In particular, Germany has formulated a reservation to Article 27 of the 1954 Convention relating to the provision of identity documents to stateless people, rendering it inapplicable.

For further information about international standards for statelessness determination and examples of good practices, please see ENS's reports [Statelessness determination and protection in Europe: good practice, challenges, and risks](#) and the [Good Practice Guide on Statelessness Determination and the Protection Status of Stateless Persons](#). Additional country information is available in the [Statelessness Index Country Profile](#).

7. STATELESS REFUGEES

Refugees can have a nationality or be stateless. Statelessness may be the result or the cause of persecution or other harm. The 1951 Refugee Convention refers to some refugees “not having a nationality” in Article I(A)(2). A refugee’s statelessness may be a reason for or very closely linked to their fear of persecution (for example a person who has been deprived of nationality for political reasons or who is part of a stateless community that is systematically persecuted). For other refugees, statelessness may be largely incidental to their fear of persecution or other harm (for example a stateless person who has fled a war which is unrelated to their lack of nationality). Or both factors can co-exist, where a stateless person fears persecution specifically linked to their statelessness and also serious harm due to an armed conflict.

It is vital that statelessness is identified in asylum procedures. This is necessary, for example, to ensure that all forms of persecution are considered and to prevent a stateless person being forced to return to a country where they face a risk of persecution or harm or a precarious future as a stateless person.

In Germany, statelessness may be identified and proven during the asylum procedure by the asylum authority (BAMF), but only through providing 1954 Convention identity or travel documents for stateless persons issued by another country. There is no guidance on how statelessness-specific grounds for persecution and specific vulnerabilities related to statelessness or risks of statelessness, especially of unaccompanied minors, are identified and protected. If an asylum application is refused, stateless people may approach the immigration authority and apply for a residence permit on humanitarian grounds and/or a travel document for stateless people.

If a stateless person applies for asylum and for their statelessness to be recognised, it is important to determine both claims. Each should be assessed, and both should be explicitly recognised so that even if refugee status or another form of protection ceases, the person remains entitled to protection as a stateless person under the 1954 Convention. This also helps to prevent arbitrary or unlawful detention, which can occur if a stateless person, who has no country to which they can return, is refused international protection (or their protection status ceases), and their statelessness has not been identified and determined. Statelessness determination should be conducted either in parallel with or following the refugee status determination, with due regard to the primacy of the asylum claim and the principle of confidentiality for refugees in procedures to determine statelessness. This means that if determining statelessness would require making enquiries to authorities which could compromise the safety of the applicant, the statelessness claim should be suspended until the refugee status determination is concluded, or the host State should determine that the applicant is stateless based on their own testimony and any other available evidence.

A stateless person who seeks asylum but who is not eligible for refugee status should be referred to any existing procedures in place that can determine statelessness. A stateless person who has been refused refugee status (or

who was granted refugee status which has now ceased due to improved conditions in the country of origin) should not be expected to return to a country in which they do not have nationality. Identifying statelessness early in the asylum process can also help prevent later unlawful detention of stateless people for the purpose of removal to a country of which they are not a national.

Stateless people should be informed by authorities and advice centres about the asylum procedure and any available procedures to determine statelessness, as well as any other possible routes to protection, a residence permit, or nationality. They should also have access to specialised legal advice. Once informed about all possible options, stateless people should be able to choose which is the best procedure for them to follow.

Asylum registration, screening procedures, and other procedures (and the people who work within them) should not assume that applicants have a nationality. Screening forms should include questions that will help to identify statelessness.

Additional information about statelessness and asylum registration, refugee status determination, and detention is available on the [Statelessness Journeys website](#) and in the statelessness section of the EASO/EUAA [Practical Guide on Registration: Lodging of applications for international protection](#).

