

Joint Submission to the
Human Rights Council

Universal Periodic Review

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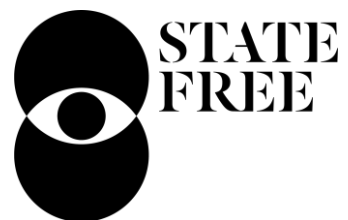
GERMANY

Statefree

European Network on Statelessness

Institute on Statelessness and Inclusion

5 April 2023



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to the Human Rights Council
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Introduction

1. Statefree, the European Network on Statelessness (ENS), and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Germany.¹
2. This submission focuses on:
 - I. Statelessness determination and access to rights for stateless people
 - II. Children's right to a nationality and birth registration
3. [Statefree](https://www.statefree.world),² the first German stateless-led non-profit organisation dedicated to the topic of statelessness, was 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 quickly expanded their scope of action to the field of political advocacy in Germany and Europe to achieve substantive structural changes at a political level. This submission is supported by Statefree's work and experience as the first organisation representing stateless persons in Germany as well as Statefree's close collaboration with individuals with lived experience.
4. The [European Network on Statelessness](https://www.statelessness.eu) (ENS)³ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 180 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and

¹ Dr Helena-Ulrike Marambio, individual member of the European Network on Statelessness, also contributed to this submission.

² For more information, see <https://statefree.world>.

³ For more information, see <https://www.statelessness.eu>.

support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS's Statelessness Index, which covers Germany.⁴

5. The [Institute on Statelessness and Inclusion](https://www.institutesi.org/) (ISI)⁵ is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made over 100 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key challenges related to statelessness in all countries under review under the 23rd to the 42nd UPR Sessions.

Previous UPR and UN Treaty bodies' recommendations to Germany

6. Germany underwent three Universal Periodic Reviews between 2018 and 2009. During the Third Cycle (2018), Germany received two recommendations 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.⁶ It also received a recommendation to establish a specific procedure to determine statelessness that would guarantee the protection of rights provided in the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), which it noted.⁷
7. In 2008, Germany had also received a recommendation from the Committee on the Elimination of Racial Discrimination to facilitate the acquisition of German nationality by long-term residents and persons born in Germany to promote their integration who may wish to acquire German nationality without relinquishing their own.⁸

Germany's International obligations

8. Germany ratified the 1954 Convention on the Status of Stateless Persons (1954 Convention), but it retains two significant reservations, namely the right not to apply Article 27 (travel documents) and to restrict the application of Article 23 (access to social welfare) to stateless people who are refugees. Germany also acceded to the 1961 Convention on the Reduction of Statelessness (1961 Convention). It has yet to examine the necessity of maintaining these reservations following its commitment at the UNHCR High Level Segment on Statelessness in 2019.⁹

⁴ ENS, Statelessness Index: Germany, <https://index.statelessness.eu/country/germany>.

⁵ For more information, see <https://www.institutesi.org/>.

⁶ Human Rights Council (HRC), Report of the Working Group on the Universal Periodic Review, Germany, 11 July 2018, Doc. A/HRC/39/9, Paras 155.258 (recommendation from Ecuador) and 155.259 (recommendation from the Philippines), available at: <https://undocs.org/A/HRC/39/9>.

⁷ HRC, Report of the Working Group on the Universal Periodic Review, Germany, 11 July 2018, Doc. A/HRC/39/9, Para 155.257 (recommendation from Burkina Faso), available at: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/39/9&Lang=E>.

⁸ Committee on the Elimination of Racial Discrimination, 22 September 2008, Consideration of Reports Submitted by State Parties under Article 9 of the Convention, (CERD)CERD/C/DEU/CO/18, para 20, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/441/50/PDF/G0844150.pdf?OpenElement>.

⁹ See UNHCR, Results of the High Level Segment on Statelessness in October 2019: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

9. Germany has international obligations to fulfil the right to a nationality and protect the rights of stateless persons based on other UN and regional treaties to which it is a party. These include, among others:¹⁰

- International Covenant on Civil and Political Rights (Article 24.3)
- International Covenant on Economic, Social and Cultural Rights (Articles. 2.2 and article 3)
- Convention of the Rights of the Child (Articles 2, 3, 7 and 8)
- Convention on the Elimination of All Forms of Discrimination against Women (Article 9)
- International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (Article 18)
- International Convention for the Protection of All persons from Enforced Disappearance (Article 25.4)

Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

10. Germany is party to the European Convention on Nationality but retains reservations permitting loss of nationality in certain circumstances (Article 10). It has signed but not acceded to the Convention on the Avoidance of Statelessness in Relation to State Succession.

