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FORCED MIGRATION POLICY BRIEFING 3

# Statelessness, protection and equality

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# Forced Migration Policy Briefings

The Refugee Studies Centre's (RSC) Forced Migration Policy Briefings highlight the very best and latest policy-relevant research findings from the fields of forced migration and humanitarian studies. Designed to provide a clear and accessible means by which rigorous and objective research and analysis may influence a wider audience of policy makers and humanitarian practitioners in a manner that is current, credible and critical. The series provides a unique forum in which academic researchers, humanitarian practitioners, international lawyers and policy makers may share evidence, experience, best practice and innovation on the broad range of critical issues that relate to forced migration and humanitarian intervention. The Refugee Studies Centre invites the submission of policy briefings on all topics of relevance to policy and practice in the fields of forced migration, refugee protection and humanitarian intervention. Further details may be found at the RSC website ([www.rsc.ox.ac.uk](http://www.rsc.ox.ac.uk)). If you have a paper for submission, or a proposal for a Policy Brief that you would like to discuss with the editor, please contact [rscpolicy@qeh.ox.ac.uk](mailto:rscpolicy@qeh.ox.ac.uk).

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# Executive summary

‘Statelessness’, in a strictly legal sense, describes people who are not considered nationals by any state. Although statelessness is prohibited under international law, UNHCR estimates that there may be as many of 12 million stateless people worldwide. The existence of stateless populations challenges some of the central tenets of international law and the human rights discourse that has developed over the past sixty years. Most importantly, the concept of statelessness is at odds with the right to nationality.

Over the past five decades, the right to nationality has been elaborated in two key international conventions that have brought the concept of statelessness into the United Nations framework: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Under the 1954 Convention, individuals who have received nationality neither automatically nor through an individual decision under the operation of the laws of a particular state are known as *de jure* stateless persons. There are also countless others who cannot call upon their rights to nationality for their protection and are known as *de facto* stateless persons. Often *de facto* stateless people are unable to obtain proof of their nationality, residency or other means of qualifying for citizenship and may be excluded from the formal state as a result.

While stateless people enjoy human rights under international law they often face barriers that prevent them from accessing their rights. These include the right to establish a legal residence, travel, work in the formal economy, send children to school, access basic health services, purchase or own property, vote, hold elected office, and enjoy the protection and security of a country.

Common to all forms of statelessness is the notion of discrimination and inequality. For analytical purposes, we may distinguish between *direct discrimination* on the basis of nationality, which is formally recorded in law, and *structural discrimination* that may be indirect but nonetheless denies individuals the opportunity to benefit from citizenship.

It is also helpful to distinguish between *primary* and *secondary* sources of statelessness. Primary sources relate to direct discrimination and include: a) the denial and deprivation of citizenship; b) the loss of citizenship. Secondary sources relate to the context in which national policies are designed, interpreted and implemented and include: c) political restructuring and environmental displacement; d) practical barriers that prevent people from accessing their rights. Arguably some forms of discrimination, such as gender-based legislation, may be both primary and secondary sources of statelessness.

There are several explanations for the pervasiveness of the denial and deprivation of citizenship. In general, denial or deprivation of citizenship takes place as a result of an intentional or unintentional specific state action. This may include the introduction of discriminatory laws that target specific communities, the carrying out of a census of selected populations, or the introduction of onerous provisions that make it virtually impossible for certain groups and individuals to access their rights to citizenship,

including proving birth by descent and establishing a legal identity by means of formal registration of births, marriages, and voting.

One of the central concerns for the prevention and reduction of statelessness is the degree to which race and ethnicity are prioritised over civic criteria, or vice-versa, in the design of exclusive nationality and citizenship laws. In practice, nationality policies built on the principle of blood origin (*jus sanguinis*) rather than birth on the territory (*jus soli*) have made the incorporation of minorities, especially relatively recent migrants and children of migrants, particularly difficult. In several parts of the world, from Cote d'Ivoire, to the former Soviet Union, to Germany and Italy, the principle of membership on the basis of blood origin has historically locked many minority groups out of the right to citizenship in their habitual state of residence.

During periods of national homogenisation ethnic membership is often associated with loyalty and this has been a major factor in the denial and granting of citizenship. Longstanding minorities and other groups have also been singled out such as the Bidun in Kuwait, the Rohingya of Myanmar, and the Banyamulenge of present day Democratic Republic of Congo who lost their citizenship when their rights were revoked by law in the 1980s.

There is a substantial body of international law which records that nationality laws must be consistent with general principles of international law. Article 15 of the Universal Declaration of Human Rights (UDHR) recognises that nationality guarantees the individual's access to the enjoyment of human rights, not only declaring that "everyone has the right to a nationality," and specifically prohibiting the arbitrary removal of that right. Further, the 1966 International Covenant on Civil and Political Rights (ICCPR) restates the principle of universal coverage in the form of a legally binding international treaty that prohibits discrimination on any grounds.

Although the conventions on statelessness have not been ratified by large numbers of states, they have contributed to the human rights regime by providing further instruments for regulating the treatment of non-citizens. For example, the 1954 Convention establishes the international legal status of stateless persons and offers an international definition of stateless persons. It also offers access to identity documents but also some provisions among the most far-reaching of which offer protection on a par with nationals and resident non-citizens, for example in the case of wage-earning employment. The 1961 Convention introduces some further potential reforms to avoid statelessness at birth and is aimed towards the prevention of statelessness.

