

JOINT SUBMISSION TO  
**THE GLOBAL CONSULTATION ON  
THE INTERNATIONAL RECOMMENDATIONS ON STATELESSNESS STATISTICS (IROSS)**

*Submitted 21 November 2022*

## Introduction

This joint submission<sup>1</sup> to the Expert Group on Refugee, IDP and Statelessness Statistics (EGRIS) on the draft International Recommendations on Statelessness Statistics (IROSS) is submitted by:

- Apatride Network
- Arab Renaissance for Democracy & Development (ARDD)
- Central Asian Network on Statelessness (CANS)
- Centro para la Observación Migratoria y el Desarrollo Social en el Caribe (OBMICA)
- European Network on Statelessness (ENS)
- Institute on Statelessness and Inclusion (ISI)
- MENA Statelessness Network (Hawiati)
- Nationality for All (NFA)
- Phiren Amenca – Walk with us
- United Stateless



The submission is based on Draft 6.0 of the IROSS released for global consultation on 24 October 2022. The submission focuses on the proposed statistical framework for reporting statelessness (Chapter 3A of the draft), but includes some other comments on the draft recommendations.

Our principal recommendations are that:

- Adoption of the IROSS should be delayed until 2024 to allow for further consultation on the issues raised in our submission;
- Category A(ii) on group recognition should provide greater clarity on the expected criteria on the basis of which groups will be recognised as prima facie stateless;
- Category B(ii) should become category A(iii) – stateless persons without recognised stateless status;
- Category B should be renamed “persons with undetermined nationality”, with subcategory B(i) including only those with “real” links to another country, and category B(ii) including all others who lack proof of nationality;
- The section on administrative data should include recommendations for the collection of data about rejected applications for documents recognising nationality;
- We also consider that the impact of the IROSS on UNHCR’s own reporting should be clarified.

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<sup>1</sup> This submission is the result of two civil society consultation meetings on the IROSS and was drafted by Dr Bronwen Manby.

## Delay adoption until 2024

We believe that the timeline for adoption of the IROSS is too short. It is a very detailed document and the recommendations will have significant impacts for years to come on the reporting of statelessness by national statistical offices, and potentially also by UNHCR. We are particularly concerned that the impact of the IROSS will be to dramatically reduce the statistics reported for stateless persons, by restricting the statistical category of stateless persons to those who are recognised by the competent authorities of the state as such.

The concerns we have are sufficiently significant that we think that adoption of the document should be delayed for one year until the meeting of the Statistical Commission in February 2024, to allow the questions raised to be debated more fully and the concerns addressed.

There is a lack of existing consensus on terminology used for people who have neither a recognised nationality nor a recognised stateless status. Time should be taken to develop a consensus, following a wider consultation process with national statistical offices that are not included within EGRISS, with affected populations, and with experts in the field.

## Current statistical framework

### Population categories

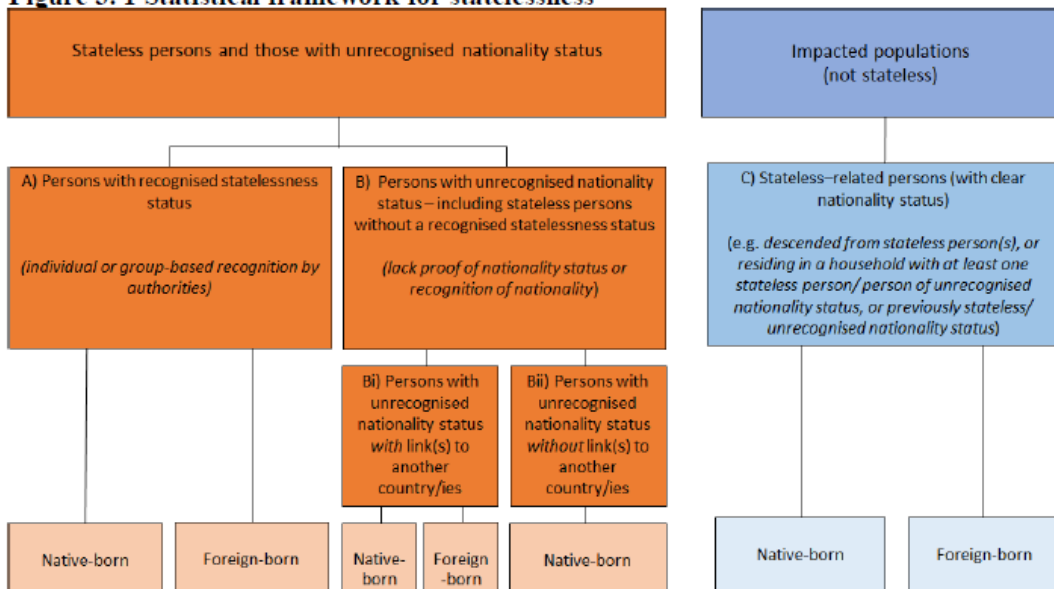
We agree with the recommendation that there should be three main categories for the collection of statistics on stateless persons.