Snapshot of Statelessness in Germany

11. Population data in Germany is comprehensive, including on statelessness, but without a dedicated procedure to identify and determine statelessness, estimates for the stateless population remain inaccurate. The Federal Statistical Office publishes a wide range of statistics. A 'stateless' category is included but there are also overlapping categories, such as 'unclear nationality', 'without indication', and 'Palestinian'. As of the end of 2022, there were 29,455 recorded stateless people in Germany and 97,150 people listed as having 'unclear' (ungeklärt) nationality or 'without indication' (ohne Angabe).¹¹ In 2021, 1,355 stateless people were naturalised, and nationality was granted to 750 other people with 'unclear nationality' or 'without indication'.¹² UNHCR reports 28,941 stateless people as of mid-2022.¹³ The Federal Office for Migration and Refugees regularly publishes asylum statistics, and parliament has undertaken inquiries into stateless refugees and asylum seekers, including on detention. The current statistics (as of end 2021) show that 5,865 stateless people held a settlement permit, 845 were granted 'tolerated stay' ('Duldung')¹⁴, 645 held a temporary residence permit ('Aufenthaltsgestattung'), and 1,055 stayed without any residence permit ('Aufenthaltstitel'), tolerated stay or temporary residence permit. Figures for the number of people with 'unclear' or 'without indication' state the following: 8,920 were

¹⁰ See [United Nations Treaty Collection](#).

¹¹ Statistisches Bundesamt, Press release Nr. 091, 9 March 2023, available at: https://www.destatis.de/EN/Press/2023/03/PE23_091_125.html.

¹² These figures rely on the GENESIS-Online Datenbank, which is the main database of the Statistische Bundesamt. Its data relies on the Central Register of Foreigners (Ausländerzentralregister – AZR), available at: <https://www-genesis.destatis.de/genesis/online?operation=abrufabelleBearbeiten&levelindex=1&levelid=1640620736070&auswahloperation=abrufabelleAuspraegungAuswaehlen&auswahlverzeichnis=ordnungsstruktur&auswahlziel=werteabruf&code=12411-0009&auswahltext=&werteabruf=Werteabruf#abreadcrumb>.

¹³ UNHCR, Refugee Data Finder, available at: <https://www.unhcr.org/refugee-statistics/download/?url=80PunF>.

¹⁴ A tolerated stay refers to a lawful stay with exceptional leave to remain.

granted a settlement permit, 7,980 people lived on ‘tolerated stay’, 4,470 individuals were issued a temporary residence permit, and 15,580 persons remained without any residence permit, tolerated stay or temporary residence permit.¹⁵ With regard to births, the statistics do not distinguish between parents who are stateless or whose nationality is unknown or unclear: in 2021, 3,030 women who were stateless or with unclear/unknown nationality or ‘without indication’ gave birth to a child, and 49,892 men who were stateless or with unclear/unknown nationality or ‘without indication’ became fathers.¹⁶

12. Although statistical data in Germany is comprehensive relative to other countries, statelessness has not been surveyed or mapped in the German context. The last census, which included the category ‘stateless’, ‘unclear nationality’ and ‘without indication’, was carried out in 2011.¹⁷ A new census was launched in May 2022 and the results are expected to be published by the end of 2023.¹⁸ There are also issues with 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. The existence of a large number of people with ‘unclear nationality’, such as persons on ‘tolerated stay’ or with irregular status, indicates that the actual number of stateless people in Germany is likely to be higher and thus underrepresented in the statistics.
13. A legislative proposal to amend the German Nationality Act, including amendments to the residence period required for acquisition of nationality for children born in Germany, is expected to be published in April 2023. The co-submitting partners urge the German Government to amend the bill taking into consideration the concerns expressed in this submission.

