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Statelessness in Central Asia: From Succession to Solutions

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1 Introduction

When State borders shift, when States divide or new ones are created, States are required to define who will be their future citizens. State succession¹ is a significant cause of existing situations of statelessness across the world today. It also represents a risk in terms of the creation of future cases of statelessness because a large number of people are likely to be affected by any conflict in citizenship laws that results from State succession.²

Common types of state succession which have resulted in large-scale statelessness are the dissolution of federal states into independent republics (for instance, in the countries of the former Soviet Union and Yugoslavia) and the more recent cases of state secession (for instance, with the splitting off of Eritrea from Ethiopia and South Sudan from Sudan). Situations of emerging or contested statehood complicate this picture further, leading to unique challenges around nationality and statelessness (for instance, for the Palestinians and the Sahrawi).³

There are estimated to be at least 620,000 people globally who are stateless as a result of State succession which has occurred within the last 30 years.⁴ Moreover, in countries which do not have safeguards to ensure that children born on their territory are able to acquire citizenship the impact of post-succession statelessness can be passed on for generations.

Due to the protracted nature of many situations of statelessness that have arisen from State succession and the ongoing shifting of State borders there is a need to better understand how to address and prevent statelessness in these situations. This is reflected by the inclusion of the prevention of statelessness in cases of State succession in the Global Action Plan to End Statelessness of the United Nations High Commissioner for Refugees (UNHCR).⁵

There has been some interesting discussion of statelessness that arises out of State succession and how we can counter it, most notably from a legal perspective.⁶ However, it is argued here that in trying to address and prevent statelessness in cases of State succession, broader historical, economic, political and socio-psychological factors should be considered alongside legal ones. With this in mind, this chapter will explore statelessness in Central Asia,⁷ how Kyrgyzstan has attempted to resolve cases of statelessness arising from its succession from the Union of Soviet Socialist Republics (USSR).

Many former Soviet republics are still struggling to resolve cases of statelessness which arose following their independence, and hundreds of thousands of former USSR citizens in the Baltic States, Eastern

¹ The definition of State succession used in this chapter is that provided by the Vienna Convention on Succession of States in respect of Treaties, 23 August 1978, entry into force 6 November 1996, 1946 UNTS 3, Art. 2(b) ““succession of States” means the replacement of one State by another in the responsibility for the international relations of territory”.

² Institute on Statelessness and Inclusion, *The World’s Stateless*, Wolf Legal Publishers 2014.

³ *Ibid.*, p. 24.

⁴ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, p. 15.

⁵ *Ibid.*

⁶ Examples of this include I. Ziemele, “State succession and issues of citizenship and statelessness”, in A. Edwards and L. van Waas, *Nationality and Statelessness under International Law*, Cambridge University Press 2014, p. 217-246.

⁷ Countries in the Central Asian region include to Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

Europe and Central Asia have still not acquired a citizenship. In some circumstances these people are passing their statelessness to their children, perpetuating the impact of the dissolution of the USSR.

As of 2014 there were reportedly over 110,000 stateless persons in Central Asia.⁸ While there are several causes of statelessness in the region, by far the most significant is the dissolution of the USSR. Although there is still a large stateless population in Central Asia, there have been significant, innovative and as yet underexplored developments in the region aiming to resolve this situation. By looking at the recent efforts of Kyrgyzstan to overcome some of the past disjuncture between the citizenship law, its implementation and the context within which it is being applied, we can develop a greater understanding of why these efforts succeeded and so contribute to resolving other cases of statelessness that have arisen following State succession and pre-empt problems in the future.⁹

With regard to terminology, citizenship of the USSR is referred to as “USSR citizenship”, and citizenship of the newly independent States is referred to as “citizenship”. While under international law the terms citizenship and nationality are used interchangeably, in USSR legislation and in the current legal provisions in Central Asia the notion of “nationality” relates to ethnicity rather than a legal status. The term “nationality” is therefore generally not used in this chapter.

2 Statelessness in Central Asia following the dissolution of the USSR

2.1 The USSR legacy on statelessness: USSR citizenship and mass migration

The first USSR Citizenship Law came into force in 1938.¹⁰ Article 1 of this law, which was based on Article 21 of the USSR Constitution of 1936, established that there was a single Union citizenship (USSR citizenship), with the right of residence of one of the Union’s republics.¹¹ While this law was modified several times during the existence of the USSR, USSR citizenship continued to be citizenship of a Federal Union of States and not citizenship of one of its constituent republics. USSR legislation did, however, distinguish between “citizenship” and “nationality”. “Citizenship” reflected a legal status, while “nationality” referred to ethnicity, such as Russian, Tatar, Armenian or Turkmen.¹² “Nationality” was included in USSR passports, but did not relate to a legal or residency status. So it would not be uncommon for, say, a person born in Uzbekistan to hold a USSR passport, which reflected their USSR citizenship, and noted that they were of Tajik nationality (ethnicity) with a *propiska* (residence registration stamped in the passport signifying the right to reside in a specific place only) to live in Almaty, Kazakhstan.

In addition to USSR citizenship, the USSR period saw significant fluctuations in the scale of migration between the constituent republics. An overview of these migratory patterns helps to explain a significant factor in the post-dissolution statelessness situation. Migration within the USSR can be divided into several categories, the predominant ones being the movement of people to fill labour gaps, deportations and migration for education or military service. Migration for labour purposes and deportations constituted by far the largest migration movements in the USSR. With regard to labour migration, a variety of policies aiming to distribute workers to areas with labour shortages ran throughout the USSR

⁸ UNHCR, Central Asia Fact Sheet, September 2014.

⁹ While Kyrgyzstan is the case study chosen in this chapter, this is not to say that other States in the region have not also made significant strides towards ending statelessness. However, Kyrgyzstan is the most useful case study to draw on, being the closest to resolving all cases of statelessness that arose as a result of succession. Therefore, it provides the best model to consider and reflect on how successes can be replicated in other cases of State succession, both in the post-USSR context and beyond.