There is a significant body of international law that has elaborated the principle of non-discrimination as a non-derogable norm that prohibits discrimination on the basis of race, ethnicity and related criteria. There are also several of bodies of international law that have been developed through regional treaty organisations and which have restated the

above-mentioned principles regarding non-discrimination and the prohibition against the arbitrary denial or deprivation of citizenship.

The development of a body of international law on the prohibition of nationality-based discrimination has been further encouraged by the advocacy efforts of international organisations, non-governmental actors, and particular states. High profile organisations and individuals, including the UN Secretary General, have drawn an explicit link between the importance of nationality and the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Further publications by high-level working groups within the UN system, in addition to UN agencies and specialised NGOs, have put the issue of statelessness firmly on the global agenda.

A recent increase in public information and advocacy has served to remind international bodies and non-governmental organisations that the persistence of statelessness is a complex matter that underlines the centrality of effective protection. There is growing pressure from international NGOs, refugee organisations, and human rights monitoring bodies to provide protection to those who do not fall under either the Refugee Convention or the 1954 and 1961 Conventions on statelessness.

While several international legal instruments offer a means of protecting either those who are currently stateless or those who are at risk of becoming stateless, the failure to ratify and comply with the conventions on statelessness (as well as the 1951 Refugee Convention) and the deliberate discrimination against specific populations who are unable to realise their rights to nationality (and hence state protection) have exposed major holes in the human rights regime.

For development agencies, the concept of statelessness introduces a power-dynamic that is particularly challenging for the design and delivery of effective pro-poor social development programmes. The denial and deprivation of nationality and the discriminatory exclusion of particular communities has a poverty-generating function. Most stateless people are the victims of discrimination by the states in which they live and are not prioritised in social assistance programmes. They are further disadvantaged as a result of aid policies that do not succeed in reaching them.

Addressing these concerns requires both greater commitment on the part of states both to respect the obligations stipulated within international legal instruments – even if they have not officially acceded to the statelessness conventions – and to develop anti-discriminatory policies and practices, including training of civil servants, reform of judicial institutions and the creation of a climate that respects the rule of law. The capacity of states to deliver services in a non-discriminatory manner remains a major impediment to the elimination and prevention of statelessness.

It is also imperative that aid donors are given greater access to vulnerable and stateless populations. Where states continue to discriminate against stateless minorities, the burden

on relief organisations is especially notable, and it is arguable that such excluded groups should feature more prominently in pro-poor development and social assistance policies sponsored by international donors.

The challenges of reducing and preventing statelessness must be addressed both through reform of the governance sector and through the development of more joined-up policy. This is especially relevant in the case of the reduction of statelessness from birth. In spite of the remarkable achievements generated by the joint UNICEF and Plan International global advocacy campaign on birth registration, the introduction of civil registration systems has not been universally effective. In the absence of the rule of law, poor populations are vulnerable to bribery and other hidden costs that may deter them from seeking to register the births of their children. Equally, the proliferation of black markets for documents undermines the realisation of the human rights to nationality and identity, among others. The development of joined-up policies that address both the primary and secondary causes of statelessness, linked to the inclusion of statelessness within a good governance agenda may go some way to addressing such cases.

UNHCR plays an essential role as a facilitating organisation that has provided technical assistance to introduce legislation to reduce and prevent statelessness. Evidence of good practice can be found in the cases of Ukraine, Sri Lanka and Nepal, where the introduction and enforcement of new legislation has ensured that millions of formerly disenfranchised people have been given nationality and the prospect of a more secure life.

Recommendations to eliminate and reduce statelessness include the following:

1. States should ratify the 1954 and 1961 Conventions on Statelessness and should fulfil the obligations of these instruments including the introduction of necessary domestic legislation to provide procedures to determine status;
2. States should honour their human rights obligations to all those within the state's territory, irrespective of nationality status;
3. States should put in place adequate mechanisms to protect people from abuses that particularly affect stateless people, including human trafficking and the use of indefinite detention;
4. States should develop anti-discriminatory policies and practices, including the training of civil servants, reform of judicial institutions and the creation of a climate that respects the rule of law;
5. States should ensure that children are provided with the means to acquire a nationality at birth;

6. States should implement birth registration campaigns in cooperation with UNICEF and Plan International and provide mobile birth registration teams where necessary;
7. States should facilitate the naturalisation of stateless people, for example by relying on reasonable use of residency and language criteria, and by relaxing the requirements for naturalisation in cases involving stateless persons;
8. States should improve access to procedures relating to the acquisition, confirmation or documentation of nationality so that those eligible to receive citizenship are not overburdened by fees; where necessary they should provide mobile registration units to ensure greater physical access to public administrative bodies responsible for issuing citizenship certificates
9. International donor governments should provide greater assistance to UNHCR to strengthen its work on the prevention and reduction of statelessness;
10. International donor governments and development agencies should ensure that aid effectively reach stateless groups;
11. States and international development agencies must improve the monitoring of the status of stateless people through their overseas embassies and in their human rights and country reports;
12. International funding bodies should support applied research by academics and non-governmental organisations in mapping the relationship between statelessness, poverty and vulnerability and in understanding the mechanisms that have encouraged effective reform.