It also makes sense to have two categories that encompass (a) those who are stateless and (b) those whose nationality or stateless status is unclear.

We welcome the inclusion of the proposed category (c), “stateless-related persons”, to expand the statistical framework to cover those who are not currently stateless but are or have in the past been impacted by statelessness.

However, we have serious concerns about the division between and the names given to categories (a) and (b) as proposed in figure 3.1 on page 26 (copied here for ease of reference). We consider each category in turn below.

**Figure 3.1 Statistical framework for statelessness**



## A. Persons with recognised statelessness status

Category A is proposed to encompass those recognised as stateless persons (individually or as a group).

Paragraph 69 of the draft IROSS states: *“Persons with recognised statelessness status include those who have been recognised as stateless, for example, following a formal statelessness determination procedure conducted by State authorities. This population category also includes those who may have been recognised as part of a stateless group on a prima facie basis, that is without undertaking a full individual status determination.”*

We understand that the category of prima facie recognition of statelessness is by analogy to prima facie recognition of refugees where there is no individual determination process but members of a group with similar characteristics are considered to be refugees based only on their membership of that group. This could be a useful addition to this category. However, we believe that there is a need for much more clarity about the basis on which this group recognition will be determined.

What are the criteria a state should adopt in recognising a group as prima facie stateless? Which authorities should have the responsibility of allocating a person or group to each category? What if there is a difference of views among different state authorities or different states? What happens if UNHCR has reported members of one particular group as being (prima facie) stateless in the past, but the state authorities do not recognise the group as such (see further the heading Impact on UNHCR reporting)?

The impact of restricting statistics on “stateless persons” to only those with recognised stateless status will be to dramatically reduce the numbers of stateless persons reported worldwide. Yet one of the main purposes of the draft IROSS (as set out for example in paragraph 4) is to address the current under-reporting of statelessness.

For this reason, we consider that those people currently within category B(ii) should be reported within category A. This is discussed further below under the heading on B(ii) and set out in the proposed revised statistical framework.

## B. Persons with unrecognised nationality status – including stateless persons

Category B is titled “Persons with unrecognised nationality status (including stateless persons without a recognised statelessness status)”. The description in the graphic states that this means that the people included “lack proof of nationality status or recognition of nationality”.

Paragraph 73 explains that the title “persons with unrecognised nationality status” diverges from a working definition of “undetermined nationality” that has been adopted by UNHCR.

Paragraph 70 states: *“Persons with unrecognised nationality status includes those whose nationality status is unclear or under dispute. It includes those who are stateless and who may self-identify as such, but where their statelessness status has not been formally recognised by the Government in the country of residence. It also includes those whose nationality status is unrecognised because of real or perceived link(s) to another country/ies by the Government in the country of residence.”*

We do not think that those who are stateless should be recorded within category B. There may be grey areas, but where the situation is clear, they should be recorded within category A.

We also think that the different language used in the titles and descriptions of category B and its sub-categories creates a substantial risk of confusion in establishing who is intended to be counted in which group. We think that category B should apply to all those who do not have a document that is proof of nationality status (without making any reference to “recognition of nationality” in another form), except for those who are stateless (and therefore included in category A).

We therefore also propose that the title for category B should be “undetermined nationality”, which both reflects the language of the 2006 UNHCR ExCom resolution, and is transparent in meaning. We agree that the UNHCR working definition for “undetermined nationality” could be improved for statistical purposes. However, it is unhelpful to introduce yet another closely-related term into international discussions about statelessness, and the title “unrecognised nationality status” in itself does not clarify who is to be included within this category. On UNHCR’s own reporting of statelessness, see further the heading below.

The draft statistical framework proposes to divide category B into two sub-categories: B(i) “with links to another country” and B(ii) “without links to another country”.

