



STATELESSNESS AND THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

Considerations for GCM Implementation Process

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This document is intended for those involved in the implementation of the global compact for safe, orderly and regular migration (GCM) and who want to know more about the implications of migration governance for stateless persons and risk of statelessness.

Statelessness and the Global Compact for Safe, Orderly and Regular Migration

There are three reasons why the implementation of the global compact for safe, orderly and regular migration (GCM) must take statelessness and risk of statelessness into consideration.

First, while most stateless persons have never crossed an international border, they are often subject to measures intended for migration control.ⁱ This must be taken into account when developing global migration governance frameworks.

Second, migration can often put people at risk of statelessness. The GCM's goal of safe, orderly and regular migration must include reducing the risk of statelessness associated with migration and ensuring that stateless persons have access to regular migration routes.

Third, the implications for statelessness of migration policies can often be unintentional and obscured. It is crucial that stateless persons and their advocates are consulted in the development of migration governance processes.

Introduction to statelessnessⁱⁱ

Statelessness has been described as 'rooted displacement' or 'displacement in situ' because it effectively makes a person displaced wherever they are.ⁱⁱⁱ According to Article 1 of the 1954 Convention Relating to the Status of Stateless Persons, a stateless person is 'a person who is not considered as a national by any State under the operation of its law'. Estimates suggest that there are at least around either 10 or 15 million stateless persons.^{iv}

Often subject to migration control measures even if they have never moved, stateless persons may be excluded from many State institutions where they live: the regular labour market, health services, property-ownership, education or certification of educational accomplishments, civil registration (of births, marriages and deaths for example), social security, and even the protection of the law.^v This means for example that a stateless person may be unable to work legally anywhere on earth. Stateless persons are also affected by administrative detention, often 'pending deportation'. However, without any place to which to be deported, the detention risks being indefinite and arbitrary.^{vi}

Most stateless persons may find crossing international borders difficult or impossible. There is no globally agreed mechanism for a stateless person to migrate in a safe, orderly and regular way. This is also the case for stateless persons in states in crisis or suffering violent persecution. They may have to seek out smugglers and are at severe risk of being trafficked. Meanwhile, statelessness can also cause mobility. At the extreme this includes those who flee persecution and those who are removed by force to a second State with which they have no formal relationship. But it also includes those who, unable to access legal work in the country where they live, for example, move elsewhere in search of better conditions.

Migration can also give rise to risk of statelessness, particularly when it is urgent. This may happen for example if a person loses their documents. When a child is born in transit, there may be administrative difficulties involved registering birth and proving citizenship, as well as disagreement as to the child's eligibility for citizenship. Migration policies can contribute to this. Irregular migrants, fearing detention or

deportation may be afraid to access health services or birth registries, risking the statelessness of their children. Meanwhile, families who have fled a country may fear approaching the consulate of their country of origin to access citizenship for their children.

Stateless persons are also the group perhaps most likely to go uncounted. Even when they do not move, they are often absent from census data and development measures, and when they move, there may be no record of them. This can make it difficult to know their needs and to hear their views. Stateless persons are largely unrepresented in national, regional or global processes. They are uncounted and disenfranchised, their very existence may even be denied. With no State to advocate on their behalf, it is crucial that the protection and empowerment of stateless persons insofar as this is related to migration (even where this is not immediately obvious), is part of the implementation of the GCM. This must include special efforts to reach out to stateless persons and their advocates to query potential impacts on stateless persons of all aspects of the GCM.

Because there are a lot of different contexts of statelessness, it is crucial that responding to statelessness takes into account this complexity. This is why, for example, the 1954 Statelessness Convention recognises the need for a State to offer citizenship to people born on its territory if they would otherwise be stateless and at the same time for a State to offer citizenship to people born to its citizens overseas if those people would otherwise be stateless. But ending statelessness cannot be the only policy approach. When considering migration governance, it is crucial also to protect the rights of stateless persons. This includes ensuring that they are not subject to policies intended for migration control even when they have never moved.