# 1 Introduction

‘Statelessness’, in a strictly legal sense, describes people who are not considered nationals and are unrecognized by any state (United Nations 1960). Although statelessness is prohibited under international law, the UNHCR recently estimated that there may be as many as 12 million stateless people in the world (UNHCR 2009a). The existence of stateless populations challenges some of the central tenets of international law and the human rights discourse that has developed over the past sixty years. Most importantly, the concept of statelessness is at odds with the right to nationality, which is recorded in the Universal Declaration of Human Rights (UDHR). Under Article 15, the UDHR states, “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (UNGA 1948).

Over the past five decades, the right to nationality has been further elaborated in two key international conventions which have brought the concept of statelessness into the United Nations framework: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention was initially conceived as a protocol on stateless persons that was to be included as an addendum to the 1951 Refugee Convention. It was later made into a convention in its own right and is now the primary international instrument aiming to regulate and improve the status of stateless persons. A second Convention on the Reduction of Statelessness was introduced in 1961 with provisions to disallow statelessness at birth and to avoid statelessness resulting from the loss, deprivation or renunciation of nationality in later life, as well as statelessness resulting from state succession. It should be noted, however, that the 1961 Convention defers to states and asserts that nationality shall be granted by ‘operation of law to a person born in the State’s territory’, where such persons would ‘otherwise be stateless’ (United Nations 1975). One important failing of this convention is that it does not prohibit the possibility of revocation of nationality under certain circumstances nor does it retroactively grant citizenship to all currently stateless persons; hence, the problem of statelessness has not been resolved adequately.

Few states have ratified the stateless conventions and the problem of disenfranchised minorities being left without nationality has multiplied.<sup>1</sup> The denial and deprivation of nationality raises several important policy questions because it undermines human security since (even though stateless people enjoy most rights under international law), in practice, they face difficulties exercising many of these rights and therefore enjoy a precarious existence. Recent research from *Refugees International* has highlighted the innumerable barriers with which stateless people contend, including the denial of opportunities to: establish a legal residence, travel, work in the formal economy, send children to school, access basic health services, purchase or own property, vote, hold elected office, and enjoy the protection and security of a country (Southwick & Lynch 2009). All too often, the births, marriages, and deaths of stateless people are not certified and, as a result, many stateless persons lack even basic documentation. This lack of identification means that they are often powerless to seek redress through the courts. Significant numbers of stateless people therefore face extortion from state and non-state agents as well as arbitrary taxation.

Under the 1954 Convention, individuals who have not received nationality automatically nor through an individual decision under the operation of any state's laws, are known as *de jure* stateless persons. There are also countless others who cannot call upon their rights to nationality for their protection and are effectively stateless or *de facto* stateless persons. Often *de facto* stateless people are unable to obtain proof of their nationality, residency or other means of qualifying for citizenship and as a result may be excluded from the formal state. Elsewhere scholars have suggested that the term 'stateless' may be expanded to include internally displaced persons (IDPs) who are in conflict with the state and therefore unable to avail themselves of basic services or protection (Boyden & Hart 2007: 238).

Under international law, *de facto* stateless persons are not covered by the provisions of the 1954 Convention, even though the Final Act of the Convention includes a non-binding recommendation that calls upon states to 'consider sympathetically' the possibility of according *de facto* stateless persons the treatment which the Convention offers to *de jure* stateless people.<sup>2</sup> Most governmental reporting on this issue concentrates on *de jure* stateless populations although there is a growing awareness that *de facto* stateless people are unable to realise their human rights and may be equally vulnerable for lack of effective protection from the state to which they have a formal connection (Southwick & Lynch 2009).

For academics and practitioners working in the international development sector, the issue of statelessness raises several concerns:

First, the subject has received scarce attention from both scholars and monitoring bodies, and there is relatively little comparative research on the causes, patterns and consequences of statelessness in the international system. Until recently, statelessness remained a minor interest within UNHCR despite the agency's mandate and in spite of the fact that the global population of stateless people includes millions.

Second, for development agencies, the concept of statelessness introduces an essential power dynamic, which is particularly challenging for the design and delivery of effective pro-poor social development programmes. Most stateless people are the victims of discrimination by the states in which they live, and yet these national governments remain key interlocutors for multilateral agencies and non-governmental bodies tasked with delivering aid. In general, stateless groups are not prioritised in social assistance programmes and are further disadvantaged as a result of aid policies that do not succeed in reaching them.

Third, and related to the last point, there is an inherent problem in the recourse to international law as a means of preventing human rights violations by states. It is a long recognised norm of international law that states have the sovereign right to determine how nationality, and hence citizenship, is acquired (League of Nations 1930). However, in the case of stateless people, the state's prerogative of determining formal membership is often at odds with the protection of human rights (Van Waas 2008; Weis 1979; Weissbrodt 2008; Weissbrodt & Collins 2006). Indeed, the very notion of statelessness exposes the essential

weakness of a political system that relies on the state to act as the principal guarantor of human rights. As Hannah Arendt noted more than fifty years ago, those who are left outside the state are vulnerable to abuse, poverty, and marginalisation in all its forms (Arendt 2004).

