LUND UNIVERSITY

Sweden’s Temporary Asylum Law and the Indefinite Statelessness of Refugees

Tucker, Jason Edward

Published in:
Oxford Monitor of Forced Migration

2018

Document Version:
Publisher's PDF, also known as Version of record

Link to publication

Citation for published version (APA):
Tucker, J. E. (2018). Sweden’s Temporary Asylum Law and the Indefinite Statelessness of Refugees. *Oxford Monitor of Forced Migration* , *7*(2), 21-32. https://764cab94-a9b5-43c3-a608-3aca9e914cb0.filesusr.com/ugd/701039_b2012856f91d40c581510373a2786601.pdf

Total number of authors:
1

General rights
Unless other specific re-use rights are stated the following general rights apply:
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.
• Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
• You may not further distribute the material or use it for any profit-making activity or commercial gain
• You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: https://creativecommons.org/licenses/

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

Sweden's Temporary Asylum Law and the Indefinite Statelessness of Refugees
By Jason Tucker

This paper explores the law and policy related to the identification, assessment, and recording of the statelessness of refugees in the Swedish asylum procedure. It considers the gaps in law and policy that can lead to a stateless refugee remaining in a prolonged, or potentially, indefinite stateless situation and the impacts of the temporary asylum law introduced in 2016. The temporary law can be seen to undermine useful legislation that saw many stateless refugees receiving citizenship after four years. However, the new State discourse introduced full-time employment or completion of education as a requirement to acquire permanent residence, a prerequisite for citizenship. Therefore, these can be seen as new naturalisation criteria for certain migrants, which could mark a shift from Sweden's previous trend towards increasingly liberal access to citizenship since the 1950s.

Introduction

In 2016 it was reported that 37,449 stateless people resided in Sweden, the majority of whom were refugees (Statistics Sweden, 2017). The true scale of statelessness in Sweden is unknown as the authorities do not have a statelessness determination procedure through which to accurately identify statelessness. The definition of a stateless person under international law -, "… a person who is not considered as a national by any State under the operation of its law" (UN General Assembly, 1954: Article.1.1) – is not to be found in Swedish legislation.

Despite this gap, a large number of asylum seekers in Sweden have been identified as being stateless, or a variation thereof. In 2015 Sweden received 9,266 asylum seekers who were recorded as either "stateless", statslös, "stateless Palestinian", of "unknown citizenship" Okänt medborgarskap or citizenship "under investigation" Under utredning[1] – 5.7% of the total asylum applications (Statistics Sweden, 2017). This increased to 7.7% (2,240) of the total asylum applications in 2016, though the overall number of asylum claims fell to 28,939 (ibid).[2] Yet, the assessment of nationality or statelessness during the Swedish asylum procedure can only be seen as partial and has not been the subject of research.

---

[1] The lack of law and policy on determining statelessness in Sweden makes it challenging to know with certainty if those recorded as stateless actually are so. There is also the possibility that some stateless people may not have been recognised as such. This provides us with a challenge in terms of mapping the scale and scope of statelessness in the country. For this reason, nationality categorisations other than "stateless" statslös are included in this analysis, such as those refugees recorded as having "unknown citizenship" Okänt medborgarskap or citizenship "under investigation" Under utredning, as well as some Palestinians. These categories were also included in UNHCR's report Mapping Statelessness in Sweden as being under the organisation's statelessness mandate (UNHCR, 2016).

[2] [2] The statelessness of refugees is by no means a minor issue in either the statelessness or refugee fields. In 2014, the United Nations High Commissioner for Refugees (UNHCR) reported it had 14.4 million people under its refugee mandate, of which nearly one in ten (1.5 million) were stateless, (UNHCR, 2015; ISI, 2014: 125). If we were to include the Palestinians under UNRWA's mandate, then we this would be increased to one in four refugees. While not all stateless people are refugees, or all refugees are stateless, some people do fall into both categories. This is unsurprising given that statelessness can be both the cause or consequence of forced migration (NRC and Tilburg University, 2014).