Issue 1 – Statelessness determination and access to rights for stateless people

14. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention. Although the 1954 Convention does not specifically provide for how statelessness should be determined, UNHCR guidance has confirmed that this is best fulfilled through a dedicated statelessness determination procedure with the necessary safeguards and procedural guarantees.¹⁹ According to international norms and standards, determination of statelessness should

¹⁵ Statistisches Bundesamt, GENESIS Online-Datenbank, ‘Ausländer: Bundesländer, Stichtag, Geschlecht, Aufenthaltstitel/Ausgewählte Aufenthaltstitel, Ländergruppierungen/Staatsangehörigkeit’ (Code 12521-0026) [‘Foreigner: Federal Lands, Reporting Date, Sex, Residence Permit/Selected Residence Permit, States/Nationality’ (Code 12521-0026)] available at: <https://www-genesis.destatis.de/genesis/online?operation=table&code=12521-0026&bypass=true&levelindex=0&levelid=168003899952#abreadcrumb>.

¹⁶ Statistisches Bundesamt, GENESIS Online-Datenbank, ‘Lebendgeborene: Deutschland, Jahre, Staatsangehörigkeit’ (Code 12612-0003) [‘Live births: Germany, Year, Nationality’ (Code 12612-0003)] available at: <https://www-genesis.destatis.de/genesis/online?operation=table&code=12612-0003&bypass=true&levelindex=1&levelid=1680038685316#abreadcrumb>.

¹⁷ Statistische Ämter des Bundes und der Länder, ‘Bevölkerung nach Staat der Staatsangehörigkeit und Geschlecht für Gemeinden. Ergebnisse des Zensus am 9. Mai 2011’ (10 April 2014), available at: https://www.destatis.de/DE/Methoden/Zensus/Downloads/1B_EinwohnerzahlNationalitaet.html.

¹⁸ Statistische Ämter des Bundes und der Länder, Zensus 2022, available at: <https://www.zensus2022.de/DE/Home/inhalt.html>.

¹⁹ UNHCR, Handbook on Protection of Stateless Persons, 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>. See also [European Court of Human Rights, Hoti v. Croatia \(application no. 42321/15\), 26 July 2018](#), holding that a State has a positive obligation to provide an effective and accessible procedure enabling applicants to have their issues of further stay and status determined, paragraph 32.

lead to a dedicated protection status, including a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements stateless people cannot meet because they are stateless, and other rights protected by the 1954 Convention. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.²⁰

Identification of stateless people and statelessness determination

15. Germany lacks a dedicated procedure to identify and determine statelessness to 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. However, statelessness may also be determined as part of 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 foreign office ('Ausländerbehörde'). The local foreign office may issue a 'tolerated stay', a form of lawful stay with exceptional leave to remain in Germany as long as the individual cannot be removed, but the obligation to leave still exists. None of these procedures have the objective of determining statelessness.
16. Due to the shortcomings in the procedures available to determine statelessness (see below) and a tendency not to recognise statelessness, applicants are often assumed to have a nationality which they are unable or unwilling to confirm.²¹ 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.²²
17. 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.²³ While instructions are provided on how to apply for a travel document under the 1954 Convention at the local level, there is no accessible nor 'easy-read' public information on the specific steps stateless people should take to regularise their status through other procedures. The available information relates mostly to asylum procedures.²⁴ Lack of access to information also includes the type of documents accepted by government bodies to establish people's identity and statelessness. Both the lack of awareness of relevant procedures and accessible, 'easy-read' information

²⁰ Statelessness Index, Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks, 2021: https://index.statelessness.eu/sites/default/files/ENS-Statelessness_determination_and_protection_in_Europe-Sep_2021_0.pdf.

²¹ See e.g. VG Gelsenkirchen, Urteil vom 23.09.2019 - 17 K 950/18 [Administrative Court of Gelsenkirchen, judgment of 23 September 2019 - 17 K 950/18]; OVG Nordrhein-Westfalen, Beschluss vom 21.10.2021 – 17 A 4237/19 [Higher Administrative Court for the Land North Rhine-Westphalia, decision of 21 October 2021 – 17 A 4237/19].

²² See, e.g., Statefree, My plight while moving with hope and the mindset of a winner, News and Updates, 27 September 2022, available at: <https://community.statefree.world/news-updates-2/my-plight-while-moving-with-hope-and-the-mindset-of-a-winner-192>; Rebecca Sawicki, "Abnormalität, die nicht ins System passt": Wie eine Organisation für Staatenlose kämpft, 21 December 2022, available at: <https://politik.watson.de/deutschland/interview/702626744-einbuergerung-wie-eine-organisation-fuer-staatenlose-kaempft>.

²³ See, e.g., Statefree, Citizens' Office does not want to recognize my statelessness, Statefree Community Forum, 24 December 2021, available at: <https://community.statefree.world/stories-experiences-7/citizens-office-does-not-want-to-recognize-my-statelessness-132>.