¹⁰ A. Salenka, Report Russia, EUDO Country Report 2012, p. 5.

¹¹ T.A. Taracouzio, “The Soviet Citizenship Law of 1938”, The American Journal of International Law 1939, Vol. 33, No. 1, p. 157-60.

¹² UNHCR, Nationality Laws of the Former Soviet Republics, 1 July 1993.

period and were organised by the *orgnabors*, an organisation for recruiting and distributing labour throughout the Union. In Central Asia, migrants arrived from Russia in large numbers to work in mining, construction and other specialised industries.¹³ The scale of these labour movements was vast, with 28 million people relocating to the region between 1930 and 1970.¹⁴ As well as people moving over borders, the borders themselves moved, as the boundaries of the USSR republics shifted, leaving “accidental diasporas”.¹⁵ This included the decision to delineate Tajikistan as a separate constituent republic in 1929, leaving a large ethnic Tajik population as a diaspora in Uzbekistan.

In addition to population movements through the *orgnabors*, deportations of “dissident” individuals or groups was a common policy. These people or groups were often exiled to the peripheries of the Union, away from the centralised power of Moscow or away from areas that bordered States to which the individual/population were seen to have potential affiliations. Central Asia, being on the periphery of the USSR, played host to many such deportees. For example, 171,781 ethnic Koreans were deported to Kazakhstan and Uzbekistan in the late 1930s following fears that the population, which previously resided in the far east of the Union, would align with the Japanese.¹⁶

Military service was compulsory in the USSR, with all men being required to serve for two or three years, often outside their republic of residence or origin.¹⁷ With regard to education, while most cities had a range of higher education facilities, specialised universities were spread throughout the USSR. Students who met the entry requirements were able to travel and live in other parts of the Union to study at these universities.¹⁸

During Stalin’s rule (1929 to 1953), migration outside State sanctioned labour movements, deportations, military service or education was very restricted. However, this control slackened after 1956 under Khrushchev’s leadership.

The experience of migration and idea of citizenship as a Federal matter rather than one linked to place of residence continue to have an effect on how former USSR citizens think about citizenship today. This legacy has had a significant impact in Central Asia and contributed to the creation of a large stateless population following succession.

2.2 USSR citizenship in the post-succession context; the legacy of the USSR system, transitional issues, and gaps in the citizenship laws of the newly independent States

In December 1991, the USSR dissolved and was succeeded by fifteen independent States. As a result of this, some 60 million people in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan were rendered stateless.¹⁹ Following independence, the Central Asian States drafted new citizenship laws. Post-independence citizenship laws were adopted in Kazakhstan in 1991, Turkmenistan and Uzbekistan in 1992, Kyrgyzstan in 1993 and Tajikistan in 1995.

¹³ R. Shigabdinov and G. Nikitenko, “Migration Processes in the West of Central Asia in the Late Nineteenth and the Twentieth Centuries”, in H. Komatsu, C. Obiya and J.S. Schoeberlein (eds), *Migration in Central Asia: Its History and Current Problems*, Japan Center for Area Studies Symposium Series 9 2000, p. 87-111, 104.

¹⁴ D. Rahmonova-Schwarz, “Migrations during the Soviet Period and in the Early Years of USSR’s Dissolution: A Focus on Central Asia”, *Revue européenne des migrations internationales* 2001, vol. 26 (3).

¹⁵ R. Brubaker, *Accidental Diasporas and External ‘Homelands’ In Central and Eastern Europe: Past and Present*, Institute of Advanced Science 2000, Political Science Series no.71.

¹⁶ R. Shigabdinov and G. Nikitenko, *supra* n13, p. 104.

¹⁷ N. Podgofny and M. Georgadze, “Law on Universal Military Service of the Union of Soviet Socialist Republics”, *Soviet Law And Government* Vol. 6, Iss. 4, 1968

¹⁸ A. Goodman, “Estimates and Projections of Specialized Manpower in the U.S.S.R: 1950-1975”, United States of America Department of Commerce, *International Population Report*, Series P-91, No.21 1970

¹⁹ M. Tulsii, “Naselenie SNG k nachalu 20003 goda – 277,5 milliona chelovek”, *Demoscope Weekly* 2003, No 103- 104, 3-16 March 2003.

These initial citizenship laws and policies failed to prevent statelessness arising following succession. While there is not room here to analyse these laws in full, several key gaps which allowed statelessness to occur should be highlighted. Following succession, States in the region defined their citizenry as all those who were permanently resident on the territory of the State on the date of the enactment of the citizenship law or constitution.²⁰ A *propiska* for that Republic in the individual's USSR passport or birth certificate (for those not old enough to have received a passport under USSR legislation) therefore played a significant role as evidence of permanent residence on the date in question. Those who did not have a *propiska* for the State in which they were residing were not able to secure citizenship of that State and those without birth certificates or a USSR passport also faced significant barriers in confirming their citizenship. While the Turkmen legislation allowed persons who were born in the State but were residing abroad for various reasons to confirm in writing that they wished to be considered citizens of Turkmenistan, this had to be done within a year of the entry into force of the citizenship law.²¹

For the majority of former USSR citizens, confirming or acquiring citizenship of the newly independent States was therefore a simple procedure involving the exchange of their USSR passports for new passports at the relevant local authority. However, hundreds of thousands of people did not manage to confirm or acquire a citizenship by the relevant cut off dates and were rendered stateless. Children born to parents who did not confirm their citizenship also became stateless as acquisition of citizenship at birth in each of the five States in Central Asia was at the time, and to a certain extent is still today, primarily based on descent (*jus sanguinis*).²² As a result statelessness that occurred following succession has been and is being passed down through the generations.