This paper is an initial attempt to address this lack of understanding, by providing an analysis of the law and policy related to the identification, assessment, and recording of the statelessness of refugees in the Swedish asylum procedure. It considers the gaps in law and policy that can lead to a stateless refugee remaining in a prolonged, or possibly indefinite, stateless situation. It will also discuss the impacts of the temporary asylum law adopted in 2016 (Migrationsverket, 2016d) on stateless refugees. The analysis will be contextualised within Sweden's obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereafter 1951 Convention), specifically on the cessation of refugee status for stateless refugees (UN General Assembly, 1951: Article 1 C:2-3,6) and the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) (UN General Assembly, 1954).[3]

Statelessness Refugees Under International Law

Stateless refugees fall under several overlapping international law regimes, as Figure 1 illustrates. They are under the 1951 Convention and the 1954 Convention simultaneously (UN General Assembly, 1951 & UN General Assembly, 1954). It is not within the scope of this paper to detail these overlapping regimes; indeed, this is not necessary as it has been covered by other commentators (see Akram, 2002; Van Waas, 2008).

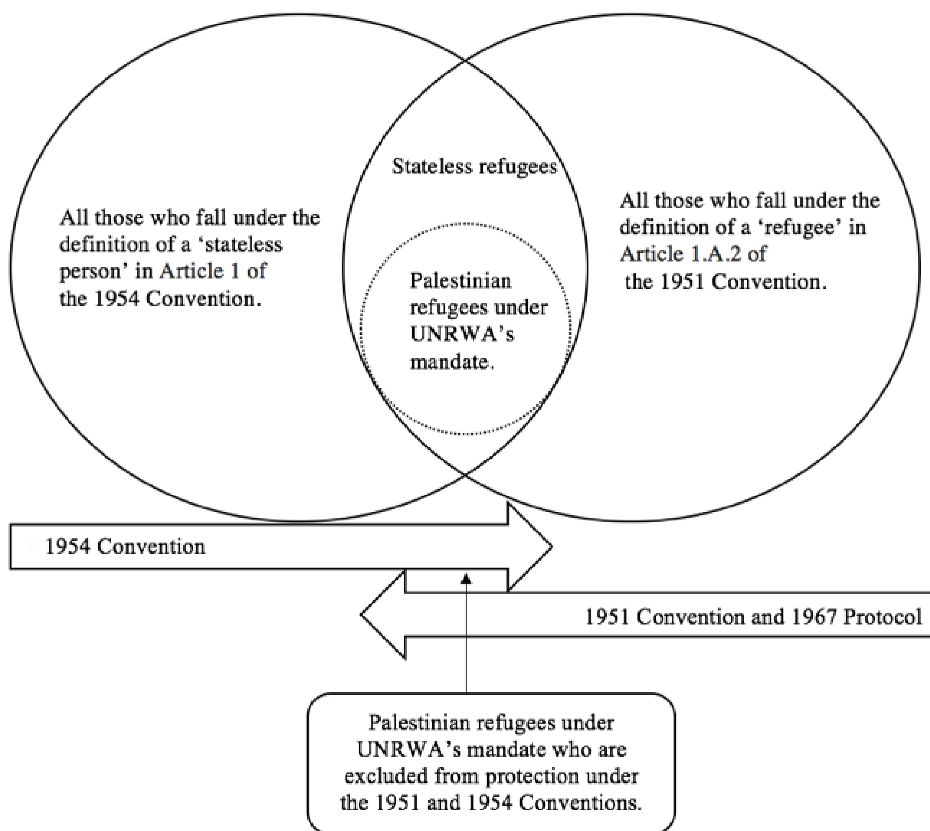

Figure 1: The International Law Regimes Covering Stateless Refugees

[3] Sweden is a party to both the 1951 and 1954 Conventions.

In an attempt to clarify this relationship, UNHCR advises, '[a]lthough an individual can be both stateless as per the 1954 Convention and a refugee as per the 1951 Convention, at a minimum, a stateless refugee must benefit from the protection of the 1951 Convention and international refugee law' (UNHCR, 2014: 7). The possibility that a refugee may be stateless is recognised in the definition of a refugee in the 1951 Convention:

… owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. [Emphasis added] (UN General Assembly, 1951: Article 1A(2)).