²⁴ Christiana Bukalo, Knowledge to Empower: Closing the Gap between Stateless People and Statelessness Research, December 2020, available at: <https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog/knowledge-to-empower-closing-the-gap-between-stateless-people-and-statelessness-research>.

make it difficult for anyone to navigate the system. Due to Germany's federal system, the determination of statelessness lies at the discretion of the local foreign office in charge of the applicant's residential area (thus, the examination is not undertaken by a centralised authority).

18. In practice, on several occasions, statelessness appears to be identified in Administrative Court proceedings. This raises concerns as it means that only a few cases can proceed to the courts (depending on the resources and access to legal aid of the applicant), that the time to obtain a decision on the person's statelessness status becomes considerably longer, and that accessibility may be hampered as access to the courts is in general more complicated than access to administrative procedures.
19. 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 to prove their identity and clarify their situation. Failure to do so can result in penalties, such as reductions in social security entitlements. However, 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. Positively, the country's Coalition Agreement pledged to introduce a new method of clarifying a person's identity through sworn affidavit.²⁵ In theory, only the standard of proof of beyond reasonable doubt is in place in Germany, but in practice, and positively, 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 foreign offices follow the Land's 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 Act²⁶ 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. Overall, there is also little awareness and understanding of statelessness within Germany's international protection procedures.
20. In terms of procedural safeguards, stateless people are treated as any other foreigner under the Residence Act and therefore can obtain legal aid if they can demonstrate financial need. In court proceedings, they 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 access by law). The evidence required may not be easily accessible (for example, proof of income or address, or a tenancy agreement) or they may be afraid to provide it 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

²⁵ Coalition Agreement between the SPD, Greens, and FDP, 2021-2025, 7 December 2021, available at: https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf.

²⁶ Residence Act (Aufenthaltsgesetz (AufenthG)), 25 February 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act], § 60b Abs. 5 S. 2: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html.

people without a residence permit. NGOs, a network of university law clinics, and faith-based organisations also provide legal assistance.

21. The official language for administrative procedures is German and no free interpretation services are available to applicants, although interpreters are provided in courts.²⁷ In practice, friends or family usually support the applicant. Interviews are not mandatory but are permitted and in practice are often carried out. Positively, all administrative decisions are given in writing with reasoning.
22. There does not appear to be formal training for public officials on statelessness in particular, though some training is offered on an ad hoc basis by interested individual experts or NGOs. The lack of training creates inconsistencies in the implementation of the law, for example in birth registration (see Issue 2 below). There does not appear to be cooperation between relevant agencies for identifying and determining statelessness.

Access to protection and the rights of stateless people

23. The rights attached to the statuses granted do not guarantee the rights provided for in the 1954 Convention and in UNHCR Guidance.²⁸ Residence rights are not granted to people in Germany on the basis of statelessness, but stateless people may be eligible for temporary residence if they cannot be removed within a stipulated timeframe. In practice, a temporary permit is often not granted within this timeframe, thus people tend to remain with 'tolerated stay' and are often recorded as 'nationality unclear'. Positively, a temporary permit can be granted even if a person does not have a passport or a travel document, as other forms of evidence of identity are accepted.
24. 'Tolerated stay' is usually granted for three months or six months in cases of particular hardship. Tolerated stay 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, 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. A temporary rule in force until 31 December 2023 allows people on tolerated stay permit to enter the labour market after 12 months (formerly after 15 months).
25. Since November 2019, a new form of 'tolerated stay' for those with 'unclear identity' was introduced, which limits the extension of the three-month stay toleration permit to one month maximum, for those who cannot provide identity documents or do not cooperate with the authorities.²⁹ This toleration permit does not provide the right to work nor freedom of movement.³⁰ The Coalition Agreement pledged to revoke the so-called 'toleration light' status.³¹

²⁷ Article 185 of the Courts Constitution Act.

²⁸ UNHCR, Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>.

²⁹ This limit is also applicable in all cases where there is a lack of cooperation with the authorities, whether under § 60a or 60b of the Residence Act.

³⁰ Residence Act (Aufenthaltsgesetz (AufenthG)), 25 February 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act], § 60b Abs. 5 S. 2: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html.

³¹ Coalition Agreement between the SPD, Greens, and FDP, 2021-2025, 7 December 2021, available at: https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf.