There are no specific screening questions to identify statelessness in refugee determination procedures in Germany, statelessness is not considered to be part of or linked to refugee status determination, and there are no specialised officials in the asylum procedure who are responsible to identify or determine statelessness. It is therefore important to proactively bring forward claims concerning statelessness before the authorities, including to highlight Germany's new obligations under the Screening and Asylum Procedures Regulations in EU law (which will come into force in June 2026).

If an asylum application is rejected and a procedure launched ex officio to remove the person from the territory, the authority will check if the conditions for removal are fulfilled. In this context, an authority may find that the person is not lawfully resident and is not officially recognised as stateless. In this case, the authority will try to obtain documents from a country with which the person has links and, if successful, proceed to the removal, even if the person may not have a true link, permanent residence, or prospect of obtaining or confirming nationality. In most cases, authorities tend to consider that there is no prospect of removal of a stateless person and, very often, the person's duty to leave the country remains in place for an indefinite period (i.e. tolerated stay). While someone in this situation can apply for a residence permit after several unsuccessful removal attempts or after 18 months of tolerated stay if there is no prospect of removal (§ 25 Abs. 5 S.2. AufenthG) or if there is no prospect of removal, this is very difficult to obtain as authorities tend to strictly apply the evidentiary requirements for identity and nationality status to be recognised, which is a required pre-condition. In this sense, the person is expected to be able to obtain the documents required to apply for a residence permit, while application for that permit is required due to being unremovable due to the absence of such documents. In practice, in many cases, people remain in legal limbo, not fulfilling the conditions either to be removed or to obtain a residence permit, as for the latter the authorities would need to recognise identity and nationality status. Under §104c AufenthG, people who held a tolerated stay (*Duldung*) continuously for at least five years as of 31 October 2022 may apply for a specific residence permit, which includes the right to work. If these conditions are not fulfilled, any person can apply for a residence permit under §25 Abs.5 AufenthG, for which the requirement of a proof of identity or nationality can be discarded.

In asylum proceedings, statelessness can only be proven and recognised but not determined, unless invoked as a ground of persecution. In the latter case, determination only leads to recognition of refugee status and statelessness needs to be determined again in immigration procedures relating to residence permits (in case asylum proceedings are not successful) or relating to travel documents for stateless people or refugees, with statelessness status being registered by the immigration authority.

Example: for an overview of the asylum process and related procedures for a stateless person in the Netherlands, see [Statelessness in the Netherlands: A Step by Step Guide](#) [A practical guide for caseworkers in contact with stateless persons in the Netherlands] (ASKV Refugee Support, ISI, ENS, 2018) and [What a Judge Cannot See: Statelessness Determination in the Netherlands](#) (2023).

8. DETENTION OF STATELESS PEOPLE

Stateless people often face a heightened risk of arbitrary detention, particularly where procedural safeguards to identify and determine statelessness are lacking.

Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the European Convention on Human Rights guarantee the right to liberty and prohibit unlawful and arbitrary detention. Any deprivation of liberty must be necessary, reasonable, and proportionate in the circumstances, and it must comply with domestic and international law. Detention must be used as a measure of last resort and is justified only when other less invasive measures are not sufficient to achieve legitimate aims. Detainees must always have the right and access to judicial review and adequate legal advice. There should be maximum limits on the duration of detention, restrictions on multiple instances of detention, and limits on the cumulative length of time spent in detention.

UNHCR has called on States not to detain stateless persons on the sole basis of them being stateless. UNHCR's Statelessness Handbook emphasises that, even when detention is justified, people awaiting statelessness determination must not be detained in the same spaces as convicted criminals or individuals awaiting trial. Procedures that can determine statelessness are an important mechanism to reduce the risk of prolonged and/or arbitrary detention. There must be mechanisms for detained people who are stateless or whose nationality is unclear or unconfirmed to be referred to available procedures when appropriate.²³

Additional information is available in UNHCR's [Stateless Persons in Detention: A tool for their identification and enhanced protection \(2017\)](#) and on the [Stateless Journeys website](#). Additional country information is available in the Statelessness Index [Country Profile on Germany](#).