This recognition is important because for stateless refugees there are specific cessation provisions. These seek to ensure that stateless refugees, who no longer require protection from persecution, do not lose their refugee status unless specific criteria related to their statelessness are met[4]. To ensure that stateless refugees do not lose their refugee status, in contravention of the cessations provisions, the identification of statelessness amongst refugees is required. This is not to say that there should be two types of refugee status, one for stateless refugees and one for those who hold a citizenship. Instead, it is argued here that, in line with the demands of the 1951 Convention, as well as the reality that a refugee may be rendered stateless after they have acquired refugee status, the identification of statelessness, or risk thereof, should be built into asylum procedures at various stages.

States are, at a minimum, required to have identified statelessness prior to making a decision on cessation of refugee status. Therefore, an assessment would need to occur before this decision could be taken. It also seems prudent to undertake an assessment of statelessness, or risk thereof, during the asylum application stage, as, very worryingly, not identifying statelessness may negatively impact a refugee's ability to be recognised as such (Berényi, 2016; Khanna & Garlick, 2017).

With regard to the guidance from UNHCR they state that 'cessation practices should be developed in a manner consistent with the goal of durable solutions. Cessation should therefore not result in persons residing in a host State with an uncertain status' (UNHCR, 2003:3). Given that stateless refugees are under the mandate of the 1951 and 1954 Conventions simultaneously, with regard to cessation of refugee status, the 'ability to return' in Article 1(C) of the 1951 Convention should also be read in light of a state's obligations under the 1954 Convention. In this regard UNHCR (2014) has provided guidance on the standards states should follow in assessing whether a stateless

[4] The 1951 Convention Article 1 C:2-3,6, states that the Convention will cease to apply to stateless refugees who: '… (2) Having lost his nationality, he has voluntarily reacquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or… (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.'

person[5] can be returned to their country of previous habitual residence.[6] If return is not possible due to the lack of issuance of permanent residence and granting of a full range of rights by the country of former habitual residence, UNHCR recommend that, following the object and the purpose of the 1954 Convention, states grant residency permits to stateless people based solely on their statelessness (ibid). Thus, even for those stateless refugees whose refugee status ceases in contravention of the 1951 Convention cessation provisions, a residency permit should be issued based on their statelessness alone.

I should also briefly refer to European Union (EU) law on the obligation to identify statelessness. The need to have identified the statelessness of refugees can be found within the laws of the Common European Asylum System (Spider, 2014).[7] Vlieks (2014) makes an argument that the European Convention on Human Rights also obliges states to identify statelessness by drawing on the available case law. Despite these implied requirements, in reality, as Ermolaeva et al. (2017: 12) set out in their detailed analysis in The Concept of 'Stateless Persons' in European Union Law, '[w]hile the EU does refer to stateless persons in its legal instruments, it has a "very limited" involvement in effectively addressing the issue of statelessness'.

Defining Stateless Refugees in Sweden

As mentioned previously, Sweden has not adopted a definition of a stateless person within its national legislation. Nonetheless, given that the 1954 Convention does not permit reservations to the definition in Article 1(1), the definition is seen as binding on state parties (UNHCR, 2012). Therefore, for the purposes of this paper, the definition of a stateless person will be that of the 1954 Convention (UN General Assembly, 1954). The definition of a refugee will be that established under Chapter 4(1) of the Swedish Aliens Act (Regeringskansliet, 2010), which is in line with Article 1A(2) of the 1951 Convention (UN General Assembly, 1951).[8] Similar to the 1951 Convention, the definition in the Swedish Aliens Act also acknowledges the possibility of a refugee being stateless (ibid).

---

[5] This differs if the individual is stateless as a result of voluntary renunciation of nationality as a matter of convenience or choice.

[6] UNHCR (2014: 55) note: 'As for an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State. Permission to return to another country on a short-term basis would not suffice.'

[7] For example, Article 36 of the Directive 2013/32/EU of 26 June 2013 *On common procedures for granting and withdrawing international protection* notes: '1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if: (a) he or she has the nationality of that country; or (b) he or she is a stateless person and was formerly habitually resident in that country…'.

[8] For the purposes of this analysis those who have been granted "Convention" status as refugees, as well as those who have been granted temporary protection status, following Sweden's legislative change in 2016, are to be included. However, those who have been granted protection on humanitarian grounds are not included as the focus of this article is on those people who are both refugees and stateless under international law. This distinction has been made for analytical purposes. It should not be read that stateless people who have been granted protection on humanitarian grounds do not face similar problems in having their statelessness accurately assessed, recorded or in finding solutions to their statelessness in Sweden.