## 2 Context and typology of stateless people

### General characteristics

There are no global data on the numbers of stateless people, although UNHCR currently estimates the number to be approximately 12 million (UNHCR 2009a); however, it may be much higher. In addition to the formal division between *de jure* stateless and *de facto* stateless, there are also different categories of stateless persons. UNHCR employs the terms used by some states to designate types of stateless people, for example, ‘non-citizens’ and ‘formerly deported persons.’ Some of the most widely cited cases of statelessness include minority groups that have been formally excluded from the right to nationality such as the Rohingyas in Myanmar (+ 1 million), Pygmy Banyarwanda in the Democratic Republic of Congo (1.5 million), Biharis in Bangladesh (300,000), ethnic Ethiopians and Eritreans in the Horn of Africa (500,000), and other groups such as the Meskhetian Turks in Southern Russia (15,000).<sup>3</sup>

Common to all forms of statelessness is the notion of discrimination and inequality. For analytical purposes, we may distinguish between *direct discrimination* on the basis of nationality, which is formally recorded in law, and *structural discrimination* that may be indirect but nonetheless denies individuals the opportunities to benefit from citizenship. Although they are often closely connected, it is also helpful to distinguish between *primary* and *secondary* sources of statelessness. Primary sources relate to direct discrimination and include: a) the denial and deprivation of citizenship; b) the withdrawal and loss of citizenship. Secondary sources relate to the context in which national policies are designed and implemented and include: a) political restructuring and environmental displacement; b) practical barriers which prevent people from accessing their rights to nationality. Arguably some forms of discrimination such as gender-based nationality legislation may be considered as both primary and secondary sources of statelessness.

### Sources of statelessness

There are several explanations for the pervasiveness of the denial and deprivation of citizenship. In general, denial or deprivation of citizenship takes place as a result of a specific state action. This may include the introduction of discriminatory laws that target specific communities, the carrying out of a census of selected populations, or the introduction of onerous provisions that make it virtually impossible for certain groups and individuals to access their rights to citizenship, including establishing a legal identity by means of formal registration of births, marriages, and voting.

One of the central concerns for the prevention and reduction of statelessness is the degree to which race and ethnicity are prioritised over civic criteria, or vice-versa, in the design of exclusive nationality and citizenship laws. In practice, nationality policies built on the principle of blood origin (*jus sanguinis*) rather than birth in the territory (*jus soli*) have made the incorporation of minorities, especially relatively recent migrants and children of migrants, particularly difficult. In several parts of the world—from Cote d’Ivoire to the former Soviet Union, to Germany and Italy—the principle of membership on the basis

of blood origin has locked many minority groups out of the right to citizenship in their habitual state of residence.

During periods of national homogenisation, ethnic membership is often associated with loyalty, and this has been a major factor in the denial and granting of citizenship; for example, in the 1990s Croatia introduced several barriers that prevented ethnic Serbs from obtaining citizenship even though they had resided on Croatian territory prior to Croatia's independence and met the criteria for nationality. For more than thirty years, the Bihari community in Bangladesh was segregated from the major Bengali population amid accusations that the Bihari had been collectively disloyal and favoured the regime based in Islamabad during Bangladesh's break from Pakistan. Similarly, in parts of Central and East Africa, long standing minority populations have been denied citizenship because they have been identified with colonial powers or historic 'enemy' groups, most notably the Nubian population in Kenya.

In some instances, the persistent denial of citizenship may relate to both a positive action by the state and the lack of infrastructure to implement the action, as formerly illustrated in the case of Kazakhstan where in the 1990s returning ethnic Kazaks, 'Oralman', were encouraged to settle in large numbers before they had received any nationality status (UN Development Programme 2006).

Although less common than the denial of citizenship, large numbers of minorities have lost their citizenship or seen it withdrawn. One activating factor leading to the withdrawal of citizenship is the influence of exclusive nationalist ideologies during periods of political restructuring. During and shortly after the First World War, foreign-born citizens who had been naturalised were stripped of their citizenship by France, Belgium, Turkey and the Soviet Union. Racist laws have similarly been used to advance denationalisation campaigns, most famous of which are the Nuremberg Laws, which stripped Jews in Germany and Austria of their citizenship. More recently, former migrants from West Africa, who had settled in Cote d'Ivoire and were often considered as 'Ivorian', lost a host of rights during a programme of ethnic homogenisation and intense xenophobia.

In other contexts, longstanding minority groups and other categories of people have been singled out. These include the Bidun in Kuwait and the Rohingya of Myanmar. A further illustration how citizenship may be withdrawn by means of legislation is presented below.

**Box 1. A brief history of withdrawal of citizenship in Cote d'Ivoire**

More than 3 million West Africans who migrated to the region, many of whom were eligible for Ivorian citizenship, saw their rights to citizenship revoked as governments embraced xenophobic campaigns based on ethnic purity. Over the past decade, high-level inter-ethnic conflicts have both provided a justification for racially based actions against minorities and provoked further antagonism.

The 1961 Nationality Act introduced the possibility of naturalisation, but subsequent racial interpretations reduced the chances of naturalisation for the large population of former migrants and their descendants. Amendments to the 1961 law, notably Law No. 72-853 of 21 December 1972 further excluded those who were born abroad – or whose parents were born abroad – from acquiring nationality.