The legislative legacy of the USSR citizenship laws can be seen across Central Asia today. While the Central Asian States' citizenship laws drew on numerous sources, several legal provisions were copied directly from USSR legislation. The most striking example of this is the definition of a stateless person. The 1938 USSR Citizenship Law introduced a specific provision that all persons permanently residing on the territory of the USSR who were not USSR citizens and who *did not possess any proof of foreign citizenship* were considered stateless persons.²³ This definition is replicated, almost word for word, in all Central Asian States' citizenship laws²⁴ and has survived reforms and amendments to these citizenship laws. The fact that this definition is not in line with that set out in the 1954 Convention on the Status of Stateless Persons (1954 Convention),²⁵ continues to hamper some post-succession efforts to reduce statelessness. While the aforementioned USSR definition of a stateless person may seem more generous than the 1954 Convention definition, it can actually be detrimental to States in determining who is stateless. Two common examples of how this definition has led to incorrect determinations of citizenship or statelessness in Central Asia can be provided. First, a person who has lost their citizenship may still possess documents which would indicate that they are citizens of their former State of nationality. As such they may be considered by the State to be foreign citizens when they are in fact stateless. Second, the definition creates the possibility that migrants who *are* foreign citizens may be

²⁰ Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan 1991 (last amended 2012), Art. 3; Law on Citizenship in the Republic of Uzbekistan 1992, Art. 4; Constitutional Law of the Republic of Tajikistan on Nationality of the Republic of Tajikistan 2015, Art. 1; Law of the Republic of Turkmenistan on Citizenship 1992, Art. 49 and 50. For Kyrgyzstan see, UNHCR, Nationality Laws of the Former Soviet Republics, 1 July 1993.

²¹ Law of the Republic of Turkmenistan on Citizenship 1992, Art. 49 and 50.

²² See, UNHCR, Statelessness in Central Asia, May 2011.

²³ A. Salenka Report Russia, *supra* n10, p. 6.

²⁴ See, Nationality law of Turkmenistan 2013, Art. 8.2; Nationality Law of Kyrgyzstan 2007, Art. 3; Constitutional Law of the Republic of Tajikistan on Nationality of the Republic of Tajikistan 1995, Art. 14.C; and Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan 1991 as amended in 2009, Art. 5.

²⁵ Convention Relating to the Status of Stateless Persons, 28 September 1954, entry into force 6 June 1960, 360 UNTS 117.

found to be stateless if they have no documents to prove their citizenship. Lack of documentation can arise for a variety of reasons such as lack of consular services or the prohibitive cost of reacquiring lost documents or renewing expired ones. The focus on “proof of foreign citizenship” negates the need to consider the interplay between law and fact in determining a person’s citizenship or statelessness.

A further example of the USSR’s legislative legacy is the inclusion in Kazakhstan, Tajikistan and Uzbekistan’s post-independence citizenship laws of provisions requiring citizens resident abroad to register with the consulate in order to retain their citizenship.²⁶ These laws were derived from article 22 of the 1990 USSR Citizenship Law, which specified the grounds for loss of USSR citizenship, including for a USSR citizen with permanent residence abroad who, without reasonable justification, failed to register with the USSR consulate for five years after leaving the USSR.²⁷ This provision was drafted in the USSR during a time of high concern about dissidents seeking refuge outside the USSR, but its ongoing application has proved to be problematic and a cause of statelessness following succession. Due to migration for economic opportunities, family reunification and people seeking refuge in other States, many former USSR citizens have resided abroad for many years and are unaware of the need to register with their consulate given the relatively free movement and frequency of movement between republics during the USSR period.

In addition to the legal gaps, we should remember that the socio-economic and political climate in post-succession Central Asia was one of significant turmoil and uncertainty for the people of the region.

The completely unexpected challenges of nation building were superimposed on the transition from a centrally planned to a market-based economy, which had begun in the late 1980s but had little influence on Central Asia before the Soviet economic system began to unravel in 1991[...] Under these multiple adverse conditions, even the ability of the countries to survive was uncertain.²⁸

Social, economic and political issues sometimes manifest themselves in conflict, such as the civil war in Tajikistan between 1992 and 1997. Many of those who fled the country during the conflict were unable to confirm their citizenship when Tajikistan’s first citizenship law was adopted in 1995, as presence in the country on the day of adoption of the Constitution was required.²⁹

Another regional trend is that some people who lived in border areas did not confirm or acquire citizenship of a successor State. The reasons for this are similar to those affecting other populations living in border areas around the world. They live across these borders, having links with multiple States, involving frequent travel, and/or cross border marriages. The new division of States may not have been clear to people or they may be excluded from citizenship in both States, as each State claims they belonged to the other.

2.3 Understanding the creation of statelessness in Central Asia following succession

It is argued that the historical, social and political context influence the ways in which laws relating to the acquisition of citizenship are understood and applied, which contributed to the creation of statelessness in Central Asia following the dissolution of the USSR. This suggests that an understanding

²⁶ Constitutional Law of the Republic of Tajikistan on Nationality of the Republic of Tajikistan 1995, Art. 29; Law on Citizenship in the Republic of Uzbekistan 1992, Art. 21; and Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan 1991, Art. 21(4). These provisions have now been removed from the citizenship laws of Tajikistan and Kazakhstan.

²⁷ Law of the USSR About the Citizenship of the USSR 1990, N 1518-1, *Svod Zakonov SSSR*, Vol.1. p.47.

²⁸ R. Pomfret, *Central Asia Economies Since independence*, Princeton University Press 2006, p. 1.

²⁹ Constitutional Law of the Republic of Tajikistan on Nationality of the Republic of Tajikistan 1995, Art. 2.

of the broader context and public attitudes towards citizenship may be significant in preventing and addressing statelessness in future.

Considering the context of the large scale migration that occurred in the USSR and the relatively free movement of border populations between republics, the problems faced by the newly independent States in defining their initial citizenry becomes apparent. Conflict, and social, economic and political turmoil meant that many people were unable to, or did not prioritise, confirming their citizenship by exchanging their USSR passports. We should also remember that the transition from USSR citizenship to citizenship of the newly independent States was by no means clear cut. Following independence, USSR passports could still be used, formally and informally, as identification documents, even allowing the holder to travel between the former Soviet Republics for several years. For example, the Kazakh government allowed the exchange of USSR passports for Kazakh ones until 1 March 1999, while in practice people could still travel on these documents until 2002.³⁰ Kazakhstan is not an exception here, but is indicative of a larger trend within the Commonwealth of Independent States; USSR passports were accepted as valid documents long after they had ceased to be officially recognised. Therefore, for many people there was not a clear end to USSR citizenship and beginning of the citizenship of the independent States, while the ability to continue to work, access State services and travel on USSR passports meant that the significance of confirming or acquiring citizenship of the newly independent States was unclear to some people.