The Identification of the Statelessness of Refugees in the Asylum Procedure

The Swedish Migration Agency, Migrationsverket, (hereafter SMA) is the authority responsible for establishing and assessing the identity (including nationality or statelessness) of refugees. UNHCR has reported that in Sweden 'no comprehensive determination of an applicant's potential statelessness takes place during the asylum procedure' (UNHCR, 2016: 20). Due to the lack of law, policy, and guidance, in certain situations the SMA are not able to determine the citizenship or statelessness of the applicant, categorising some people as having "unknown citizenship" Okänt medborgarskap or citizenship "under investigation" Under utredning. Guidelines on how and when these classifications are to be used have not been produced (ibid). Despite the lack of clarity on the assessment of statelessness, the Migration Court of Appeal has previously recognised that while statelessness is not grounds in and of itself to grant refugee status, statelessness, understood as membership of a social group, can be considered alongside the asylum seeker's other individual circumstances (Migrationsöverdomstolen, 2008b).

With regard to the asylum procedure, following a submission of an application for asylum, the SMA will conduct interviews. During these interviews, questions related to the applicant's country of origin and/or citizenship are raised. This is part of a credibility assessment for the asylum claim, which includes determining where the applicant was born, their country of origin and which languages they speak (Migrationsverket, 2016g). These questions do not have the specific intention of determining a person's citizenship or identifying their potential statelessness.

All SMA asylum caseworkers are expected to be able to determine the nationality or statelessness of asylum seekers, using relevant legal provisions related to nationality in the country of origin (UNHCR, 2016). However, a crucial part of determining statelessness is also to consider the operation of the nationality law. It is unclear to what extent this is taken into account by the caseworkers when they are making such assessments. As will be discussed below, no information or guidance on how the operation of the law can be assessed, in general, or for specific countries, is given in any of the sources on which the SMA caseworkers can draw.

In response to the limited guidance received by SMA caseworkers on the establishment of the identity including the nationality of applicants, the SMA adopted a legal position (Rattling ställningstagande) in March 2016 on examining and determining identity and citizenship of asylum seekers, followed by another in June 2016 on the concept of regular place of residence (vanlig vistelseort) for stateless applicants (UNCHR, 2016). While these provided some information to caseworkers on which country, or countries, a determination of a stateless asylum applicant's claim should be made, they also reaffirmed that "[t]he one who claims to be stateless must make this probable" [emphasis added] (ibid: 38).

Stateless asylum seekers are thus expected to raise their statelessness during the interview and make their claim probable. This can be problematic, as not all stateless people can prove they are stateless, while others may not raise it for a variety of reasons, such as the fear that it would negatively affect their claim.[9] The Swedish practice whereby applicants have to make their

[9] It is not argued here that all asylum seekers should be considered stateless until proved otherwise. Rather, as UNHCR (2014) guidance on the coordination of refugee and statelessness determination procedures notes, it is

statelessness probable stands in contrast to UNHCR (2014: 35) guidance on the determination of statelessness, which emphasises that statelessness should only have to be established to a 'reasonable degree'. The demand that the applicant makes their claim probable is compounded by the fact that the burden of proof lies, by and large, with the applicant themselves, in contrast to UNHCR guidance on the shared burden of proof in establishing statelessness.[10]

Increasing the barriers faced by some refugees in proving their statelessness in Sweden, the SMA place restrictions on the use of documentation issued by certain states or authorities. This includes documents from Afghanistan, Iraq, Somalia, Eritrea and those carried by 'stateless Palestinians' (Migrationsverket, 2016b). All of these are countries or authorities with known stateless populations or with nationality law, or the implementation thereof, which sees the creation and perpetuation of statelessness. It is unclear therefore how a stateless person from one of these states, even if they could provide documentation indicating they were stateless, would be able to make their statelessness probable.

With regard to the material available to SMA caseworkers in their decision making beyond what the applicant provides and their own knowledge, they can draw on several other sources. This includes country of origin information on the LIFOS database, other external sources and language analysis for the determination of country of origin. Caseworkers can also turn to either the Migration Handbook, produced and continuously updated by the SMA, legal positions made by the legal team of the SMA, or rulings by the Migration Court of Appeal.