26. Positively, a new law adopted in December 2022 provides a right to stay for those with 'tolerated stay' status who have been living in the country for more than five years since January 2022. This then entitles them to apply for longer-term residence permits, and eventually, a route to settlement.³²
27. People recognised as stateless shall be issued a travel document according to the 1954 Convention,³³ but this is not accessible to people with 'tolerated stay' in Germany because lawful residence is required. Stateless people can apply for family reunification if they meet certain conditions and their family members provide evidence of language and/or integration tests.
28. There is a possibility under the Residence Act for recognised stateless people to acquire German nationality through 'discretionary naturalisation' after six years' residence. 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.
29. Recognised stateless people may also apply for naturalisation under the general rules for other foreigners after being 'legally ordinarily resident' in Germany for eight years. In addition to the requirements mentioned above, this route also requires people to evidence sufficient command of German, knowledge of the legal system and society, and that the person renounces or loses their previous nationality. 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. However, stateless persons that have obtained other travel or residence documents, or unidentified stateless persons, face difficulties to prove 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. The German Government is developing a legislative proposal to amend the Nationality Act which is expected to be published in April 2023.
30. Stateless people can face significant delays in the naturalisation process due to the complex procedure to establish their identity, in particular since the determination of the applicant's identity and nationality was codified in 2019.³⁴ There are also financial barriers, as there is no provision for specific reductions or waivers for stateless people (which are set at a maximum of 255 EUR, reduced to 51 EUR for a minor).
31. The lack of a statelessness determination procedure in Germany is resulting in a failure to uphold the rights of stateless people, and to fulfil Germany's international obligations. Although statelessness may be identified in other procedures, such as asylum and

³² Law for the Introduction of an Opportunity for Residency, (20/3717) [Gesetzesentwurf der Bundesregierung, Gesetz zur Einführung eines Chancen-Aufenthaltsrechts], 2 December 2022, available at: <https://dserver.bundestag.de/btd/20/037/2003717.pdf>.

³³ Margarida Farinha (2022) 'What about it is unclear? I mean I was born here:' Ungeklärte Staatsangehörigkeit and the (re-) production of de facto statelessness in Germany, *Citizenship Studies*, 26:6, 799-815, p. 801-807, DOI: 10.1080/13621025.2022.2103972.

³⁴ Third Law amending the Nationality Act code introduced on 4 August 2019 [Dritte Gesetz zur Änderung des Staatsangehörigkeitsgesetzes] (, BGBl. I 2019, S. 1124), entered into force on 9 August 2019, available at: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl119s1124.pdf.

tolerated stay procedures, none of them are tailored to make a determination of statelessness nor lead to protection on the grounds of statelessness. This significantly hinders stateless people's access to and enjoyment of the full range of rights afforded to them by the 1954 Convention.³⁵

Issue 2 - Children's right to a nationality and birth registration

Safeguards for children born stateless in Germany

32. Every child has the right to a nationality and to be registered immediately after birth.³⁶ 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.³⁷ States should have provisions in law to prevent statelessness at birth, including granting nationality to all children born on the territory who would otherwise be stateless, children born abroad to non-national parents, foundlings, and following an adoption process.³⁸ To implement these safeguards, States should determine whether a child would otherwise be stateless as soon as possible after birth, and in any case in a period not exceeding five years.
33. UNHCR recommends that States automatically grant their nationality to otherwise stateless children born in the territory, rather than providing for an application process, as it is in the best interests of the child to acquire a nationality at or very soon after birth.³⁹ Although the 1961 Convention also allows States to grant nationality to children born on their territory who would otherwise be stateless through application, this process risks leaving the child stateless for many years. If a State opts to require an application for the child to acquire nationality, it can only impose an exhaustive list of conditions.⁴⁰ The State may require the person to be habitually resident in the territory (which is understood as stable, factual residence),⁴¹ but the 1961 Convention does not allow for the acquisition of nationality to be conditional upon lawful residence.⁴²

³⁵ See, e.g., Jaafar Abdul Karim, *Wie ist es, ohne Staatsangehörigkeit zu leben?*, JETZT MAL KONKRET, Rundfunk Berlin-Brandenburg 24, 7 december 2022, available at:

<https://www.youtube.com/watch?v=3X33hx7P64g&lc=Ugxd4zCORiJGsFsXSRh4AaABAg>;

Ralf Julke, *Das Warten auf Leben: Die leuchtenden Bilder Moussa Mbareks und die Verzweiflung eines Lebens ohne Papiere*, Leipziger Zeitung, 16 July 2022, available at: <https://www.l-iz.de/bildung/buecher/2022/07/das-warten-auf-leben-die-leuchtenden-bilder-moussa-mbareks-und-die-verzweiflung-eines-lebens-ohne-papiere-460694>.