In Central Asia the experience of USSR citizenship created an understanding of citizenship that was not tied to the nation State nor strongly linked to place of residence. This understanding of citizenship may have been particularly prevalent because few of those involved had any experience of other forms of citizenship. One result of this was that at the time of the dissolution of the USSR, the population did not understand the significance of citizenship in the context of a world of nation States and were unused to the idea that the individual might have to actively seek or confirm citizenship. Policy and awareness-raising to reduce and/or prevent statelessness needs to account for and address these perceptions and encourage people to act. Even with very inclusive notions of the initial body of citizens following succession, if people do not recognise the importance of confirming or acquiring citizenship and the policy and practice of States fails to provide the population with information on the significance of doing so, statelessness will arise. Central Asian States provide an example of how this can cause statelessness and the importance of understanding and addressing the various understandings of citizenship held by the population in order to prevent statelessness from the outset.

3 Solutions to statelessness in Central Asia: the example of Kyrgyzstan

To illustrate efforts to reduce statelessness following succession we can draw on the example of Kyrgyzstan. Kyrgyzstan has taken an active, flexible and responsive approach to resolving the issue of stateless former USSR citizens who have not acquired citizenship despite residing in the country for many years. Other States in the region have also made progress in reducing statelessness, for example Turkmenistan has undertaken mobile registration of persons of “undetermined citizenship”, many of whom were stateless former USSR citizens.³¹ The efforts of Central Asian States to reduce statelessness also include stateless persons who are not former USSR citizens. Some of these people, who are born in Central Asia, either did not acquire citizenship at birth or have been rendered stateless later in life. This is a result of the lack of safeguards to prevent childhood statelessness and the lack of safeguards on loss, deprivation and renunciation of citizenship in regional citizenship laws. Others are stateless migrants or refugees from outside the region.

³⁰ Cabinet of Ministries of the Republic of Kazakhstan, On Approval of Instruction on Passport System in Kazakhstan, 5 April 1993, No. 256.

³¹ For more detail on the achievements of Turkmenistan, please see, UNHCR, Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness, 23 February 2015.

However, to allow us to consider in detail how successor States can overcome statelessness or prevent it occurring during State succession, this chapter will focus on Kyrgyzstan. It does so by exploring the reformed citizenship law, related policies and their implementation as well as how Kyrgyzstan has addressed the legacy of the USSR, including the understanding of citizenship.

3.1 *The causes of statelessness in Kyrgyzstan*

The first Law on Citizenship of the Kyrgyz Republic was adopted in December 1993 (1993 Citizenship Law). The 1993 Citizenship Law set out broad criteria which, in theory, recognised the majority of former USSR citizens in the country as Kyrgyz citizens.

Article 1 - The citizens of the Kyrgyz Republic are:

1. persons who belonged to the citizenship of the Kyrgyz Republic as at the date of its adoption of the Declaration of the State Sovereignty of the Kyrgyz Republic (December 15, 1990) and have not yet stated that they belong as citizens of another state;
2. persons who belonged to the citizenship of the Kyrgyz Republic according to the procedures established with the Law upon the adoption of the Declaration of the State Sovereignty of the Kyrgyz Republic and have not lost it at the time when this Law is enforced;
3. persons who obtained the citizenship of the Kyrgyz Republic according to the provision of this Law.³²

A *propiska* in a USSR passport indicating residence in Kyrgyzstan, or a birth certificate showing birth on the territory, were required as proof that a person “belonged to the citizenship of the Kyrgyz Republic” upon adoption of the Declaration of the State Sovereignty of the Kyrgyz Republic in 1990.³³ Problems arose for people born and raised in Kyrgyzstan who migrated between the former Soviet Republics during or immediately after independence (and so had a *propiska* in another Republic). Because of this they were unable to acquire Kyrgyz citizenship. Some of these persons were also unable to acquire citizenship from other States with which they had links and so became stateless. Other people missed the deadline for confirming their Kyrgyz citizenship or had lost the USSR documents needed to confirm their claim to Kyrgyz citizenship.

There were also problems in the implementation of the 1993 Citizenship Law. As mentioned previously this was a time of significant socio-political and economic turmoil and uncertainty, meaning that some people were unaware of the importance of exchanging their passports or were unable to do so. Some people lived too far away from registration offices to be able to make the journey, whether due to the cost of travel, the lack of transportation, or the inability to take time out from their work or household responsibilities.³⁴ Due to the fines for late confirmation, those who delayed were sometimes unable to afford the cost of confirmation.³⁵ In other cases people were unaware of the importance of confirming their citizenship by the cut-off date, which is understandable since they could continue to use their USSR passports as an identity document post-succession in addition to the general instability and uncertainty surrounding the State formation. As a result of these factors, as in other States in the region, a significant *in situ* stateless population was created and the initial law and policy on citizenship failed to prevent or resolve this.

³² Law on Citizenship of the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic of 25 July 2002 No. 130) 1993, 1333-XII.

³³ Refugees International, Kyrgyz Republic: Powerful neighbors imperil protection and create statelessness”, Reliefweb, 2007.

³⁴ UNHCR Central Asia, Ending Statelessness, Newsletter Issue 7 2014.

³⁵ *Ibid.*

3.2 Citizenship law and policy reform in Kyrgyzstan

It soon became apparent to the government of Kyrgyzstan that the system of confirming or acquiring citizenship was not achieving the desired results and a significant number of former USSR citizens residing in the country had become stateless. It was recognised that to address post-succession statelessness required both legal reform and policies sensitive to the reasons for people not confirming their citizenship.