In the 1990s a new political discourse emerged around non-citizens. Political tensions between ethnic communities increased after 2000, when President Henri Konan Bedie promoted the cultural concept of “Ivorite” to distinguish between “pure Ivorians”, who constituted his support base, from those of immigrant parentage that tended to support the opposition led by Alassane Ouattara.

Racist sentiment was accompanied by restrictive laws, including a requirement that all migrants possess a residency permit. Law 2000-513 introduced on 1 August 2000 restricted the rights those declared ‘non-Ivorite’ and under Articles 35 and 65, only those with Ivorian parents could be employed in the civil service. Passports and identity cards were reserved for “native” Ivorians.

Further discrimination followed the introduction of a law passed on 3 January 2002 which obliged all nationals to obtain identity cards. Non-citizens were denied standard identity documents and the right to vote.

The Linas-Marcoussis (Peace) agreement in 2003 required the government to discontinue the use of residency permits for ECOWAS nationals and called upon states to protect foreign nationals and their property. Following this agreement, the new government proposed a law under which anyone born on Ivorian soil before independence would qualify for citizenship; however, the national assembly rejected the proposal on the basis that it amounted to a “selling-off” of Ivorian nationality.

With the formal conclusion of the conflict between the government and rebel forces (Forced Nouvelles) and signing of the Ouagadougou Peace Agreement in March 2007, the government has committed itself to the settlement of nationality issues.

Sources: Open Society Institute 2004, UNHCR 2009a.

**Box 2. Withdrawal of citizenship in Bhutan**

In 1985 the Bhutanese government introduced a new Citizenship Law, which initiated a programme of denying citizenship to longstanding minority groups, in particular, the ethnic Nepalese communities. Under Article 3, the Citizenship Law provided citizenship to 'a person permanently domiciled in Bhutan on or before 31st December 1958, and, whose name is registered in the census register maintained by the Ministry of Home Affairs'.

This act raised many problems for those born after 1958, including a 20 year residency requirement for those whose parents were not born in Bhutan. It also required proficiency in both spoken and written Dzongkha.

In 1988, the government of Bhutan conducted a census with a view to establishing whether or not individuals who were domiciled in Bhutan in 1958 would qualify as Bhutanese according to the 1985 Citizenship Act. Individuals were required to provide proof of residency including tax receipts dating back to 1958.

The introduction of two amendments to the nationality laws further restricted the rights of ethnic minorities. The Marriage Act of 1977 had prescribed that only children born to Bhutanese fathers (not either spouse as before) would be considered Bhutanese citizens, but the 1985 Citizenship Act tightened this requirement by requiring that both parents be Bhutanese citizens by birth. Applied retrospectively and in tandem with the 1958 tax receipt stipulation, the government declared tens of thousands of legal southern Bhutanese non-nationals. People born in Bhutan in 1959 suddenly became illegal residents during the 1988 census when either parent could not prove his or her presence in the country in 1958.

As a result of the above laws, over 100,000 individuals of ethnic Nepali origin were stripped of their citizenship and forcibly expelled from Bhutan in the early 1990s; their right to return has been systematically obstructed by the Bhutanese government.

The 2005 nation-wide census declared the total population as 634,972 and also declared that 81,976 of this population were non-national residents. Within the past year several thousand Bhutanese have been resettled in the United States. Approximately 6,000 arrived in the USA in 2008.

Source: Refugees International 2005, The Economist 2009

Forced migrations during periods of political development may generate new minority groups and give rise to subsequent stateless populations. Many citizenship issues in Russia and Central Asia are directly related to former Soviet policies; mass deportations conducted in the 1940s created large minorities whose citizenship status is still uncertain; for example, Ossetians in Georgia, Crimean Tartars in Uzbekistan and Kazakhstan, Ingushetians and Meskhetian Turks in Southern Russia, to name a few (Ginsburgs 1966, Helton 1996).

While the process of exclusion often occurs during periods of state creation or state transformation, it should be noted that the ways in which states determine membership and access is fluid. Historical migrations may give rise to stateless communities, such as the large numbers of Estate Tamils who were brought to work in Sri Lanka in the late 19th Century. More recent migrations may similarly raise nationality problems, which if not addressed, may give rise to situations of statelessness.

State succession, which is often, but not necessarily, a consequence of war, is another explanation for the prevalence of discriminatory treatment of people who may not be migrants but may find themselves living under a different jurisdiction. The break-up of the Austro-Hungarian and Ottoman Empires and later Soviet Union fomented numerous nationality contests, which left millions stateless and forced them to live as minorities in new political contexts. Following the de-federation and division of Czechoslovakia in 1992 thousands of Roma were left in a precarious situation while their citizenship status was challenged and questioned by both successor states.

Another form of state succession, namely state restoration, may have an identical effect on the problems discussed above, as illustrated by the citizenship struggles affecting ethnic Russians in Estonia and Latvia. Individuals of Slavic origin who moved to the country during the Soviet occupation (and their descendents) were not given automatic citizenship when these countries regained their sovereignty in 1991. In the case of Latvia, citizenship was granted only to those who were Latvian citizens before 17 June 1940 and their descendents. As a result, 30 per cent of the population was left without nationality. The government has since recognised as 'stateless' fewer than 1000 individuals who do not have a claim to foreign citizenship and are not eligible to apply for naturalization in Latvia; the rest of the non-Latvian population, approximately 350,000–400,000, have been considered as non-citizens and presumed to be members of another state (Southwick & Lynch 2009).