³⁶ UN Convention on the Reduction of Statelessness, 1961, Articles 1 and 4; International Covenant on Civil and Political Rights, 1966, Article 24(2); Convention on the Rights of the Child, 1989, Articles 3 and 7; UNHCR, *Global Action Plan to End Statelessness 2014-24* (2014): Action 7; UN Sustainable Development Goal 16.9.

³⁷ See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

³⁸ See, e.g., UN Convention on the Reduction of Statelessness, 1961: Articles 1-4. European Convention on Nationality, 1997: Articles 2 and 6.

³⁹ UNHCR, *Good Practices Paper – Action 2: Ensuring that no child is born stateless* (2017), p. 2:

<https://www.refworld.org/docid/58cfab014.html>.

⁴⁰ Article 1(2) of the 1961 Convention on the Reduction of Statelessness.

⁴¹ UNHCR (2012), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>.

⁴² Although Article 6.2 of the European Convention on Nationality (ECN) allows for 'lawful and habitual residence' to be imposed as a condition for the acquisition of nationality, for States such as Germany that have acceded to both treaties, as well as the Convention on the Rights of the Child, the 1961 Convention should prevail as it provides the strongest protection, in accordance to Article 26(1) of the ECN, which states that the provisions of the ECN "shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals in the field of nationality". The 1961 Convention does not allow States to make an application for the acquisition of nationality of otherwise stateless individuals conditional on lawful residence, thus this should be the prevailing provision and applied to all children born in Germany.

34. There are safeguards in German nationality law to prevent statelessness for some children born in Germany, including in the case of foundlings, adopted children and children born abroad to German nationals if they would otherwise be stateless (although registration is required). However, there are gaps that allow for children to be born stateless in the country. The provisions are either automatic or non-automatic depending on which applies. Under the Nationality Act,⁴³ 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 eight years 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 law⁴⁴, 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 nationality, or if another State may recognise the child as a national in the future. In practice, there are no procedures in place to allow screening for statelessness upon birth with many children being reported with unclear nationality status. Moreover, neither authorities nor legal experts are aware of the existence of specific legislation that transposes the 1961 Convention, and it remains unapplied as it is placed outside of the Nationality Act, which increases its own invisibility.
35. The 1961 Convention does not allow States to impose conditions on the automatic acquisition of nationality, which is regulated by the Nationality Act in Germany. Moreover, the 1961 Convention does not permit States to include the condition of 'legal residence' ('rechtmäßiger Aufenthalt') among the conditions that may be imposed for acquisition of nationality by application, which is regulated by the 1961 Convention implementing law in the country. Imposing a requirement to have 'legal residence' on children born in Germany - who would otherwise be stateless - and their parents is therefore in breach of Germany's international obligations.
36. A legislative proposal to amend the German Nationality Act is expected to be published in April 2023, which would reduce the length of the 'legal residence' requirements for parents of children born in Germany. The co-submitting partners urge the German Government to take into consideration the concerns expressed in this submission, and to remove the requirement that parents have 'legal residence' in Germany for children who would otherwise be stateless to acquire nationality.

Issues with birth registration

37. States should also put in place measures to ensure universal birth registration, regardless of the residence or documentation status of their parents or family members, which is key to children effectively exercising their right to a nationality. Birth registration is vital because it provides official evidence of key facts such as birthplace

⁴³ Nationality Act (Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung), available at:

<https://www.gesetze-im-internet.de/stag/BJNR005830913.html>.