In 2007 Kyrgyzstan enacted the relevant legal changes with the adoption of the Law on Citizenship of the Kyrgyz Republic (2007 Citizenship Law).³⁶ This was supplemented by a new Regulation on Procedures to Consider Issues of Kyrgyz Republic Citizenship, which specifies how the law is to be implemented.³⁷ The 2007 Citizenship Law significantly broadens which stateless former USSR citizens are automatically considered citizens of Kyrgyzstan and simply requires these individuals to complete an administrative procedure for issuance of a Kyrgyz passport (which is considered proof of citizenship). The 2007 Citizenship Law notes in Article 5(2) that:

Citizens of the Kyrgyz Republic are: persons who used to be USSR citizens and who have lived continuously for the previous five years on the territory of the Kyrgyz Republic and [...] have not made any application regarding belonging to the citizenship of another state.³⁸

By automatically considering former USSR citizens who have not applied for citizenship of another State and have been living in the country for five years as citizens and not requiring a USSR passport as proof of the place of residence pre-succession, Kyrgyzstan has managed to overcome many potential barriers to resolving these cases. For example, these people are exempt from criteria for naturalisation to which other stateless persons are subject.³⁹ Stateless former USSR citizens can therefore approach the relevant authorities who will determine if the person meets the criteria to be considered as a Kyrgyz citizen and issue documentation confirming this. With the residency requirements for a stateless former USSR citizen being five years' residence before applying to the Internal Affairs agencies, rather than a requirement of residence after approaching the authorities, people's statelessness can be resolved quickly.

Assessment of the applications is done at a local level through a Conflict Commission, later named the Commission on Citizenship Determination. Decentralising this decision-making has increased the speed at which these applications can be processed, with a decision reached no later than one month after the person submits their documents. The administrative penalties for late registration of citizenship have been removed and only a minimal fee remains as a means of encouraging people to look after their documents. However, this fee is waived for those who are unable to afford it.

The amendments and reforms did not, however, end there. Recognising the difficulties that some stateless former USSR citizens have in establishing that they meet the criteria for Kyrgyz citizenship, Presidential Decree 473 includes flexible requirements for what is to be considered proof that a person has been residing in the country for five years.⁴⁰ Following this Decree, when applying for confirmation

³⁶ Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic 2007.

³⁷ Regulation on the Procedure for Considering Issues of Citizenship of the Kyrgyz Republic, 10 August 2013, Resolution Number 174.

³⁸ Law of the Kyrgyz Republic on Citizenship of the Kyrgyz Republic 2007.

³⁹ *Ibid*, Art. 13 states that the criteria for naturalisation included knowledge of the State or official language sufficient for communication, proof of source of subsistence and commitment to comply with the Constitution and legislation of the Kyrgyz Republic.

⁴⁰ Presidential Decree of the Kyrgyz Republic 473, Regulation on Procedures to Consider Issues of Kyrgyz Republic Citizenship, 25 October 2007.

of citizenship the applicant has to bring their USSR passport or a notification that they have lost it. Both those with a USSR passport and those without have to provide a detailed biography, two photographs and documentation showing that they have been permanently residing in the country for five years. The 2007 Citizenship Law and aforementioned procedures, have enabled the majority of stateless former USSR citizens in the country to confirm their Kyrgyz citizenship; between 2009 and 2012 nearly 45,000 such persons received confirmation of their Kyrgyz citizenship.⁴¹

The success in Kyrgyzstan has been due to the political will of the State to address the issue and to the fact that law and policy reforms were responsive, flexible and based on an understanding of the needs, concerns and barriers faced by the population they aimed to assist. Since the 2007 Citizenship Law entered into force, the Kyrgyz Government has collaborated with civil society and international organisations to find ways to implement the law and policies on citizenship to reduce statelessness. In collaboration with the government, UNHCR commissioned Kyrgyz civil society organisations to conduct three field studies in 2007 and 2008 to gain a better understanding of the remaining problem. These studies provided crucial information for the development of by-laws and administrative procedures relating to citizenship and documentation, which enabled more stateless former USSR citizens to confirm their Kyrgyz citizenship. It was noted that despite the law reform, stateless former USSR citizens faced a range of barriers to confirming their Kyrgyz citizenship. One was that they did not have the right identity documents to establish their eligibility for citizenship through the improved legal framework. Furthermore, many people remained unaware of the legal reforms that would enable them to resolve their status. This problem was particularly prevalent in remote areas and among older persons. Other participants noted that they were aware of the reforms, but were unable to reach regional registration centres or could not afford the fees related to confirmation of citizenship.

Realising that some people could not meet the evidentiary requirements, more flexible criteria have been implemented through paragraph 53 of the 2013 Citizenship Regulation which grants the Commission for Citizenship Determination greater flexibility in the documents they can accept as proof of residence.⁴² The documents which may now be considered as proof of residence in Kyrgyzstan include a USSR passport with a *propiska* for Kyrgyzstan, a USSR military service book, certificates from places of work, diplomas from educational institutions and other certificates from the place of residence. Testimony from a residence committee or village chief, with the participation of a district police officer and three neighbours of the individual concerned, is also included as a possible form of evidence of habitual residence if the person has no other form of proof.⁴³ This flexibility has allowed many stateless former USSR citizens, who had not previously been able to confirm their citizenship, to do so.

To overcome issues related to access and lack of awareness, the government, supported by UNHCR and civil society, undertook nationwide information campaigns to raise awareness among the population explaining the changes in the procedures, the waiving of fines, the new evidentiary standards and the importance of confirming citizenship. This sustained effort led to the majority of the remaining stateless former USSR citizens confirming their citizenship. However, some stateless former USSR citizens still faced the issue of access to the registration centres to exchange their documents. Many of these people live in very remote areas and would have to spend a significant amount of time and money to reach the regional registration authority. In some instances their remoteness also meant they were not informed about the possibility of confirming their citizenship as the information campaigns did not reach them.

⁴¹ UNHCR, Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness, *supra* n31.