**Category B(i): With links to another country**

Paragraph 71 of the draft IROSS proposes that “*relevant ‘link(s)’ to another country/ies include territorial links such as birth in another country or habitual residence abroad, or filiation/marriage links such as descent, marriage or adoption.*”

The paragraph goes on to propose that these links could also include:

- a. certain minority groups,*
- b. border-dwelling and/or nomadic communities,*
- c. historical migrants and their descendants,*
- d. refugees in protracted exile,*
- e. groups living in countries formed as a result of State succession, and*
- f. undocumented migrants.”*

As noted above, paragraph 70 draws a distinction between “real” and “perceived” links. We assume the first list in paragraph 71 relates to “real” links, whereas the second (listed with letters) relates generally to “perceived” links.

In paragraph 73 it is stated that “*One link to another country is sufficient to satisfy the definition of link(s) to another country/ies and thus be categorised in the statistical framework.*” That is, real and perceived links are given the same statistical weight.

We think this framing creates a serious risk of confusion about what this sub-category represents, and unhelpfully combines under one heading people with very different risks of statelessness. There seem to be three different groups among those with undetermined nationality (unrecognised nationality status) that could be distinguished based on whether they have “real or perceived links” to another country:

- People who have real links to another country – that is, links that are related to nationality laws, such that they are reasonably likely to be recognised as nationals of the other country or able to acquire nationality of the other country;
- People who have perceived links to another country but do not have real, nationality-law-related, links;
- People who do not have links to another country, whether real or perceived.

It is our view (i) that the list of “real” links should be revised to be more precise and more comprehensive in relation to the type of links envisaged; and (ii) that the question of “perceived” links should not be included within the draft statistical framework – but rather considered for qualitative research. See further the two headings below. In addition, as noted above, those without links to another country who are clearly stateless should be included under category A.

*“Real” links*

We think that “links to another country” should be defined with reference to the typical content of nationality laws. That is, persons of undetermined nationality (unrecognised nationality status) should be

counted as having “links to another country” only if those links are strong enough to suggest that they may have legal entitlement to the nationality of that country.

While it is not practical to propose a detailed analysis of all the nationality laws of the countries to which those falling within this statistical category might have links, it is practical and relevant to the question of statelessness to propose collection of data about links that suggest that a person may have a different nationality from the one of the country of residence. The initial (currently unbulleted) list of links quoted above approaches such a list but should be refined and clarified to be more specific, so that it is easier to apply in a statistical context. We put forward a revised list below under the heading on the proposed revised statistical framework.

#### *“Perceived” links*

The characteristics listed (a) to (f) in paragraph 70 are so vague as to create complete subjectivity in the determination of whether a person has links to another country – creating the risk of arbitrary categorisation and a continued lack of comparability in the statistics reported by different states (which IROSS is supposed to reduce), as well as stigmatisation of those put within these categories.

The information that would allow a person to be allocated to one of the groups in the lettered list is hard to grasp, while the different groups are very heterogeneous. For example: who is a “historical migrant” – how many generations back is historical migration to count as a “link”? On what basis are “certain minority groups” considered to have links to another country? Perhaps a majority of states in the world were formed as a result of state succession – which “groups” are intended to be relevant here? The categories “refugees in protracted exile” and “undocumented migrants” could potentially also have different interpretations. There would be a need to distinguish (at minimum) between those who themselves fled as refugees and those who have derivative refugee status but were born in the country; and between undocumented migrants who are recent arrivals and those who may be considered by national authorities to be in the same legal category but who have been resident for many decades with no contact with the consular authorities of the country of origin, or who were born in the country and are therefore not themselves migrants.

Perhaps most importantly, however, many of these “perceived” links do not suggest that a person may have the nationality of another country.

For these reasons, we do not think that “perceived links” should form part of the statistical framework. We do agree that the question of perceived foreignness is often relevant to determine a greater risk of statelessness for a subgroup of those of undetermined nationality (without recognised nationality status). However, these factors should be examined further through qualitative research, with a view to the more effective targeting of efforts to resolve statelessness rather than the production of statistics. This is discussed further below under the heading on UNHCR reporting.

#### **Category B(ii) Without links to another country**

Paragraph 72 of the draft IROSS states that those without link(s) to another country/ies include:

- *“those born to stateless parents and/or parents with unrecognised nationality status in countries where there is no legal safeguard to grant nationality to children who would otherwise be stateless;*
- *abandoned children whose parents are unknown, in countries where there is no legal safeguard to grant nationality to foundlings;*
- *those born in countries which do not allow women to confer their nationality to their children on an equal basis as men, where the mother is a national and the circumstances are such that the father is unable or unwilling to confer his nationality.*
- *those who have lost, or been stripped of, their nationality, for reasons other than real or perceived links to another country.”*

It is our view that the people in these categories should be included in category A. They are clearly stateless persons.