⁴⁴ Implementing Law to the Convention of 30 August 1961 on the Reduction of Statelessness and to the Convention of 13 September 1973 on the Reduction of Cases of Statelessness (Law on the Reduction of Statelessness (Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit Gesetz zur Verminderung der Staatenlosigkeit: BGBl 1977 I, 1101-1102), available at: https://www.gesetze-im-internet.de/staatenlmind_bkag/StaatenlMind%C3%9CbkAG.pdf.

and parentage, without which the child can face issues proving their entitlement to nationality. Free and prompt birth registration should be assured in law and practice even if the period within which the birth should have been declared has expired.⁴⁵

38. In Germany, problematic birth registration practices lead to inconsistencies in recording key data and access to birth certificates, even though the law stipulates that children must be registered immediately. In the case of births in hospitals or other institutions (including detention centres) the institution is obliged to notify 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, and 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 presence to the authorities, which constitutes a barrier to registration.⁴⁶
39. 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 rather than a birth certificate, which contains the additional note 'identity not established'.⁴⁷ 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).⁴⁸ If parents cannot present the documentation required, other evidence may be provided. If these are 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. 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.⁴⁹ According to a study on birth registration, although it is provided for in law, the declaration on oath is hardly applied, and if so, not necessarily accepted as an equal valid document, for instance by public health insurances.⁵⁰
40. 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,

⁴⁵ European Parliament, Resolution on minimum standards for minorities in the EU (2018); UN Human Rights Council, The right to a nationality: women and children, Resolution A/HRC/RES/20/4 (2012); Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return; and Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration; UNHCR, Guidelines on Statelessness No. 4 (2012); Global Compact for Safe, Orderly and Regular Migration; Global Compact on Refugees; Council of Europe: ECRI General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (2016); Council of Europe, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children (2009).

⁴⁶ Art 68, Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122) [Civil Status Act]: <https://www.gesetze-im-internet.de/pstg/BJNR012210007.html>; 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>.

⁴⁷ Arts 8, 34 (2)3, 47 (1), 35, 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>.

⁴⁸ Andrea Koch, Victoria Lies (ed.), Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen, Working Paper nr. 16, Humboldt Law Clinic Grund- und Menschenrechte, 2018: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Sonstiges/Humboldt_Law_Clinic_Working_Paper_Probleme_bei_der_Geburtenregistrierung.pdf.

⁴⁹ Art 9 Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122) [Civil Status Act]: <https://www.gesetze-im-internet.de/pstg/BJNR012210007.html>.

⁵⁰ Geburtsurkunden von Flüchtlingskindern [Birth certificates of refugee children] BT-Drucksache 18/9163 (13 July 2016).

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, there is a risk that children are kept in limbo for more than five years as the relevant documents to obtain a birth certificate (rather than an extract) from the registrar can be submitted later, and there is no time limit for the procedure. 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 (e.g. 90 to 145 EUR in Greifswald and 80 to 160 EUR in Berlin). The fees are particularly high if foreign law applies. Other related fees may apply, too.

41. There are credible reports to parliament, by civil society, and the Committee on the Rights of the Child,⁵¹ of refugees and undocumented migrants facing barriers to birth registration due to missing documents or fear of being deported. If undocumented migrants do not give birth in hospital due to a fear of the authorities, the birth would not be automatically registered.

Recommendations

42. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Germany:

- I. Withdraw all reservations to the 1954 Convention Relating to the Status of Stateless Persons, the European Convention on Nationality, and the 1961 Convention, in line with Germany's pledge at the UNHCR High Level Segment on Statelessness in 2019.
- II. Harmonise and disaggregate quantitative data on stateless persons in Germany, build the capacity of officials to accurately identify and record statelessness across government agencies at all administrative levels, and consider carrying out a comprehensive exercise to accurately map the stateless population in Germany.
- III. 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.
- IV. 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.

⁵¹ See e.g. Deutsches Institut für Menschenrechte, Die Politik muss dafür sorgen, dass Kinder von Geflüchteten Geburtsurkunden erhalten, Press release, 1 June 2016; Geburtsurkunden von Flüchtlingskindern [Birth certificates of refugee children] BT-Drucksache 18/9163 (13 July 2016); Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Germany*, 25 February 2014, UN Doc CRC/C/DEU/CO/3-4; Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Kinderrechtskonvention, 'Keine Papiere – keine Geburtsurkunde? Empfehlungen für die Registrierung von in Deutschland geborenen Kindern Geflüchteter' (Position Nr. 18, Dezember 2018) 1 [German Institute for Human Rights, National CRC Monitoring Mechanism, 'No papers – No birth certificate? Recommendations for the registration of children of refugees born in Germany' (Position No 18, Dec 2018) 1]: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/POSITION/Position_18_Keine_Papiere_keine_Geburtsurkunde.pdf.

- V. 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 ('rechtmäßiger Aufenthalt') requirement.
- VI. Remove all practical barriers to birth registration, including the requirement that registry officials share information with immigration authorities, ensure that the status of parents or criteria for late birth registration do not prevent immediate registration.