⁴² Regulation on the Procedure for Considering Issues of Citizenship of the Kyrgyz Republic, Resolution Number 174, 10 August 2013.

⁴³ *Ibid.*

In response to this, mobile registration centres were established in 2014 and ran until 2016. These centres covered the entire country to ensure that as many people as possible had the opportunity to confirm their citizenship. The registration was organised to ensure that the majority of people could access the mobile registration centres. For example, the location of and distance between remote villages was mapped. Starting at the most remote places the teams then moved towards regional centres. Doing so meant that people who were not able to access the mobile registration centres while they were nearby were able to use local transport to get to the next registration site (as transport links to regional centres are better than between remote villages). The dates and locations of the mobile registration sites were widely disseminated in local communities well in advance of the team's arrival. A related information campaign informed individuals of the importance of exchanging their passports as well as the dates and location of the mobile registration sites. Local television advertisements (in multiple languages, including the language of the neighbouring States in border areas) proved particularly effective. Posters in local transport hubs, local village centres and buses were also used. Local village leaders were informed and encouraged to spread the word among their community. Such individuals were often able to target individuals who were known to be stateless. All parts of the information campaign gave the details of an NGO legal aid call centre which provided more information.

Rather than tackle the problem at a national level, the country was divided into regions which were dealt with in turn by the registration campaign. This meant that the information campaign could be further targeted and resources could be focused by working closely with the local community in each region before and during the registration. This also allowed the capacity of local registration authorities and regional Commission on Citizenship Determination to be bolstered for specific periods of time during registration in their area. With a large number of applications being received, it was crucial that these bodies had the human resources to cope with the increased demand.

3.3 Summarising the solutions to statelessness in Kyrgyzstan

The achievements of Kyrgyzstan can be summarised as the continuous development of law and policy, responding to the causes of statelessness following succession from the USSR. Once the government became aware of the prevalence of stateless former USSR citizens who had failed to confirm their Kyrgyz citizenship, the first step was law reform. However, even with a legal basis that provided a theoretical solution for these people, new policy guidelines on the implementation of this law had to be developed and reformulated based on research with the population in question. This shows that policies to implement the law have to be sensitive to the situation of those affected; in Kyrgyzstan a combination of lack of documents, lack of information and the inability to access the relevant authorities.

It is also important to note the timing of efforts to address statelessness; by 2007 it was becoming clear to many of the stateless former USSR citizens that their old USSR citizenship document no longer provided access to services on a par with Kyrgyz citizens. USSR passports were no longer widely accepted as proof of identity and the lack of valid documentation was increasingly impacting peoples' daily lives and their aspirations for the future.

Therefore, the achievements of Kyrgyzstan cannot simply be explained by looking at law reform, but also require us to consider the efforts of the Kyrgyz government to engage with the population and develop policies that made confirmation of citizenship accessible. By acknowledging the variety of factors that caused statelessness following State succession, Kyrgyzstan was better placed to address the issue, and as a consequence, is near to resolving all cases of post-succession statelessness.

4 Preventing and resolving statelessness in cases of State succession

The impact of succession on citizenship and statelessness has been of interest to the international community since before the dissolution of the USSR, for example during decolonisation in the 1960s

and 1970s. More recently we have seen problems arising with the dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s, the division of Ethiopia and Eritrea in 1993 and of Sudan and South Sudan in 2011.

To counter the risk of statelessness during State succession, the 1961 Convention on the Reduction of Statelessness (1961 Convention) provides that:

Article 10.

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.
2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.⁴⁴

The United Nations General Assembly resolution 55/153 on the International Law Commissions Articles on the Nationality of Natural Persons in Relation to the Succession of States (ILC Articles on Nationality),⁴⁵ and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession⁴⁶ set out more detailed standards on the prevention of statelessness in these situations. Both the ILC Articles on Nationality and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession note that States should take “all appropriate measures” to prevent statelessness.⁴⁷ “All appropriate measures” should include a truly contextualised consideration of relevant legal provisions and their implementation. Where possible, clear agreement on the parameters for “appropriate measures” should also be set out in bilateral or multilateral treaties between successor States to ensure there are no gaps in the international cooperation on citizenship, especially for populations living across the new borders.

As these standards indicate, there is agreement on the need for watertight legal provisions that prevent people being rendered stateless during State succession. States should ensure that the risk of statelessness is minimised through the signing of bilateral or multilateral agreements and, where this is not possible, grant citizenship to those who would otherwise be stateless. Such arrangements should be included in the citizenship laws and policies of new States, providing a foundation for the prevention of statelessness during succession.

Such legal provisions need to be supplemented with policy and practice that is sensitive to broader historical, economic, political and socio-psychological considerations which, as reflected in Central Asia, are an important part of how law is received and how it takes effect. Such a contextualised view will make these legal provisions more effective in preventing and reducing statelessness. Based on the experience of Central Asia, the following are suggested as key considerations for those attempting to prevent or reduce statelessness in cases of State succession.

⁴⁴ Convention on the Reduction of Statelessness (1961 Convention), 30 August 1961, entry into force 13 December 1975, 989 UNTS 175, Art 10.

⁴⁵ International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10).

⁴⁶ Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, 15 March 2006, entry into force 1 May 2009, CETS 200.

⁴⁷ International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10), Art. 4 and Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, *supra* n46, Art. 3.

4.1 The population's perception of citizenship

The first of these considerations is the perception of citizenship by the population in question. We do not have an equivalent of the USSR in today's world, with its citizenship of a union of States rather than a specific nation State. Nevertheless, we can still learn from this example that populations do not necessarily think of citizenship or understand its importance in the same ways as those developing citizenship law and policy. If a person has a citizenship, they often do not perceive its significance and impact on their daily lives or give thought to other forms or conceptions of citizenship or, indeed, life without a citizenship. This is especially true for those living in remote or rural areas who have little interaction with the State or those who live close to and move freely across State borders. It cannot, therefore, be assumed that a population affected by State succession share or understand the international legal understanding of citizenship.