Statelessness in the Compact

Statelessness has long been largely absent from considerations relating to global migration governance. This also reflects a broader absence of statelessness from global policy frameworks and relative ignorance of statelessness among global actors.^{vii} A fact which is understandable, given the obscurity imposed by the situation of statelessness for example. Yet statelessness is addressed in the New York Declaration and in the drafts of both the global compacts. The annexed Table 1 shows the different ways this is done and how it has changed through the drafting process.

Following the consultation period, the content of the zero draft of the GCM, while imperfect, was stronger and more rights-focused than many observers anticipated. It formalised the consideration of statelessness in the context of global migration governance. It also offered concrete ways to improve conditions for stateless persons and those at risk of statelessness, and to avoid risk of statelessness. The final draft of the GCM differs in key ways. First, there are some things to be celebrated. For example, it still recognises the need to consider statelessness in global migration governance. The document also includes recognition of the obligation under international law to eliminate gender discrimination in nationality laws. It will be important to build upon this, as well as the material set out in the zero draft, during the implementation phase.

However, there is also reason for serious concern with the final draft of the GCM. As can be seen in the annexed Table 1, it retracts in almost every dimension from commitments in the zero draft both to protect the rights of stateless persons and to avoid the risk of statelessness. This is particularly concerning because strong State commitments in these areas are already set out in existing treaties, some of which are almost unanimously ratified. For example, the final draft does not acknowledge the international law commitment for States to offer citizenship to those children born in their territories who would otherwise be stateless. The position of international law relating to statelessness with respect to key aspects of the GCM is presented in detail (though non-exhaustively) in the annexed Table 2.

Understanding the final document in the context of this trajectory and its non-binding nature has implications for advocacy efforts. For example, while municipal registration cards have remained in the GCM, their nature

has changed. The zero draft focussed on the possibility that such cards could facilitate access to services, engagement in business and participation in community life irrespective of status. In the final draft, explicit reference to this aspiration has been removed and been replaced with the requirement that such cards provide no entitlement to citizenship or residency. The original intention of this provision should be referenced, given the real-world examples of identity documents which in fact formalise exclusion from citizenship for example.^{viii}

Finally, while the discussion of statelessness in the GCM is found primarily in Objective 4, on legal identity and documentation, statelessness-related impact in fact needs to be considered across the global governance agenda. For example, stateless persons are currently often absent from government data (Objective 2), may be forced to move involuntarily (Objective 2) and yet also lack pathways for regular migration (Objective 5). Stateless persons are often overwhelmingly at risk of being trafficked (Objective 10) and being detained (Objective 13), often indefinitely. And at the same time, without citizenship of any country, they lack access to consular protection (Objective 14). Meanwhile, more generally, a lack of regular migration pathways (Objective 5), access to status determination (Objective 12) and consular protection (Objective 14) for example can also put those migrating at risk of statelessness.

Considerations for Implementation

Statelessness is now recognised as an important consideration in global migration governance. Implementation of the GCM and monitoring of the implementation must build upon the positive opportunities it represents while being alert to the need to ensure that existing widely-ratified and long-standing international law commitments are not undermined.

1. Mainstreaming consideration of statelessness in UN migration governance

Statelessness is now on the global migration governance agenda. It appears in both compacts and in the New York Declaration. It will be important to ensure that the new UN Migration Network continues to address: the protection of stateless persons, including those who move; and the prevention and reduction of statelessness. This includes for example ensuring that statelessness and access to citizenship is considered in the creation of Working Groups and agenda-setting and that stateless persons and their advocates are sought out and consulted from the outset.

2. Ensuring that those with direct experience and knowledge of statelessness are involved throughout implementation and monitoring of the GCM

Statelessness is widely misunderstood and the implications of policy for stateless persons and for risk of statelessness can be difficult to identify. In addition, stateless persons are often absent from data and lack political representation. For this reason, it is crucial that those with direct experience of statelessness are consulted in the development of migration policy.

3. Statelessness is relevant to all migration issue areas

Statelessness must be considered in all aspects of migration governance. This includes, for example, aspects relating to gender, labour, children and youth, health, access to services, racial and religious discrimination, indigenous and minority groups, migration control measures.