The Migration Handbook, at the time of analysis, did not include a definition of a stateless person, a person with "unknown citizenship" or those whose citizenship was "under investigation" (Migrationsverket, 2015). In addition, as of October 2016, there were only twenty-seven legal positions with a reference to statelessness from the SMA available to caseworkers for guidance on statelessness assessment (LIFOS, 2016). While these detail law and policy positions on individual cases of stateless Syrian and Palestinian refugees, as well as how to record country of origin on stateless refugees' applications for a residence permit, no actual detail regarding how statelessness, "unknown citizenship" or citizenship "under investigation" are to be identified or categorised was given. With regard to the past decisions of the Migration Court of Appeal, based on a review as of October 2016, this only related to individual cases and did not provide comprehensive guidance on how statelessness should be identified in the asylum procedure.

---

important for asylum seekers to be made aware that they should raise their statelessness, or their perceived risk of statelessness, during the application procedure. There are also practices in other states, such as Spain, where ex officio initiation of stateless determination occurs (see Gyulai, 2012). This could be useful in cases where the applicant is unaware that they are stateless, but through the information the applicant has provided, the SMA may identify that the applicant is as at risk of statelessness and launch a determination.

[10] The SMA note in their guidance to asylum seekers (which is similar for non-asylum migrants): 'It is your responsibility to prove your identity. This means that you must present documents that prove what your name is, when you were born and your citizenship. This document must also include a photograph and be issued by an authorised authority'. [Emphasis added] (Migrationsverket, 2016f). Detailed guidance on how to implement a shared burden of proof has been set out by UNHCR (2014) and good and bad practices can be drawn on from other states who have implemented statelessness determination procedures. Essentially it is very similar to the shared burden of proof between the applicant and the authorities in establishing the need for protection as a refugee, and could easily be incorporated into the Swedish asylum procedure.

The LIFOS database in Sweden, which provides SMA caseworkers with information and guidance upon which to make better-informed decisions, only provides information on the major causes of statelessness in some states, including Syria, though this is not presented thematically (LIFOS, 2016). The information on statelessness found on LIFOS is far from comprehensive in terms of providing caseworkers with the information they need to be able to identify statelessness globally. Indeed, for some countries of origin, from which large numbers of asylum seekers arrive in Sweden, who have known and documented stateless populations, information on statelessness is not available. Further to this, research has suggested that the use of LIFOS by SMA caseworkers varies considerably, as discussed in Helge Flärd's (2006) report The Use, Misuse and Non–Use of Country of Origin Information in the Swedish Asylum Process.

If a stateless refugee in Sweden has their nationality incorrectly recorded, or their statelessness is not accepted by the SMA, they cannot appeal this (Migrationsverket, 2016a). However, when appealing the rejection of an asylum application, a re-evaluation of the statelessness of the applicant can occur if it is seen as relevant to establishing persecution. In the case of a stateless Bidoon from Kuwait who claimed asylum in Sweden, the Migration Board rejected the application as the individual had not provided sufficient documentary evidence to prove that he was an unregistered Bidoon, or provided a passport to prove when he had left Kuwait. There were also doubts about the claim that the persecution he faced was linked to his political involvement. Upon appealing the decision, the Migration Court found that the individual, as a Bidoon, was not issued identity documents and did not have the right to work or access to education or medical care. The Migration Court also stated that the evidence he had provided established that he was an unregistered Bidoon. As such, given that the individual had a well-founded fear of being subjected to further persecution as an unregistered Bidoon, he was granted permanent residence as a refugee (Migrationsöverdomstolen, 2011).

Due to the lack of law, policy or guidance that the SMA have to work with when identifying statelessness amongst refugees, it is likely that some stateless refugees have had their statelessness incorrectly assessed and have been unable to challenge this. UNHCR (2016) also note that this lack of law, policy, and standardisation of nationality statuses means that individuals can have different statuses recorded in the Migration Agency Register and the Population Register in Sweden. This can have negative consequences for an individual in their ability to prove their identity when they apply for naturalisation, as will be discussed below.