This is important because the understanding of citizenship by the population has an impact upon the effectiveness of laws and policies which seek to prevent or reduce statelessness. The perception of citizenship is especially important in cases where a person is required to take active steps to confirm or acquire citizenship.⁴⁸ Even with the political will of States and a legal foundation which should ensure the avoidance of statelessness during State succession, if people are not aware of the importance of confirming or acquiring citizenship of one or other successor State, the law may prove only partially effective in preventing statelessness. As we can see from the example of Kyrgyzstan, it was only decades after succession and the end of USSR citizenship that many people realised they were stateless, because it began to have a direct impact on their lives. It was at this point that the importance of citizenship became apparent to these people, though they were unaware of the law and policy reforms that allowed them to resolve their status or faced barriers in so doing.

Overcoming this lack of awareness of the importance of confirming or acquiring citizenship requires States to understand and actively engage with their population, setting out clearly and persuasively the importance of confirming citizenship. This may require information campaigns that target specific groups' concerns, such as those in border or remote areas. Where individuals have to make a decision on which citizenship they wish to acquire, this will involve two or more States cooperating and sharing information with the population in question. In situations where succession is caused by, or results in, animosity between the successor States, such cooperation may not be realistic. In such cases, States should recognise these difficulties and develop laws and policies which seek to overcome them. Article 10(2) of the 1961 Convention notes that States who transfer or acquire territory should grant citizenship automatically to those on their territory who would otherwise be stateless. Where States do not grant citizenship automatically but require individuals to confirm or acquire citizenship, this may necessitate transitional provisions permitting the use of documentation from the predecessor State for an extended period of time.

One means of overcoming many of these problems is through legal provisions that automatically grant citizenship to those in a State's territory who would otherwise be stateless. Such provisions overcome the need to inform and persuade the population to take steps to acquire or confirm their citizenship and provide a strong safeguard against statelessness following succession. This does not necessarily mean that the population would not have a choice in determining their fate. Legal provisions could provide for the possibility of opting out of the automatic grant of citizenship for those persons who secure citizenship of another State. Such provisions would provide an element of choice for the population, while maintaining strong safeguards against statelessness.

4.2 Transitional provisions which 'blur' citizenship

⁴⁸ Based on personal interviews, observations and experiences with stateless people in Central Asia between 2014 and 2014.

The blurring of citizenship during succession can be seen in the case of the USSR and, more recently, during the succession of Eritrea from Ethiopia. Although Ethiopian law does not permit dual citizenship, during the referendum and succession of Eritrea both countries agreed that “until the issue of citizenship is settled in both countries, the traditional rights of citizens of one side to live in the other’s territory shall be respected”.⁴⁹ As a result many of those who would later have to confirm or acquire their citizenship were for a while *de facto* citizens of one State or the other. This was a pragmatic and largely beneficial provision, allowing people to continue their lives as *de facto* citizens until a decision was reached on how citizenship of the two States was to be arranged. This is similar to the way stateless former USSR citizens were able to use their pre-succession documents as travel documents and to access State services for a period after succession. This blurring of citizenship can also be seen in the European Convention on Nationality, which stipulates that non-nationals of a predecessor State who are habitually resident in a territory which is transferred to a successor State and who do not acquire the citizenship of the successor State should have the right to remain in that State and should be allowed to enjoy the same social and economic rights as nationals.⁵⁰

There are several advantages and disadvantages in allowing people to continue to use their pre-succession documents and/or effectively be considered as *de facto* citizens for a period of time following succession, especially where confirmation or acquisition of citizenship is required. Among the advantages are that it allows individuals who have not confirmed their citizenship to avoid the day-to-day problems of statelessness. In cases where the individual may choose which citizenship they wish to acquire it allows States time to provide the information needed for the population to make an informed decision. It also gives the population time to make arrangements to move to another country if they chose to so do as well as allowing time for the confirmation of citizenship where individuals have other competing priorities.

Where succession entails socio-economic and political turmoil, allowing people to continue to use their pre-succession documents or continue to live as *de facto* citizens may be necessary. Depending on the causes and type of succession, State succession can cause a loss of confidence in the successor State – particularly where the succession is the result of armed conflict or follows occupation. This in turn may lead people to question the legitimacy or worth of confirming or acquiring citizenship of the new State.⁵¹ Conflict also often leads to a reduction in the ability of the State to function, including those agencies who confirm citizenship, and time may be required to rebuild capacity in this area. Allowing people to live as *de facto* citizens and/or continue to use pre-succession documents gives the State time to prepare for large numbers of people seeking to confirm their citizenship as well as allowing time to formulate laws and policies with regard to citizenship. This is likely to be particularly useful where succession is unplanned and/or abrupt.

However, drawing on the experience of Central Asia, there are also disadvantages to transitional forms of status. Allowing people to continue to use pre-succession documents can be a disincentive for people to act to rectify their citizenship status. The perception that they will be able to continue using their old documents indefinitely can be difficult to overcome.⁵² Doing so requires considerable effort and resources to provide information about deadlines for confirming citizenship. The population should also be informed of the impacts of not confirming or acquiring citizenship and, where populations are too remote to reach the relevant authorities, the authorities must go to them. While this may be less

⁴⁹ K. Southwick, “Ethiopia-Eritrea: statelessness and State succession”, Forced Migration Review 2009, Issue 32, p. 15.

⁵⁰ European Convention on Nationality, 6 November 1997 entry into force 1 March 2000, ETS 166, Art. 20 (1) (a),(b).

⁵¹ Based on personal interviews, observations and experiences with stateless people in Central Asia between 2014 and 2014.

⁵² *Ibid.*

problematic in urban areas, in remote rural areas, where some people have very little contact with State services, it can prove a real challenge.

Allowing people to continue to use their pre-succession documents or be considered *de facto* citizens pending their confirmation or acquisition of a citizenship is a temporary measure. A deadline for confirmation of citizenship and the development of incentives and disincentives for so doing are still needed. From the Kyrgyz example it seems clear that once the benefits of confirming or acquiring citizenship are made clear to the population and their access to these services is facilitated, including waiving fines and, in certain circumstances, fees, cases of post-succession statelessness can be effectively resolved. By contrast, the previous policy which imposed fines for late application served as a disincentive for people to come forward if they failed to meet the initial deadline.