We are not convinced by the argument in paragraph 74 that lack of a formal statelessness determination procedure means that unrecognised stateless persons who fulfil these criteria should be included in the population category of “persons with unrecognised nationality status” even when their statelessness is so clear in law.

The list in current sub-category B(ii) is based on the minimum protections against statelessness provided in international law, establishing a core group of those who evidently do not hold any nationality, even if not recognised as stateless following a formal procedure. We think this should be reflected by placing the sub-category within the statistical category “stateless”, as a new sub-category A(iii), entitled “stateless persons without recognised stateless status”.

We also propose that the question of discrimination based on sex in transmission of nationality to children should be considered not only if the mother of the child is a national of the country of residence, but whatever the nationality of the parents. While it is not reasonable to require a complete analysis of the laws of other countries for statistical purposes, UNHCR publishes an annually updated report on those countries where there are not equal rights for men and women to transmit their nationality, and this report can provide guidance to national statistical offices. It is also important to note that in some contexts (usually a birth out of wedlock) it may be the father’s inability to transmit nationality, rather than the mother’s, that is relevant to the statelessness of the child.

The final bullet point on loss and deprivation of nationality should include “and whose nationality of another country has not been confirmed”. The reason for nationality deprivation is not relevant to the question of statelessness.

With these changes made, we recommend a new definition for heading B(ii) on those “without links to another country”, so that it includes all those who are of undetermined nationality who do not have “real” links to another country (and who are not included in category A – including in the new sub-category A(iii)). See the proposed revised statistical framework for details.

### C. Impacted populations/stateless-related persons

Paragraph 75 proposes that *“Stateless-related Persons includes individuals who are not currently stateless nor are persons with unrecognised nationality status. They are people who currently have citizenship/clear nationality status but who have been impacted by statelessness or unrecognised nationality in some way. This includes: people who were previously stateless or of unrecognised nationality status, children descended from stateless parent(s) and individuals who reside in a household with at least one stateless person/person of unrecognised nationality status.”*

We broadly support this category, although the term “stateless-related” is not very intuitive to understand, and creates potential confusion in the case of family members. We suggest further thought and consultation on a revised title for this category, and below have used the term “persons impacted by statelessness”.

In addition to children of stateless parents, parents of stateless children would be an important set of people impacted by statelessness. However, we think that there is only a need for two sub-categories: (i) formerly stateless/with undetermined nationality, and (ii) related to or living in the same household as a person who is stateless/with undetermined nationality.

### Native/foreign born

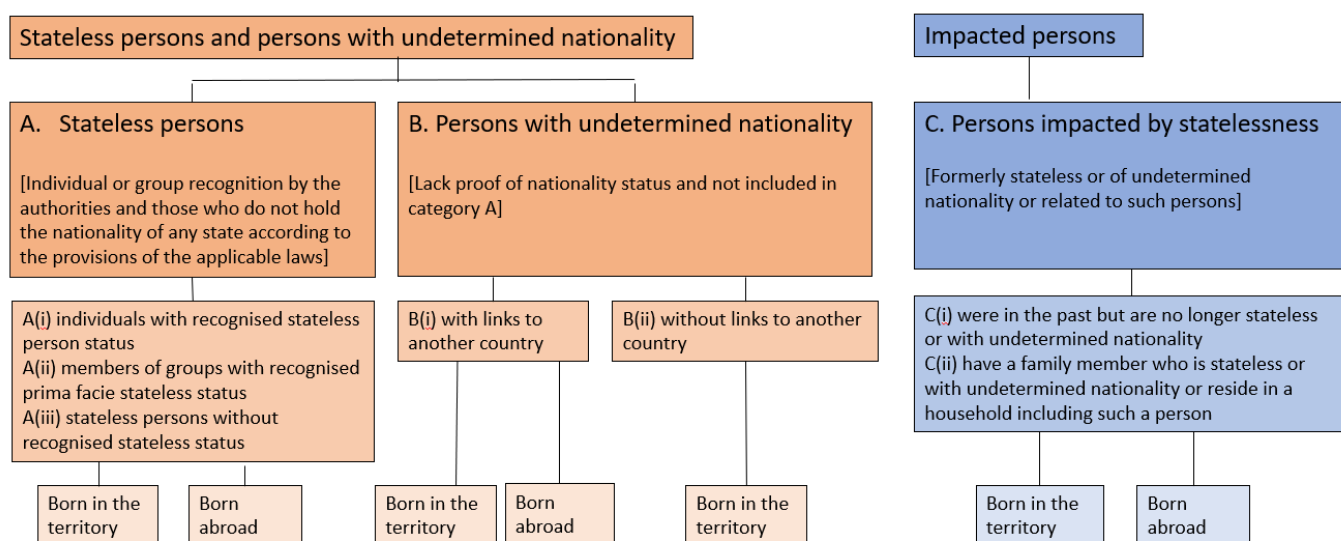
The question of location of birth is relevant to state obligations in relation to nationality and statelessness, and we agree that place of birth is a useful piece of information to include in the IROSS.