One new category of stateless which has been produced by decolonisation, includes the several hundred ethnic minorities in Hong Kong who hold British Nationals Overseas Passports but have been unable to register themselves in Hong Kong and now remain *de facto* stateless (Avebury 2009).

In addition to political restructuring, statelessness may be caused by climate and environmentally induced displacement, a fact that was emphasised most recently at the



**Box 3. Gender-based discrimination in Jordan**

'Jordanian law prohibits married women from transferring their citizenship to their children or husbands. Non-Jordanian men married to Jordanian women must establish 15 years of permanent residency to apply for citizenship and often this process takes several years longer. Non-married women may pass their citizenship to their children with the consent of the Council of Ministers. In most cases they are granted this right, except when the father is of Palestinian descent. Children born to Jordanian mothers and non-citizen Palestinian fathers, married or not, are rendered stateless and are unable to access basic government services' (Southwick and Lynch, 2009: 51).

2009 UN Conference on Climate Change. The Intergovernmental Panel on Climate Change (IPCC) report had identified the Netherlands, Guyana, Bangladesh, and oceanic islands as being especially threatened by a rising sea level (IPCC 2008), but press reports publicised the claim that approximately 600 million people could be affected by rising sea levels before the end of the 21st Century. This introduced the prospect of statelessness as a result of the physical disintegration of the state (Adam 2009).

Contemporary forms of gender-based discrimination including citizenship laws based exclusively on patrilineal descent have created large stateless populations. In several Arab states, children of mixed parentage – especially in cases where the mother is married to a non-national – may be denied nationality in their country of residence and may be left stateless as recorded in the most recent report published by Refugees International (see Box 3. above).

Another issue is the negative effect that the non-registration of births may have on minority populations. The United Nations Convention on the Rights of the Child (CRC) calls upon states to register children at birth (Article 7) but, according to Plan International, millions of births are not recorded. Approximately 36 per cent of the total births (48 million births each year) are not registered. The most affected regions are South Asia and Sub-Saharan Africa where more than half of all births are not registered. Children's advocates claim that birth registration provides the first legal recognition of the child and is generally required for the child to obtain a birth certificate which provides permanent, official and visible evidence of a state's legal recognition of his or her existence as a member of society. Birth registration is central to the campaign to reduce statelessness and inequality since the registrations of births is a means of proving birth by descent and place of birth; states rely on birth registration and other means of documentation to grant access to basic services that are vital for the promotion of human security.<sup>4</sup>

Finally, there are a number of practical problems that have contributed to the growth of statelessness in poor regions. In underdeveloped states, many minorities live without documentation and lack the resources to meet bureaucratic conditions (even though they

may be eligible) for citizenship. Nepal, for example, has amended its citizenship laws to include all persons who were born on the territory before mid-April 1990, including a broad range of minority communities such as the Madhesi and Dalit groups, however, the reforms have yet to benefit vulnerable people who are too poor to pay registration fees or travel long distances to obtain documentation.

The following table aims to set out some of the main typologies of statelessness. It is not exclusive, and it should be noted that in certain situations statelessness has resulted from more than one form of discriminatory procedure or policy. For example, the problems of statelessness in the Dominican Republic are the result of both the denial and deprivation of citizenship and a deliberate lack of access – in this setting, requirements are imposed as a way to prevent access to nationality. In the case of Sri Lanka, the discrimination against the Estate Tamils was not solely linked to their lack of access but also resulted from state succession and political restructuring following Sri Lanka's independence from British colonial rule.

**Table 1. Typologies of statelessness**

**Denial and deprivation of citizenship**

*Methods:*

The intentional and unintentional use of or interpretation of provisions in nationality laws so as to discriminate between groups; removal from census; gender-biased legislation that prevents women from transmitting nationality.

*Cases:*

Bangladesh, Dominican Republic, Federal Republic of Germany, Georgia, Kashmir, Kazakhstan, Kenya, Myanmar, Nepal, Russia

**State succession/state restoration**

*Methods:*

Ill-defined nationality laws following conflict, de-federation, secession, state succession, and state restoration in multinational situations.

*Cases:*

Bosnia and Herzegovina, Croatia, Estonia, Ethiopia, Eritrea, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Montenegro, Serbia, Slovenia, Former USSR, Yemen

**Withdrawal and loss of citizenship**

*Methods:*

The revocation of laws and forced removals following xenophobic campaigns.

*Cases:*

Bhutan, Cote d'Ivoire, DRC, Germany (1933–45), Kuwait, Lebanon, Mauritania (pre-2007), Syria

**Lack of access**

*Methods:*

Lack of opportunities to register births and marriages, the use of high fees for documents, requirements regarding the presence of witnesses to certify documents.

*Cases:*

Croatia, Ecuador, Fiji, India, Israel, Kyrgyzstan, Former Yugoslav Republic of Macedonia, Nepal, Panama, Russia, Serbia, Slovenia, Sri Lanka

## 3 International law and jurisprudence

### Nationality as a universal human right

There is a substantial body of international law which records that nationality laws must be consistent with general principles of international law as noted in the 1923 decision by the Permanent Court of International Justice (PCIJ 1923) and Article 1 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (League of Nations 1930). Within the UN system, the introduction of a specific article in the 1948 Universal Declaration of Human Rights (UDHR) situated nationality unequivocally within the framework of universal human rights. Article 15 of the UDHR declares that “everyone has the right to a nationality” and specifically prohibits the arbitrary removal of this right (United Nations General Assembly 1948).