4.3 Ensuring that no child is born stateless, halting the perpetuation of statelessness

The creation of statelessness during State succession does not just impact the population at that time, but is often passed on to the next generation. This is an issue that can be seen across the former USSR. For example, in Estonia and Latvia, which still host large stateless populations resulting from succession from the USSR (in these States these persons are commonly referred to as “non-citizens” or “persons of undetermined citizenship”), the lack of safeguards to prevent childhood statelessness have meant that:

Today, a quarter of a century after dissolution [from the USSR] and long after anyone who was already alive at the time has attained adulthood, statelessness continues to affect children in countries of the former Soviet Union. According to the most recent figures, there are 7,846 stateless children in Latvia and 936 in Estonia [...]

Both states’ nationality laws exhibit flaws that have allowed children born in the territory to parents left stateless upon independence to inherit their parents’ statelessness.⁵³

The United Nations Convention on the Rights of the Child obliges States to ensure that every child has the right to acquire a citizenship.⁵⁴ Safeguards specifically designed to prevent childhood statelessness following State succession can be found in both the ILC Articles on Nationality, which notes “[a] child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born”⁵⁵ and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, which stipulates that children born on the territory of the State, whose parent, at the time of State succession, had the citizenship of the predecessor State, should automatically acquire the State’s citizenship at birth, if that child would otherwise be stateless.⁵⁶

For this reason, when devising or reforming citizenship law and policy in cases of State succession, States should include provisions on access to citizenship for children born on their territory or born abroad to their citizens. International and regional law sets out obligations and guidance for States in ensuring that no child is born stateless, or remains stateless for a prolonged period of time.⁵⁷

⁵³ European Network on Statelessness, No Child Should Be Stateless, 2015, p. 5 and 13.

⁵⁴ Convention on the Rights of the Child, 20 November 1989, entry into force 2 September 1990, 1577 UNTS 3, Art. 7.

⁵⁵ International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10), Art. 13.

⁵⁶ Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, *supra* n46, Art. 10.

⁵⁷ 1961 Convention, *supra* n44, Art. 1 and 4 set out States’ obligations with regard to the prevention of stateless for children who would otherwise be stateless born on their territory or born abroad to their nationals. European

Furthermore to ensure that “all appropriate measures” have been taken to avoid statelessness during State succession, States should also consider potential problems with documentation, in particular that demanding birth registration as proof of place of birth and parentage may not be reasonable where disruptions and reduced State capacity have affected the birth registration system.

An appreciation of the difficulties faced by populations in providing proof of eligibility for citizenship following succession and how States should seek to accommodate these through appropriate policy is included in the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, which stipulates that:

A successor State shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements.⁵⁸

5 Conclusion

This chapter has looked at the causes of statelessness in Central Asia following the dissolution of the USSR and the efforts to resolve this situation. From this it has drawn out the advantages and disadvantages of some of the strategies adopted and suggested questions which it may be useful to consider in other cases of statelessness resulting from State succession. It has highlighted that laws and policies which aim to prevent and reduce statelessness in cases of State succession are most effective when they are built around an understanding of broader historical, economic, political and socio-psychological considerations. In the case of the dissolution of the USSR, such an understanding has to consider the nature of USSR citizenship, mass migration within the USSR, the transitional blurring of citizenship and the socio-economic and political turmoil that followed succession.

The challenges faced by States in ensuring the prevention of statelessness in cases of State succession seem daunting. However, many problems can be avoided if citizenship is granted automatically, without the need for confirmation. Providing an opt-out option which has appropriate safeguards to prevent people rendering themselves stateless accommodates cases where individuals have a link to two or more successor States. With regard to reducing statelessness following State succession, lessons can be drawn from the experience of Kyrgyzstan. This country’s success is due to the fact that Kyrgyzstan’s law and policy reforms were responsive, flexible and evolved based on a developing understanding of the needs, concerns and barriers that the population faced in confirming their citizenship. In so doing they have enabled Kyrgyzstan to move towards closing the chapter on statelessness that resulted from succession from the USSR.

Ensuring that people act to confirm or acquire citizenship can be problematic and resource intensive. Under international law, States are required to undertake “all appropriate measures” to avoid statelessness in cases of State succession. Pragmatically, this means that States should be sensitive to the way in which citizenship and its importance are understood by the population and consider the impact this will have on the effectiveness of law and policy. Where people are required to confirm their citizenship, States must weigh up the advantages and disadvantages of policies such as the transitional blurring of citizenship, the implementation of deadlines for confirmation of citizenship, incentives and disincentives to encourage people to confirm their citizenship and how to ensure the population are well informed about procedures for resolving their citizenship status. Furthermore, States should be aware that some of the population may fail to understand the importance of confirming their citizenship. This

Convention on Nationality, *supra* n50, Art. 6(2) sets out States’ obligations toward preventing childhood statelessness.

⁵⁸ Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, *supra* n46, Art. 8(1).

is reinforced by instances where people can continue to use pre-succession documents or are considered as *de facto* citizens for a certain period of time after succession.

Automatic acquisition of citizenship without the requirement of confirmation provides a means to avoid many of the post-succession challenges mentioned in this chapter. Whether citizenship is automatic or not, safeguards to prevent statelessness being passed on to the next generation should also be introduced. Such safeguards ensure that even if people fail to confirm or acquire a citizenship, their statelessness is not be passed to their children.

This chapter has argued that an understanding of the relevant historical, economic, political and socio-psychological factors can help ensure that laws and policies are responsive, flexible and adapted to the particular situation they aim to address. Such considerations may help States identify and implement “all appropriate measures” to prevent and reduce statelessness during State succession and its aftermath. Combined with legal safeguards, this sensitivity to the context will help to combat mass statelessness resulting from future State succession and could contribute to resolving existing cases.