Criteria for Naturalisation: Resolving Statelessness

Bevelander and Pendakur (2012) describe the liberalisation of Sweden's citizenship policy over the last six decades. This liberalisation has seen a reduction in the residency requirement, the allowing of dual citizenship, the removal of language proficiency tests and the relaxation and eventual abolition of a subsistence requirement (ibid). This process began in the 1950s and the trend towards more liberal access to citizenship has continued until recently. The temporary asylum law can be seen as a temporary shift in this trend, one that is seeking to increase the criteria some refugees must meet in order to be able to acquire citizenship, through restricted access to permanent residence. Even before the implementation of the temporary asylum law, UNHCR's report Mapping Statelessness in Sweden, which did not differentiate between the naturalisation

of refugee and non-refugee stateless people, recognised that a relatively low number of people recorded as stateless managed to acquire Swedish citizenship (UNHCR, 2016).

The Act on Swedish Citizenship details the criteria by which a non-national can become a Swedish citizen, following the hemvist principle. This principle, which is specific to Sweden, implies that a person has a strict subjective purpose of continuous residence and is seeking regular employment and setting up a permanent home in Sweden (Brochmann & Seland, 2010). Section 11 of the Act on Swedish Citizenship sets out the naturalisation criteria, which require that the applicant has 1) established their identity, 2) is eighteen years old, 3) holds a permanent residence permit (or permanently resides legally) in Sweden, 4) has resided in Sweden for five years (four for refugees or stateless people)[11], and 5) has led and can be expected to lead a respectable life (Regeringskansliet, 2006). These provisions have been a useful means for ending individual's need for protection as both a refugee and as a stateless person. Previously refugees were granted permanent residence, which was effectively an automatic pathway to citizenship. However, if the individual has been in Sweden under an incorrect identity, or "impeded" their deportation, it may 'harm… the possibility of obtaining citizenship after three years' (ibid).

The Citizenship Unit of the SMA, the authority responsible for assessing naturalisation notifications and applications, can undertake an assessment of nationality or statelessness of an applicant. Yet, the Citizenship Unit 'does not follow any specific guidelines when determining statelessness, instead, each case officer is expected to be able to make the determination based on the available information regarding the applicant and the nationality laws of relevant countries' (UNHCR, 2016: 41). As mentioned previously, stateless people may face obstacles in proving their identity. This situation is exacerbated by the Citizenship Unit of the SMA not having law, policy or guidance to follow to ensure that their identity and credibility assessments are conducted accurately, fairly and transparently when determining nationality or statelessness. Further problematising this, the evidentiary benchmarks for proving ones' identity is also higher in the naturalisation procedure than during the asylum application (Bernitz, 2013).[12] Even where the law seeks to ostensibly facilitate access to citizenship for certain stateless people, the problem of establishing identity remains.[13]

[11] For those with permanent residence permits, they may be able to acquire Swedish citizenship after three years if they are married to, or in a registered partnership with, a Swedish citizen and have lived with them for two years (Migrationsverket, 2017).
[12] As Bernitz (2013: 2-3) details, 'As to the first naturalization requirement, that the applicant can prove his or her identity, there are rather strict guidelines in practice. The proof of identity requirement has been tightened up over the years. Exceptions are possible, but only in certain situations. The identity may be proven by showing the national passport in the original or showing an identity document in the original or, if that is not possible, a close relative attesting to the applicant's identity… Original driving licenses and birth certificates are not normally accepted as proof of identity.'
[13] For example, those who can naturalise through a notification procedure, rather than through the application procedure, have to be 1) aged between 18 to 21 years old, 2) be stateless, 3) have been in Sweden since they were 15 and 4) hold a permanent residence permit (Migrationsverket, 2016e). The applicant must have held a permanent residence permit at the age of 15 to qualify. Therefore, if their identity had yet to be established at this time, they would not qualify for naturalisation by notification, and would have to go through the more demanding naturalisation by application procedure (ibid). Similarly, it is unclear how the applicant would prove they are stateless, given the lack of statelessness determination procedure in Sweden and the lack of mechanisms to appeal an incorrect assessment of nationality.