Although the Universal Declaration does not clarify what constitutes arbitrary deprivation, ‘arbitrariness’ is a common term of reference in international law, and there are accepted definitions that usefully describe the limitations placed on states. Arbitrariness tends to describe practices that do not follow fair procedure or due process. The term is used to refer to actions where states cannot be held to account. Related criteria that are used to measure the behaviour of states, and which complement this description of arbitrariness, include the standards of necessity, proportionality and reasonableness.

The UN Human Rights Committee has gone further to suggest that the concept of arbitrariness should be interpreted more broadly to include actions that might be described as ‘inappropriate’ and ‘unjust’ as well (Open Society Justice Initiative 2006). States may nonetheless withdraw citizenship rights under certain conditions provided they are reasonable and meet the test of non-arbitrariness. Such examples include instances when an individual has acquired citizenship by fraudulent means or voluntarily acquires another nationality or serves in a foreign military force. Other criteria that might be relied upon include settlement in another country where there is no genuine link to the declared country or nationality that would support a claim to citizenship and when an individual may have placed the national security or interests of a state at considerable risk.

### The protection of stateless persons

In addition to Article 15, the Universal Declaration establishes several principles that reaffirm the centrality of universal protection. Further, the 1966 International Covenant on Civil and Political Rights (ICCPR) restates the principle of universal coverage in the form of a legally binding international treaty which prohibits discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The ICCPR also binds states to guarantee rights to *all* persons subjected to their jurisdiction, irrespective of national origin or citizenship status. The ICCPR includes protections against arbitrary expulsion (Article 13) and equality before law (Article 26) and further sets out obligations to prevent the denial of citizenship by insisting on birth registration and the reaffirmation of a child’s right to nationality under Articles 24 (2) and (3). Also noteworthy is the introduction of Article 27 on minority

rights,<sup>5</sup> which may be taken to prohibit both forced assimilation and denial of citizenship on arbitrarily defined grounds that relate to linguistic and cultural backgrounds.<sup>6</sup>

The International Covenant on Economic, Social and Cultural Rights (CESCR) also prohibits the creation of conditions that undermine the social and economic survival of an individual and their family members which in practice may be generated by denial or withdrawal of citizenship (United Nations General Assembly 1966). Article 15 affirms the right to take part in cultural life, and it may be inferred to guard against the forced assimilation of minority groups. This is particularly important in the case of certain nomadic stateless populations where housing, physical survival and the preservation of cultural identities may be linked, as noted by the Committee that oversees this convention (OHCHR 1991).

The 1989 Convention on the Rights of the Child (CRC) restates the universal protections and provisions on matters of citizenship and elaborates on the rights of children. Under Article 7 (1) the CRC declares that every child has a right to acquire a name and nationality and stipulates that states should register births to make this happen. Under Article 7 (2), it draws attention to the prospect of statelessness in the event that births are not recorded and nationality not formally transmitted. The CRC introduces a clause regarding unlawful interference in nationality matters, firming up the principle of arbitrariness described above. Under Article 8 (1) it declares that ‘States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference’. It also mentions the possible deprivation of elements of a child’s identity and calls upon states to re-establish a child’s identity in such cases. The above clauses add further weight to claims for the prohibition of arbitrary denial and deprivation of citizenship towards children, not least because the CRC has been ratified by 193 countries (Boyden & Hart 2007).

There are other international conventions that further reaffirm the principle of universal protection and include named groups, among them women, especially as in Article 9 of the 1979 Convention on the Elimination of Discrimination against Women (CEDAW).<sup>7</sup> Finally, the 2004 International Convention on the Protection of the Rights of All Migrant Workers illustrates an important trend in the convergence of treatment afforded to citizens and non-citizens since this convention specifically prohibits the exploitation of workers on the basis of immigration and civic status. Further, Article 29 of the Convention guarantees the right to a nationality to children of migrant workers.<sup>8</sup>

### **The centrality of non-discrimination**

There is a significant body of international law that has elaborated the principle of non-discrimination as a non-derogable norm that prohibits discrimination on the basis of race, ethnicity and related criteria. This body of law is well documented and hence needs only a brief discussion below. The principle is enshrined in key instruments including the 1965 Convention on the Elimination of All Forms of Racial Discrimination; the 1979

**Box 4. Prohibitions and recommendations of the Committee on the Elimination of Racial Discrimination (CERD)**

Under Section IV of General Recommendation Number 30 CERD recommends that states should:

Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;

Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;

Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;

Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;

Regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party.

Convention on the Elimination of Discrimination Against Women (CEDAW); the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and the 2003 Migrant Rights Convention, as well as in a significant body of case law which is discussed below.