4. Statelessness is a global, an international, and a multilateral issue

Statelessness affects and is affected by inter-State relations, and functions on multiple levels. The protection of stateless persons and the avoidance of statelessness will need cooperation between States and among local, national, regional and global authorities.

Table 1. Comparing the New York Declaration, the zero draft of the global compact for migration, the final draft of the global compact on refugees and the final draft of the global compact for migration as they relate to statelessness

| | New York Declaration (September 2016) | Zero Draft of Global Compact for Migration (focus on Objective 4) (February 2017) | Global Compact on Refugees (August 2018) | Final Draft of Global Compact for Migration (focus on Objective 4) (July 2018) |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Why consider statelessness? | Root cause of forced displacement and caused by forced displacement (72). | It represents a form of vulnerability (chapeau). States can identify nationality e.g. for return (chapeau). Human right to a nationality (a). | Protect stateless persons (5). Both a cause and consequence of refugee movements (83). | Proof of legal identity is to enable migration authorities to ascertain identity, including for removal (chapeau). Human right to nationality (e). |
| Avoiding risk of statelessness | | Identity documents for all migrants (a). Consular documents to all migrants (d). Determine status autonomously, independently and individually (e). Individual documentation for female and child migrants (e). Citizenship or access to passport or visa not tied to spouse or parent (e). | Identify stateless persons and those at risk of statelessness (60). Strengthen capacity of national civil registries for access by refugees and stateless persons (82). Share good, gender-sensitive practices for prevention and reduction of statelessness (83). | States provide their nationals with proof of nationality (chapeau, c). States provide documentation to all migrants on territory (chapeau, a). Improve civil registry systems (a). Non-discriminatory criteria to obtain passports and visas (d). |
| Ensuring citizenship | Note UNHCR campaign to end statelessness in a decade and encourage States to consider actions that could reduce incidence of statelessness (72). | Facilitate conferring to citizenship to children born in another State's territory and allowing women to confer nationality to children (b). | | Ensure women and men can equally confer nationality to their children (e). Each State to provide nationality to children born in another State's territory (e). |
| Rights of stateless persons | | Abolish requirements to prove citizenship at service delivery centres (f). Institute identification cards enabling access to services, conduct business and participate in community life irrespective of status (g). | When requested by States, help will be provided for inclusion of stateless persons in national data and statistical collection processes (46). Identification of stateless persons and those at risk of statelessness (60). | Review and revise requirements to prove nationality at service delivery centres (f). Build on e.g. municipal registration cards that contain basic personal information without entitlement to citizenship or residency (g). |

Table 2. List of international treaties (non-exhaustive) with provisions concerning statelessness and corresponding existing rights and obligations