Different types of immigration detention are provided for in the German Residence Act with different procedures and rules, though detention should only be used as a last resort. The law provides for alternatives to detention at national level, which are transposed into guidelines and resolutions on federal state level. Alternatives must be considered prior to detention, and these must be proportionate. Orders for detention pending deportation are regulated by the central government but implementation is a matter for each federal state and varies. The immigration authorities can detain a person without prior judicial order and notice based on several grounds, including to secure the person's deportation or if there is a suspicion that the person may abscond. It is reported that immigration detention is used in practice prior to all alternatives being considered. NGOs have stated that the order for deportation is often too hasty, and the courts do not always perform due diligence when examining decisions to detain. Detention pending deportation is however not based on statelessness, but other conditions must be fulfilled and there must be a prospect of deportation.

Detention for the purposes of deportation or removal is unlawful if removal cannot be carried out for legal or practical reasons. If deportation cannot be carried out due to difficulties obtaining a travel document or

²³ See UNHCR's Statelessness Handbook, paras 112-115.

unwillingness of the destination country to receive the individual, or if the country of destination categorically refuses to issue travel documents within three months, detention to secure deportation cannot be ordered. In practice, an impossibility to deport is only established after several unsuccessful attempts. Case law has established that the deportation of a stateless person can constitute inhumane treatment if the affected person may be at risk of significant and immediate mortal danger in the destination country, or if the person cannot pay for vital medical care. In such situations a person under threat of being removed, can bring forward actions and claims against the removal order. Authorities must regularly check whether the conditions for alternatives pending deportation are upheld, or whether the obligation to leave the country may have ceased due to, for example, impossibility of removal.

Statelessness is sometimes identified in the detention context, but there is no specific mechanism for this, and statelessness is not necessarily treated as a juridically relevant fact in decisions to detain. Authorities tend to categorise statelessness as 'unclear nationality' until it is determined, so the person should cooperate to obtain the necessary documents to establish their statelessness. The definition of vulnerability transposed to national law does not explicitly include statelessness. Vulnerabilities should be identified, but in practice the process lacks rigor, and statelessness is not considered a vulnerability factor within this assessment.

A maximum time limit on detention of 18 months is established in law. Cumulative time spent in detention does not count towards the maximum time limit if a new detention order is issued. The court must issue a copy of the application for detention to the individual concerned with the written reasons for detention (translated if necessary). The law provides for detainees to receive information about their rights and obligations including their right to contact a legal representative, family members, consular authorities, and support organisations. The authorities must examine and record ex officio at regular intervals whether the legal requirements for detention pending deportation are still in place and release the person if the reasons have ceased.

Individuals can appeal the decision to detain to the local (*Amtsgericht*) or district court (*Landgericht*) within a month (detention order) or two weeks (temporary injunction). If the appeal is rejected, a further appeal can be lodged within a month to the Federal Court (*Bundesgerichtshof*). An appeal is also possible by applying to the local court to lift the detention order. In practice, barriers to appeal have been reported including missed hearings, lack of interpreters, failure to translate the detention order, lack of administrative review of the person's file by the foreigners' office, but free legal aid must be provided by law and may help mitigate these challenges.

There are rules and procedures established in law and jurisprudence regulating the process of redocumentation and ascertaining nationality.

There is now a specific regulation on access to free legal aid during the removal process (§ 62d AufenthG). In practice, legal assistance is also provided by civil society. It is possible to apply for free legal aid to challenge deprivation of liberty under the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction, but only those in financial need, registered in the local registry, and with some prospect of success, are eligible.

If someone is released from detention due to deportation not being carried out, a form of 'tolerated stay' is usually granted, but this maintains the obligation to leave and does not protect from a new detention order being issued. If deportation is suspended for 18 months, it is possible to apply for a temporary residence permit (§ 25 Abs.5 AufenthG).

