

STATEMENT

UPR Pre-Session on Germany

Geneva, 29 August - 1 September 2023

This presentation will focus on the human rights of stateless people in Germany. It is delivered on behalf of Statefree, a stateless-led human rights organisation, the European Network on Statelessness, a civil society alliance committed to addressing statelessness in Europe, and the Institution on Statelessness and Inclusion, a human rights NGO dedicated to working on statelessness at the global level.

I will focus my presentation on two issues concerning Germany's international commitments to reduce and end statelessness and to safeguard the rights of stateless people living in Germany:

1. Statelessness determination and access to rights for stateless people
2. Children's right to a nationality and to birth registration

Statelessness determination and access to rights for stateless people

Identifying stateless people is the first step to providing protection in line with the 1954 Convention. According to UNHCR, the identification and determination process should be ensured with a dedicated statelessness procedure. The lack of such a procedure resulting in a dedicated statelessness status can lead to human rights violations.

During the Third Cycle, Germany received a recommendation by Burkina Faso to establish a specific procedure to determine statelessness that would guarantee the protection of the rights provided in the 1954 Convention relating to the Status of Stateless Persons, which it noted. To date, Germany still lacks a dedicated procedure to identify and determine statelessness and a protection status and there is no route for stateless people to regularise their stay on the grounds of statelessness. Statelessness may be identified or recorded in other procedures, although these do not have the objective of determining statelessness. It is concerning that Germany recently stated that recognition of statelessness alone does not lead to any rights and there is no need for a specific procedure to determine statelessness, as this is contrary to international law and guidance and puts stateless people at risk of serious human rights violations.

This results in many shortcomings in law and practice which prevent access to protection to stateless people they are entitled to under the 1954 Convention. Authorities lack awareness on statelessness and tend to register people with 'unclear' nationality. There is a lack of procedures and inconsistencies in the determination of nationality status at birth. There is no obligation in German law for the authorities to consider a claim of statelessness, and there is no clear, binding, and accessible guidance on how to determine statelessness and regularise status. Fair evidentiary rules to establish people's identity and statelessness are not applied. Where facts are difficult to establish or evidence difficult to obtain, it is generally accepted that the burden of proof is shared between the applicant and the government, although this practice seems to be little applied. Statelessness is often disregarded and procedural safeguards are limited.

Although the 1954 Convention on the Status of Stateless Persons is transposed into national law, stateless people have limited access to their rights. A temporary residence permit is only accessible subject to stringent requirements and, in practice, people tend to remain with 'tolerated stay' with the obligation to leave. The right to work, education, healthcare, and social welfare benefits depends on the type of residence permit issued and on the person's identity and nationality status.

Therefore, we call upon reviewing States to recommend Germany the following:

- I. Establish a national statelessness determination procedure and protection status in law and in line with good practice, to give full effect to the rights enshrined in the 1954 Convention to stateless people in Germany, including residence rights.**
- II. Provide training to public officials on nationality and statelessness at all administrative levels, and ensure there is clear and accessible information for stateless people on how to access protection and regularise their status, as well as acquisition of nationality for otherwise stateless children born in Germany.**

Children's right to a nationality and birth registration

Every child has the right to a nationality and to be registered immediately after birth. These are core principles of international law, which, if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.

During the Third Cycle, Germany received two recommendations by Ecuador and the Philippines to *'guarantee the right of every child born in Germany to be registered, irrespective of their migration status or that of their parents'*, which it accepted.

There are safeguards in German nationality law to prevent statelessness for some children born in Germany, but there are significant gaps that result in children still growing up without a nationality. While the legal provision under the Nationality Act is conditional on the parents' residence status, the law implementing the 1961 Convention is in violation of international law, as stateless children born in Germany must have 5 years of legal residence, comply with other criteria and submit an application. Moreover, there is a lack of information available for individuals on this procedure. This provision is not known or applied by the authorities, since this provision is placed outside the Nationality Act. The legal framework is insufficient, inconsistent and Germany considers that no right derives from statelessness, leading to many stateless children born in Germany to remain without a route to fulfil their right to acquire a nationality. As of 2022, there are 29.000 stateless children and children registered with unclear nationality status born in Germany, who may be eligible for acquisition of nationality but have very limited routes to do so.

Germany does not have a 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 an undetermined period of time, which prevents them from accessing safeguards to prevent statelessness at birth and other fundamental rights. Children of parents whose identity is not established receive an extract from the birth register, instead of a birth certificate, leading to difficulties to access certain rights and acquire a nationality. Registry officials are required to report people with irregular residence status to the authorities and there are credible reports that refugees and undocumented migrants face barriers to birth registration due to missing documents or fear of being deported.

Therefore, we call upon reviewing States to recommend Germany the following:

- I. Amend nationality laws to ensure that all otherwise stateless children born in Germany automatically acquire a nationality at birth, in particular by removing the 'legal' residence requirement.**

- II. **Remove all practical barriers to birth registration and ensure that the status of parents does not prevent immediate registration.**