However, the terms “native born” and “foreign born”, which may carry pejorative connotations, should be replaced with the more neutral terms “born in the territory” or “born abroad”.

## Proposed revised statistical framework

We propose that the draft IROSS statistical framework be adjusted as represented and explained below.

Our objective has been to propose statistical categories that can be determined on factual grounds, under the two broad headings “stateless” and “undetermined nationality”. As for category B in the current draft IROSS, “undetermined nationality” is a broad term. As a statistical category, it will in most cases include people who, on further investigation, might be determined to hold the nationality of the country of residence, or the nationality of another country, or to be stateless. The aim is to establish baseline factual data to guide such inquiries.



### A. Stateless persons

#### **A(i) : individuals with recognised stateless person status**

People identified as stateless persons by the competent authorities through an individual statelessness determination procedure

#### **A(ii): members of groups with recognised prima facie stateless status**

People belonging to a group whose members are considered by the competent authorities to be stateless on a prima facie basis.

Additional consultation should be carried out to provide guidance on the criteria by which prima facie statelessness may be determined.

#### **A(iii): stateless persons without recognised stateless status**

People who would have the nationality of the state of residence if the minimum protections against statelessness in international law had been in effect on the relevant date, but where national law does not provide those protections.

These include, but are not limited to:

- a) those born to stateless parents in countries where there is no legal safeguard to grant nationality to children of stateless parents or who would otherwise be stateless;
- b) abandoned children whose parents are unknown, in countries where there is no legal safeguard to grant nationality to foundlings (this category includes those who are now adults, but who were children when found);
- c) those born to parents who have the nationality of a state that is known not to permit women to confer their nationality to their children on an equal basis with men, where the parent to whom descent has been established cannot confer nationality and the other parent is also unable or unwilling to confer his or her nationality;
- d) those who have lost or been deprived of their nationality, and who do not hold a document that is proof of their nationality of another country.

Note that category A(iii) includes people who have “links to another country” as defined in the new version of category B(i); their statelessness is, nonetheless, not in doubt.

### ***Place of birth***

In each sub-category birth in the territory or birth abroad is recorded.

### **B. Persons with undetermined nationality**

Category B includes all those without a document recognising their nationality of at least one country *except* those who are included within category A. The category should be seen as a temporary identification category for statistical purposes, pending an in-depth review to determine if those in this category have the nationality of a state or are stateless (as UNHCR currently proposes – see paragraph 42 of the draft IROSS).

#### ***B(i): With links to another country***

Links to another country include that the person concerned:

- a) was born in another country; or
- b) has one parent who holds (or held, while alive) a document suggesting that he or she is recognised (or has been recognised in the past) as the national of another country; or
- c) is married to a person who holds a document suggesting that he or she is recognised (or has been recognised in the past) as the national of another country; or
- d) has close family members who hold documents suggesting that they are recognised (or have in the past been recognised) as nationals of another country; or
- e) has one parent born in another country; or
- f) has been habitually resident for more than ten years in another country (other than as a refugee).

The response to (a) divides those in this sub-category into “born in the territory” or “born abroad”; however, one person may have several different types of link to another country (or countries).

#### ***B(ii): Without links to another country***

This category includes all those of undetermined nationality, except for those who are within B(i).

All those in this category would be born in the territory, since birth abroad counts as a “real” link to another country.

In addition to the statistical category, national statistical offices could consider collecting qualitative data on those at greater risk of statelessness within this category (see further heading on UNHCR reporting below).



### C. Persons impacted by statelessness

This category includes:

#### ***C(i) Formerly stateless***

Persons who now have a documented nationality, but were in the past stateless or with undetermined nationality.