It can be difficult to obtain travel documents from the authorities, as they are granted on a discretionary basis as long as the residence status has not been regularised. The law provides for a form of tolerated stay for people with 'undetermined identity', which obliges the individual to cooperate with the authorities and risks resulting in a stateless person being deemed not to be cooperating and becoming subject to a fine for non-cooperation. A person with tolerated stay may receive subsistence under the Asylum Seekers' Benefit Act if they cannot meet their own

subsistence, but they initially receive less than asylum seekers. After 15 months of uninterrupted stay, they can access similar support, including healthcare, maternity services, and limited cash for basic personal needs.

The Federal Office for Migration and Refugees (BAMF) has published guidelines on immigration detention.²⁴

9. BIRTH REGISTRATION AND CHILDREN'S RIGHT TO A NATIONALITY

All children have a right to a nationality, under the UN Convention on the Rights of the Child and other international human rights instruments. The 1961 Convention on the Reduction of Statelessness sets out international standards for avoiding childhood statelessness.

Birth registration can help prevent statelessness, although it is usually not, on its own, proof of nationality, unless the child was born in a country that provides automatic nationality to all children born on the territory (birthright, or *jus soli* nationality). Lack of birth registration heightens the risk that a child may be left without a nationality or experience difficulties proving nationality.²⁵

Where nationality is recorded at birth registration, birth registrars and others involved in registering the birth of a child should ensure that a nationality is not incorrectly recorded and that it is not assumed that the child has a nationality.

In Germany, the law provides that children must be registered immediately, but there are inconsistencies in recording key data on the birth certificate and in access to birth certificates. In the case of births in hospitals or other institutions (including detention centres), the institution is obliged to notify the authorities of the birth. The birth must be communicated to the local registry office (*Standesamt*) where the child was born within a week, either by the parent, any person who was present at or informed about the birth, or the relevant institutions. By law, a child can be registered if their parents' stay in the country is irregular. However, registry officials have a duty to report their irregular presence to the authorities, which may constitute a barrier to registration for some parents.²⁶

To register a birth, parents must submit certain documentation depending on their marital status. In cases where at least one parent cannot present the required documentation, practice varies as to whether only the mother or both parents are registered, and parents receive an extract from the birth register, instead of a birth certificate, which contains the additional note 'identity not established'. Although the extract is an official document, its value as a form of legal identification is disputed in practice, and this may pose barriers to accessing certain rights later in life, or to acquiring nationality (especially if the identity of the parents is unclear). If parents cannot present the documentation required, other evidence may be provided. If this is not easy to obtain, or if the actual facts relating to the persons concerned cannot be proven by public or other certificates, the law provides that the civil registrar can take a declaration on oath as *ultimo ratio* (last resort). However, due to the federal system, it is the competent registry office in each federal Land that needs to decide whether the conditions for a declaration on oath are met. There are reports that the declaration on oath is only rarely applied in practice and where it is applied, may not always be accepted by other public services as a valid document.

²⁴[Abschiebungshaft und Alternativen zur Abschiebungshaft in Deutschland – Fokus-Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk \(EMN\), 2014](#)

²⁵ For more information, see [Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers](#) (ENS, 2020).

²⁶Art 68, Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122) [Civil Status Act]: <https://www.gesetze-im-internet.de/pstg/BJNR012210007.htm>; Arts 8, 34 (2), 47 (1), 56, 57 Personenstandsverordnung (PStV) vom 22. November 2008 (BGBl 2008 I, 2263) [Regulation on Civil Status]: <https://www.gesetze-im-internet.de/pstv/BJNR226300008.html>

Upon entry into the birth register, reference is made to the nationality of the parents (if not German, nationality must be proven), marriage, birth certificates of parents, acquisition of German nationality of the child, and the law to which the child's name is subject. Registry officials will check whether the child of foreign parents has acquired German nationality by birth. However, the relevant documents to obtain a birth certificate and therefore a legal identity (rather than an extract) from the registrar can be submitted later, and there is no time limit for the procedure, so there is a risk that children are left in limbo for a prolonged period of time. Late birth registration is possible in law but requires habitual residence and a travel document, which presents barriers in practice. There is a fee for late registration of a birth abroad, which varies between federal Lands. The fees are particularly high if foreign law applies. Other related fees may also apply in some cases. There are reports of risks that some children of undocumented migrants, refugees, and people with unclear nationality remain unregistered. In such cases, children and parents need to apply for residence permits, travel documents or for naturalization, as they all entail determination of identity and nationality status.