Section 12 of the Act on Swedish Citizenship foresees the potential barriers some people may face in proving their identity when applying for naturalisation, allowing for exceptions if the person has domiciled in Sweden for eight years and the information about their identity is credible (Regeringskansliet, 2006). However, any period of time the applicant has spent in Sweden with an incorrect identity is not counted towards the period of residency (Bernitz, 2013). Given that stateless refugees cannot appeal decisions about their identity, this can lead to a situation of prolonged statelessness if the SMA have incorrectly assessed the person's statelessness. The dangers of this lack of clarity on determining statelessness was highlighted in an Administrative Court Judgment which ruled, in a case where the Swedish Tax Agency and the SMA had not agreed upon whether a child born in Sweden to an unmarried Somali woman was stateless or not, the child could not acquire Swedish citizenship by notification as the statelessness of the child had not been established due to the authorities (both of whom have no law or policy upon which to accurately make such an assessment) not reaching a consensus (Förvaltningsrätten, 2012).

The Temporary Asylum Law and Naturalisation

Temporary restrictions on refugees being granted permanent residence permits in Sweden came into force in 2016. The law not only applied to new applicants but also those still waiting for a decision on their asylum claim. Previously anyone granted a residence permit as a refugee, a person in need of subsidiary protection or a person otherwise in need of protection, before the 20th of July 2016, received a permanent residence permit (Migrationsverket, 2016d). From this date, however, with some few exceptions,[14] those in need of protection as refugees only receive temporary residence permits valid for three years.

With regard to the extension of these new temporary residence permits, the SMA stated that 'If the person still has grounds for protection when their residence permit expires, they can be granted an extension of their residence permit in Sweden. If the person can support him/herself, they can be granted a permanent residence permit' (ibid). The SMA have been explicit in what this means for these new arrivals ability to naturalise as Swedish citizens in the future. "This [temporary measure] means that the large number of asylum seekers who came to Sweden last autumn [2015] can only become Swedish citizens in a few years, providing they have permanent residence permits" (Migrationsverket, 2016c).

In the past, the requirement to hold a permanent residence permit in order to naturalise has been successfully challenged (Migrationsöverdomstolen, 2008a). In one case it was decided that the applicant, who had met the residency requirement by renewing his temporary residence repeatedly, had intended to permanently stay in Sweden from the date of application for asylum, even though the applicant only received temporary residence. This was because, at the time, an application for asylum was an application for permanent residence. Thus, it was successfully argued that it was always the applicant's intention to permanently reside in Sweden, and he thus met the hemvist principle. However, refugees who arrived after the temporary law was introduced are not applying for permanent residence. It remains unclear what impact the temporary asylum law

[14] Unaccompanied minors and families with children under the age of 18 who were in need of protection were still granted permanent residence permits if they submitted an application for asylum before the 24th of November 2015.

will have on refugees' ability to acquire citizenship if they are unable to acquire a permanent residence permit though have met the residency requirement.

The temporary asylum law could put citizenship further out of reach for refugees granted this temporary status, eroding the usefulness of Section 11 of the Act on Swedish Citizenship which saw many refugees (stateless or otherwise) naturalised after four years (Regeringskansliet, 2006). Those with temporary residence permits now have certain criteria to meet to secure permanent residence, including self-sufficiency or educational attainment (Migrationsverket, 2016d). This has effectively introduced new naturalisation criteria specifically targeted at refugees who were issued residency after the 20th of July 2016.

This shift to more restrictive access to citizenship is not a breach of Sweden's international obligations, as there remains facilitated access to citizenship for stateless persons and refugees if they hold a permanent residence permit.[15] Despite this, if the temporary asylum laws are not managed carefully and with sensitivity to the reality that some of those with this status are stateless, these new barriers could lead to some refugees being in a prolonged, or possibly indefinite stateless situation in Sweden.

The Temporary Asylum Law and Cessation of Refugee Status

While previously all refugees received permanent residence, now the authorities will have to begin to consider cessation of refugee status for some of those with temporary residence. This introduces new challenges. The first is ensuring that this procedure is conducted in line with the demands of the cessation provisions for stateless refugees in the 1951 Convention given the lack of law or policy to accurate and transparently identify the statelessness of refugees. Second, the wording of the SMA policy position on the extension of temporary protection only notes that an extension will be granted if there is continued 'grounds for protection' (Migrationsverket, 2016d). However, the authorities must also consider stateless refugees' ability to return to their country of previous habitual residence if Sweden is to meet its obligations under the 1951 Convention. In addition, if they do not consider the ability to return, then they will be faced with the situation of stateless refugees losing their refugee status though being undeportable as there is no country to which they can return.