#### ***C(ii) Related to a stateless person***

Persons who have a family member who is stateless or with undetermined nationality or who reside in a household including such a person.

### **Classificatory variables**

The classificatory variables set out in Chapter 4(A) would need to be adjusted in accordance with the revised framework.

### **Administrative data sources**

We welcome the extended discussion of data sources and data integration in chapter 5 of the draft IROSS, including censuses, sample surveys, and data from non-government actors.

Chapter 5C considers administrative data, and provides a helpful outline of the potential uses of different government registers. One aspect of administrative data that is not discussed is the collection of data about refused applications for nationality documents, when the person who applied is not verified to have another nationality. This data is currently available for internal processes in at least some countries, but not usually reported. However, even if the data is not currently available, it would be a relatively easy matter to include within the record of applications made for identity documents the requirement for the official processing the application to record the basis on which an identity document was refused (including the question of “real” or “perceived” links to another country), and what other nationality it is believed that the person may hold. This data might include not only applications for identity documents that are proof of nationality (national identity cards or passports) but also documents such as birth certificates which are not usually proof of nationality but are proof of the facts on the basis of which nationality may be determined.

While this data would – like the other administrative data – not be comprehensive, it would provide important information about some members of the proposed statistical categories. More detailed guidance would need to be developed in conjunction with those designing the information systems for management of identification registers on the fields that should be included for officials to complete.

### **Impact on UNHCR reporting**

In addition to these comments on the current draft IROSS, we would like to emphasise the importance for IROSS – or UNHCR, in a parallel document – to state more clearly how the proposed framework will relate to or impact UNHCR’s own reporting of stateless populations.

The purpose for adopting IROSS is that the criteria for UNHCR’s reporting of stateless persons are recognised by the agency to be inconsistent and the data not comparable across countries. Nonetheless,

the agency has already developed guidance on statistical reporting and the interpretation of international obligations in an effort to reduce the inconsistencies.

The foundational document for UNHCR's current reporting is the Handbook on the Protection of Stateless Persons, which notes that the question of whether a person is stateless – is “considered as a national by any state” – is a “mixed question of fact and law” (summarised in paragraphs 32–38 of the draft IROSS). UNHCR's methodology for determining stateless groups includes discussion with the relevant competent authorities in order to ask specific questions on the status of different groups as well as interviews with communities known to have challenges in gaining recognition of nationality (see UNHCR's *Quick Guides: Researching Statelessness*, March 2021, available at: <https://www.refworld.org/docid/6054c9ca4.html>).

UNHCR has also adopted a working definition of “undetermined nationality” for its own reporting (as noted in paragraph 41 of the draft IROSS), which is very similar to the definition proposed by the draft IROSS for “unrecognised nationality status”. UNHCR's working definition is that a person may be assessed as being with undetermined nationality following a review that verifies that they:

- *“Lack proof of possession of any nationality; and*
- *Have links to more than one State on the basis of birth, descent, marriage, adoption or habitual residence; or*
- *Are perceived and treated by authorities in the State of residence as possessing links which give rise to a claim of nationality of another State based on specific elements such as historic ties, race, ethnicity, language or religion.”*

We think it important that UNHCR should continue to collect independent data on stateless persons (including those with unrecognised stateless status), and on people with undetermined nationality (including those with or without different types of links to another country).

As noted above, we propose that the terminology used in IROSS for those whose status as a national or stateless person is unclear should be “undetermined nationality” rather than “unrecognised nationality status”, in order to avoid confusion about the differences between these closely related terms. To ensure consistency across statistical efforts and advocacy, we propose that UNHCR modify its definition to conform with the proposed revised statistical framework above.

Whereas we believe that the statistical categories in IROSS should focus on “real”, nationality-law-related, links to another country, we agree that the question of “perceived” links is often also relevant to statelessness. The statistical data provided by IROSS will establish a useful baseline for further research. However, research into the risks of statelessness created by perceptions of foreignness should be more in depth and qualitative (rather than mainly quantitative), focusing on the causes and impacts of statelessness – and the solutions to statelessness – rather than seeking to establish exact numbers for those with different levels of risk or who are more or less seriously affected. At the same time, qualitative investigation may provide the basis for design of country- or region-specific surveys to establish more reliable statistics on statelessness among particular communities.

UNHCR should also engage as appropriate with national statistical offices in discussions about implementation of the IROSS, the allocation of groups to the different statistical categories, or the conduct of further qualitative research.