NATIONALITY DETERMINATION PROCEDURES

A nationality determination procedure is a way for a person who is a national of a particular country to obtain confirmation of the fact of their nationality. It is often important for a person who was born in a country of which their parents are not nationals, to children whose parents have different or multiple nationalities, or to children born to stateless parents. Nationality determination procedures can confirm which children who would otherwise be stateless are in fact nationals. Nationality determination is a simple process for most children if their parents are nationals of the country of birth. For children of migrants, the procedure should entail consideration of the laws and practice of the authorities of the parents' country(ies) of nationality, as well as of the child's country of birth. Where a child holds multiple nationalities from birth, this should be recorded, and the parents informed. Nationality determination should always be carried out by the competent decision-making authority, and the information recorded across different public authorities should be consistent.

In some cases, a nationality determination procedure will identify that a child is stateless. If there are no automatic safeguards in law for the child to acquire the nationality of the country in which they were born, the parents should be informed of ways that their child might be able to obtain a residence permit and acquire a nationality as soon as possible.²⁷

There is no procedure or time limits in place to determine the nationality status of a child born in Germany. This leads to many children being recorded as having 'unclear nationality' for long periods of time. It is important that statelessness is identified and determined, and that the child's nationality is not assumed or imputed based on the nationality of the parents or an interpretation of foreign nationality law. There are safeguards in German nationality law to enable some children born in Germany (and to German nationals abroad) to acquire German nationality if they would otherwise be stateless. The provisions are either automatic or non-automatic depending on which applies. Under the Nationality Act, all children born in Germany after 1 January 2000 automatically acquire German nationality if at least one parent has been legally and habitually resident for five years (§ 4 Abs.3 Nr.1 StAG) and has been granted permanent residence (or residence under EU law).

Where the Nationality Act does not apply, there is a safeguard in the 1961 Convention implementing law, which is not conditional on the parents' legal status but is non-automatic and requires an application for naturalisation before the age of 21, based on five years of continuous, legal residence. Additionally, the child or young person must not have any juvenile conviction of more than five years. In practice, evidence of the child's non-recognition as a national by another State must be provided, and the authorities must check whether the parents are able to transmit their

²⁷ Additional information available in [ENS's report relating to birth registration for stateless children](#) (note 16) and on the [Stateless Journeys site](#), and birth registration is covered in the [Statelessness Index](#) (see Questions PRS.6.a – 6.h on the country surveys).

nationality, or if another State may recognise the child as a national in the future. Many authorities and lawyers are unaware of the existence of this safeguard, so it is rarely applied in practice. It is necessary to identify children that have no nationality, especially children registered with undetermined nationality and apply for naturalization under the Law on the reduction of statelessness. In addition, the administration for naturalisation can be contacted and asked for advice with regards to the procedure on acquisition of nationality in application of this provision.

CHILDREN'S RIGHT TO A NATIONALITY: JURISPRUDENCE

In 2021, the UN Committee on the Rights of the Child issued a decision in [A.M. \(on behalf of M.K.A.H.\) v. Switzerland \(no 95/2019\)](#), concerning a stateless child threatened with removal from Switzerland to Bulgaria. The Committee found (among other findings) that Switzerland had not considered the best interests of the child nor taken necessary measures to verify whether the child would be able to acquire a nationality in Bulgaria. The Human Rights Committee also found a violation of the child's right to a nationality in [Zhao v. the Netherlands](#) (2020). The authorities had registered a child born in the Netherlands as having 'unknown' nationality and refused to change it to 'stateless' on the ground that the child had not proved that he had no nationality. Without being recognised as stateless, the child could not acquire Dutch nationality in line with existing safeguards to prevent statelessness of children born on the territory.