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|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Why consider statelessness? | <p>Everyone has a right to a nationality (UDHR 15, CNMW preamble ICCPR 23(3)).</p> <p>Every child has the right to acquire a nationality (CRC 7(1)) and preserve that nationality (CRC 8(1)).</p> <p>Human rights are universal (ICCPR 2(1)).</p> |
| Avoiding risk of statelessness | <p>Women should have equal right to men to acquire, change, retain nationality (CEDAW 9(1)).</p> <p>Neither marriage nor divorce, nor a change in nationality of a husband, should automatically affect the nationality of the wife (CNMW 1, ICESCR 9(2), CEDAW 9(1)), nor make her stateless (CEDAW 9(1)).</p> <p>No change in status (e.g. through marriage, divorce, adoption, renunciation of citizenship) should make someone stateless (CRS 5, 7) and if someone must lose their citizenship because of the change in citizenship of their spouse or parent, this cannot happen if they would thereby be stateless (CRS 6)</p> <p>Efforts must be made to ensure change in State territory does not lead to statelessness (CRS 10)</p> <p>Women should have equal rights with men to pass nationality to their children (ICESCR 9(3), CEDAW 9(2))</p> <p>Children should be registered immediately after birth (CRC 7(1))</p> |
| Ensuring citizenship | <p>No one should be arbitrarily deprived of their nationality (UDHR 15, CRS 8, 9)</p> <p>States should facilitate and expedite naturalisation of stateless persons as far as possible (CRSSP 32)</p> <p>States should grant nationality to anyone born in their territories who would otherwise be stateless (CRS 1(1)), to foundlings within that State (CRS 2), and to babies born on ships or aircraft carrying that State's flag (CRS 3).</p> <p>States should grant nationality to anyone born overseas to at least one citizen parent of that State if the person would otherwise be stateless (CRS 4)</p> <p>Women should have equal rights with men to acquire, change, retain nationality (ICESCR 9(1))</p> |
| Rights of stateless persons | <p>Stateless persons should be protected at least as well as citizens wrt freedom of religion (CRSSP 4), artistic rights and industrial property (CRSSP 14), access to justice (CRSSP 16, ICCPR 26), any rationing (CRSSP 20), elementary education (CRSSP 22(1)), public relief (CRSSP 23), labour protections and social security (CRSSP 24), access to documents, ID papers, civil registration (CRSSP 25, 27, 28), free movement within the territory (CRSSP 26), tax (CRSSP 29(1)). They should be treated as well as possible with regard to property (CRSSP 13), association (CRSSP 15), work (CRSSP 17), self-employment (CRSSP 18), professional work (CRSSP 19), housing (CRSSP 21), post-elementary education (CRSSP 22(2)).</p> <p>In all other aspects, stateless persons should have same treatment as other 'aliens' (CRSSP 7(1))</p> |
| Abbreviations and number States Parties | <p>1948 Universal Declaration of Human rights (UDHR)</p> <p>1954 Convention Relating to the Status of Stateless Persons (CRSSP) (91)</p> <p>1957 Convention on the Nationality of Married Women (CNMW) (74)</p> <p>1961 Convention on the Reduction of Statelessness (CRS) (73)</p> <p>1966 International Covenant on Civil and Political Rights (ICCPR) (172)</p> <p>1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) (169)</p> <p>1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (189)</p> <p>1989 Convention on the Rights of the Child (CRC) (196)</p> |

Notes

ⁱ European Network on Statelessness (2017) *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, European Network on Statelessness; David Weissbrodt (2008) *The Human Rights of Non-citizens* Oxford University Press; Caia Vlieks (2017) 'Context of statelessness: the concepts of 'statelessness in situ' and 'statelessness in the migratory context', pp.35-52 in Bloom et al (2017) *Understanding Statelessness*, Routledge.

ⁱⁱ This section is adapted from a longer piece: Tendayi Bloom (2018) 'Statelessness and the global compact for migration', Refugee Law Initiative Blog, 11 Sep 2018, <https://rli.blogs.sas.ac.uk/2017/09/11/statelessness-and-the-global-compact-for-migration/> (23 Nov 2018)

ⁱⁱⁱ Kristy Belton (2015) 'Rooted displacement: the paradox of belonging among stateless people', pp.907-921 in *Citizenship Studies* 19(8)

^{iv} UNHCR (2016) *Global Trends: Forced Displacement in 2016*, UNHCR; ISI (2017) *The World's Stateless Report 2017*, Wolff Publishers.

^v David Weissbrodt (2008) *The Human Rights of Non-citizens*, Oxford University Press; Laura van Waas (2014) *Nationality Matters*,

^{vi} European Network on Statelessness (2017) *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, European Network on Statelessness; David Weissbrodt (2008) *The Human Rights of Non-citizens* Oxford University Press; Caia Vlieks (2017) 'Context of statelessness: the concepts of 'statelessness in situ' and 'statelessness in the migratory context', pp.35-52 in Bloom et al (2017) *Understanding Statelessness*, Routledge.

^{vii} Lindsey Kingston (forthcoming) 'Conceptualizing Statelessness as a Global Problem'

^{viii} E.g. see Casey Dunning et al (2014) 'Birth Registration, Legal Identity and the Post-2015 Agenda', Center for Global Development Policy Paper 046, September 2014

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