A recent and comprehensive assessment of Swedish law, policy and case law by Lundberg and Tunbjer on (un)deportability of stateless people, amongst others, is a very useful resource (see Staten's Offentliga Utredningar, 2017). The assessment shows that there is a lack of consideration of Sweden's obligations under the 1954 Convention to grant a residency status to these people as well as UNHCR's (2014) guidance on the conditions under which the deportation of stateless people can occur. This case law is extremely enlightening as, if the cessation of refugee status for those with temporary residence is not managed carefully, stateless refugees could be left in legal and administrative limbo, with no status, being unable to return to their country of previous habitual

[15] Article 32 of the 1954 Convention and Article 34 of the 1951 Convention mirror each other when they note that, 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons [refugees]. They shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings'. (UN General Assembly, 1954: Article. 32; UN General Assembly, 1951: Article.32).

residence and seeing very restricted access to social welfare and assistance (see Statens Offentliga Utredningar, 2017). This uncertain status, which UNHCR warns against, and the consequences of this, can be understood by referring to the literature on those who fall into the deportation gap in Sweden, unable to stay, but with the authorities not being able to enforce the deportation order (DeBono et al, 2015). The number of those in this deportation gap could increase dramatically if the statelessness of refugees is not identified and the cessation provisions of the 1951 Convention not followed.

Summary

A significant number of gaps that can result in some stateless refugees remaining indefinitely stateless in Sweden have been identified. These gaps have been widened with the adoption of the temporary asylum law. The discourse of the SMA surrounding the temporary asylum law is that it aims to restrict access to citizenship for newly arrived refugees. Legally, there remains a lack of clarity on the actual impacts of this in terms of access to citizenship. One particular area that requires further research is the issue of what constitutes a person permanently legally residing, and if a refugee who holds a temporary residence permit can naturalise after four years if they meet the hemvist principle. What is clear is that the impact of the temporary asylum law, which introduces the possibility of cessation of refugee status, when combined with the lack of statelessness determination procedure, means that Sweden will not be able to ensure that they are not contravening their obligations under the 1951 Convention when they assess the extension of protection for stateless refugees.

This is not the first time Sweden has introduced temporary asylum laws which saw the granting of temporary residence to refugees. Due to the large number of asylum seekers entering Sweden after the dissolution of the Soviet Union and wars in Bosnia-Herzegovina, Kosovo and the Middle East between 1989 and 1993, temporary asylum laws were put in place (Westin, 2006). Though, in June 1993 the government granted 40,000 Bosnian refugees permission to remain permanently in Sweden (Appelqvist, 2000: 89), thus reversing the temporary asylum policies and once again opening the pathway to Swedish citizenship.

This U-turn in policy meant that issues related to cessation of refugee status for stateless refugees with temporary residence were avoided. It is too soon to tell what direction Sweden will take, either concretising the temporary asylum law (or aspects of it) or reversing them as they have done in the past. Either way, the debate about whether to do so must include the acknowledgment that Sweden has specific obligations under the 1951 Convention with regard to the cessation of refugee status for stateless refugees. The temporary asylum laws have raised new challenges in this regard and have highlighted that there are substantial gaps in the law and policy on the identification, assessment, and recording of the statelessness of refugees in Sweden.

Jason Tucker is a post-doctoral researcher at Malmö Institute of Migration, Diversity, and Welfare (MIM), Malmö University, Sweden. He was awarded his PhD from the University of Bath in 2014. His main area of research is on the nexus between statelessness and forced migration. He is currently undertaking a project on the indefinite statelessness of some stateless refugees in Sweden and Denmark, as well as exploring the framing of stateless refugees under international law. Jason teaches on asylum and refugee law, migration and citizenship and

migration theory. Prior to his current position, Jason worked on statelessness for UNHCR Central Asia and UNHCR Northern Europe.

The views in this article are those of the author alone and do not necessarily reflect the views of OxMo.