Also in 2021, [a Spanish court](#) recognised as a Spanish national a child who would otherwise have been stateless. The child was born in Morocco while her mother was travelling from Cameroon to Spain, outside a health facility, and her birth could not be registered in Morocco. The mother tried to register the child as a national of Cameroon, but this was not possible. The Court held that the safeguard established in Spanish law to prevent statelessness of children born in Spain should be applied broadly, in compliance with international treaties and with the principle of the best interests of the child. Therefore, it found that there was a violation of the child's fundamental rights and declared that the child held Spanish nationality and ordered the registration of the child's birth. More information is available [here](#).

More information is available on the [Stateless Journeys website](#) and in the [Statelessness Case Law Database](#). Additional country information is available in the Statelessness Index [Country Profile on Germany](#).

10. NATURALISATION AND INTEGRATION

Naturalisation is a crucial step for many stateless people to finally obtain a nationality. Article 32 of the 1954 Convention establishes that:

*States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*²⁸

Where stateless people are eligible for facilitated naturalisation or integration assistance, it is important that their statelessness has been recorded in official documents or systems in other procedures, such as asylum or immigration applications and decisions, so that when they apply to naturalise or for integration assistance, it is already recorded that they are stateless, and this will not pose a barrier for them.²⁹

There is a possibility under the Residence Act for recognised stateless people to acquire German nationality through discretionary naturalisation after six years' residence (administrative guidelines on the Nationality Act). Other requirements for discretionary naturalisation include that the person has legal capacity, no criminal record, and can support themselves and any dependents. The law provides that requirements can be waived on grounds of public interest or to avoid special hardship, but this option is hardly used in practice. The Federal Guidelines to the Nationality Act also indicate that difficulties to prove statelessness and refugee status must be taken into account (although this is rarely applied in practice), which is why this needs to be invoked in any administrative or judicial procedure.³⁰

Recognised stateless people may also apply for naturalisation under the general rules for other foreigners after being 'legally ordinarily resident' in Germany for five years (§ 10 Abs. 1 StAG). In addition to the requirements mentioned above, this route also requires people to evidence sufficient command of German language, knowledge of the legal system and society, to be financially independent and to affirm 'Germany's special historical responsibility for the National Socialist reign of injustice and its consequences'.

Travel documents can facilitate proof of identity and statelessness, although their evidentiary function is uncertain as recognition of identity and statelessness is not binding on other agencies. Stateless people who have obtained other travel or residence documents, or whose statelessness has not been identified, face difficulties to prove their identity and statelessness during the naturalisation procedure. Minor convictions do not prevent naturalisation, but multiple convictions may pose a barrier to naturalisation. Cases are considered on an individual basis and in exceptional cases may be granted at the discretion of the authorities where there are criminal convictions. Amendments to the Nationality Act entered into force in June 2024 provide that people who work in Germany and are well integrated can acquire German nationality after five years instead of eight. They no longer need to renounce their previous nationality, although the requirements for commitment to liberal democratic principles became stricter (§10 Abs. 1 StAG).

²⁸ There is a parallel provision for refugees in the 1951 Refugee Convention (Article 34).

²⁹ Further information about naturalisation, especially for stateless refugees, is available on the [Stateless Journeys site](#).

³⁰ BMI: Vorläufige Anwendungshinweise des Bundesministeriums des Innern zum Staatsangehörigkeitsgesetz (StAG) in der Fassung des Zweiten Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes vom 13. November 2014 (BGBl. I S. 1714), 01.06.2015, Ziff. 8.1.2.2 und 8.1.3.1:

<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/verfassung/stag-anwendungshinweise-06-15.pdf>

Stateless people can face significant delays in the naturalisation process due to the complex procedure to establish their identity and the restrictions to recognise legal identity without official identity documents or birth certificates, in particular since the determination of the applicant's identity and nationality was codified in 2019. There are also financial barriers, as there is no provision for specific reductions or waivers for stateless people with regards to the fees for naturalisation. It remains possible to initiate legal actions against the administrative authority in case of lengthy procedures, but this can be costly and does not guarantee better chances of outcome.

11. HELP FOR STATELESS PEOPLE IN GERMANY

STATEFREE

Statefree is the first German stateless-led non-profit organisation dedicated to the topic of statelessness, founded in 2021 with the goal of empowering stateless people through community, visibility and equal rights. After the launch of the first global platform for stateless individuals and organisations working on statelessness (www.community.statefree.world), Statefree engages in political advocacy in Germany and Europe to achieve substantive structural change. You can [contact Statefree](#) and [find out more about our work](#).

In Germany, a [network of refugee-law-clinics](#), providing free legal aid to refugees and potentially on statelessness. You can find an [overview of all refugee law clinics in Germany](#) and [more information about offers](#).

EUROPEAN NETWORK ON STATELESSNESS (ENS)

ENS is a civil society alliance of over 180 organisations and individual experts in 41 European countries. ENS is committed to breaking the cycle of statelessness and ensuring that the rights of everyone living in Europe without a nationality are fully respected. ENS coordinates awareness-raising and advocacy projects and campaigns aiming to protect the rights of stateless people, promote realisation of the right to a nationality, end childhood statelessness, and raise awareness about the rights of minorities in terms of statelessness, migratory statelessness, and the arbitrary detention of stateless people. You can [contact the network](#) if you are looking for more detailed information about statelessness. You can also [subscribe to ENS's newsletter](#) and find out about [joining the network](#).

12. RESOURCES

Statefree, the European Network on Statelessness and the Institute on Statelessness and Inclusion made a [joint submission on the human rights situation of stateless people in Germany to the Human Rights Council in the context of the Universal Periodic Review](#), 5 April 2023

Statefree, [Comment on the Draft Nationality Act](#), 15 June 2023

German Parliament, [Government response to a parliamentary inquiry relating to statelessness in Germany](#), Drucksache 20/6103, 17 April 2023

Wissenschaftliche Dienste, deutscher Bundestag: [Identitätsnachweis bei Einbürgerung in Deutschland](#), 25 January 2023

BMI: [Personen mit palästinensischer Volkszugehörigkeit](#), Reiseausweise für Staatenlose, Feststellung der Staatenlosigkeit, Festlegungen im AZR und in ausländerrechtlichen Dokumenten, 18 June 2020

Expert Council on Integration and Migration, [Policy brief on the situation of stateless people in Germany](#), May 2023

BMI, [Guidelines relating to the German Nationality Code](#)

BMI, [Guidelines relating to the Act on Residence, Economic Activity and Integration of Foreigners in the Federal Territory](#)

Justizportal des Bundes und der Länder, [Federal and federate court decisions database](#)

◀ STATELESS JOURNEYS ▶

Statelessness is often overlooked in asylum and migration debates. It is a hidden but very real issue affecting many refugees and migrants in Europe.

The #StatelessJourneys campaign – led by the European Network on Statelessness – calls for full access to rights and support for stateless refugees, and for this to be better prioritised as part of international protection responses.

<https://statelessjourneys.org>



European
Network on
Statelessness



European Network on Statelessness (ENS) is a civil society alliance of over 180 members in 40 countries working to promote the right to a nationality in Europe. ENS is committed to ending statelessness and ensuring that everyone living in Europe without a nationality can access the rights they are entitled to under international law.
<https://www.statelessness.eu/>

Statefree is the first German stateless-led non-profit organisation dedicated to the topic of statelessness, founded in 2021 with the goal of empowering stateless people through community, visibility and equal rights. After the launch of the first global platform for stateless individuals and organisations working on statelessness, Statefree engages in political advocacy in Germany and Europe to achieve substantive structural change.
<https://statefree.world/>

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