In this context, one of the most significant human rights instruments is the 1965 Convention on the Elimination of All Forms of Racial Discrimination. Article 1 of the Convention provides a precise definition of racial discrimination and is particularly relevant to the problem of denial or deprivation of citizenship because, not only does it address the issue of motivation, it also highlights the consequences of states creating conditions which exacerbate the vulnerability of minority populations and which make the state liable.<sup>9</sup> Further, under Article 2 (d) and 2 (e) the Convention calls for states to prohibit and bring to an end racial discrimination and to undertake the elimination of 'barriers between races, and to discourage anything which tends to strengthen racial division.' The Convention affirms that differential treatment between groups of non-citizens may constitute discrimination, but the convention also explicitly mentions that distinctions between citizens and non-citizens are not generally considered to be covered

**Box 5. CERD country-specific recommendations**

Qatar was asked to correct the distinction made in Article 3 of Act No. 3/1963 between nationals of Arab countries and others as regards the length of time they must reside in Qatar before submitting an application for naturalization; also the distinction between citizens by birth and naturalized citizens as regards access to public office, other kinds of employment, and the right to vote and to stand for election (CERD 2002b);

Russia was called upon to regularize the position of former Soviet citizens who previously resided legally in the Russian Federation but have been considered illegal migrants since the entry into force in 2002 of the Federal Laws on Russian Citizenship and on the Legal Status of Foreign Citizens in the Russian Federation (CERD 2003b);

Mauritania was called upon to respect the principle of non-discrimination in children's access to nationality (CERD 2004a);

Tajikistan was called upon to apply the Law "On Citizenship" without discrimination (CERD 2004b);

Nigeria was called upon to ensure that the acquisition of nationality complies with the Convention and treats male and female applicants equally (CERD 2007).

Source: Concluding Observations of the CERD 2002-07.

under its terms. Some of the key elements of this Convention include a universal provision under Article 5 that states parties are obliged to guarantee equality for all in the enjoyment of civil, political,<sup>10</sup> economic,<sup>11</sup> social and cultural rights, to the extent that they are recognized under international law (Wesissbrodt 2008).

In 2004, the Committee on the Elimination of Racial Discrimination (CERD), which was created to monitor and review actions by states with respect to the implementation of the above convention, published its General Recommendation Number 30 on the theme of discrimination against non-citizens. In this document CERD reaffirmed the need to tighten loopholes that might lead to discrimination on the basis of citizenship and nationality. While calling upon states to take measures to ensure that non-citizens enjoyed protection before the law and had access to education, housing, employment and health and were protected against forced expulsions, CERD further sought to clarify the prohibitions against states under international law.

CERD has since generated a significant body of country-specific recommendations regarding discrimination in relation to the acquisition of citizenship (CERD 2002a, 2002b,

2003a, 2003b, 2004a, 2004b, 2007) and the denial of citizenship, for example in the case of Cote d'Ivoire (CERD 2003a) and Lithuania (CERD 2002a) where minorities have been excluded on the grounds of race (being 'non-native Ivorians') and HIV/Aids, respectively.

### **International jurisprudence on statelessness**

Although the statelessness conventions have not been ratified by large numbers of states, they have contributed to the human rights regime by further regulating the treatment of non-citizens. For example, the 1954 Convention establishes the international legal status of stateless person and provides the international definition of stateless persons as recognised by the International Law Commission (ILC) as a norm of custom. It also offers access to identity documents and some provisions among the most far-reaching of which offer protection on a par with nationals<sup>12</sup> and resident non-citizens, for example in the case of wage-earning employment.<sup>13</sup> The 1961 Convention, although more technical in nature, established some further safeguards to be introduced in national law that serve to prevent and reduce statelessness.

In addition to the conventions, another action which heralded a wider interpretation of the problem of statelessness was the 1955 International Court of Justice Ruling in the case of *Nottebohm*. The context here was an individual seeking diplomatic protection. In its ruling, the Court formally considered nationality in terms of a legal bond that recognised certain social facts, rather than purely as a political bond. *Nottebohm* is important because in its recognition of social facts, it emphasized the relevance of a genuine connection to the state in determining the basis of citizenship:

*According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties* (International Court of Justice 1955).

The significance of this ruling on the need to ensure a genuine and effective link, made manifest by birth, residency, and/or descent, is now reflected in the provisions of most nationality laws and has subsequently been used to shield non-citizens from the threat of removal.

Yet, this ruling was not entirely positive and some commentators have criticised the decision because it also provides States with a reason not to consider persons to be nationals if they lack the social element of the genuine and effective link. Under international law mere birth on the territory has always been considered sufficient for grant of nationality. Various authors have therefore criticized the decision and put forward that argument *Nottebohm* should only be read in the context of diplomatic protection.



Since the Nottebohm ruling, it is also possible to identify an emerging international regime around the problem of statelessness; the main actors being located within United Nations bodies, international NGOs, local NGOs and also at the grassroots level.

### **Regional human rights regimes**

There are also several bodies of international law that have been developed through regional treaty organisations and which have restated the above-mentioned principles regarding non-discrimination and the prohibition against the arbitrary denial or deprivation of citizenship. For example, the 1969 American Convention on Human Rights (also known as the Pact of San José) reaffirmed the universal right to a nationality under Article 20 (1) and under Article 20 (2) provides the grant of nationality to children who do not have the right to acquire another nationality at birth. It further records under Article 20 (3) that ‘no one shall be arbitrarily deprived of his nationality or of the right to change it’ (Organisation of American States 1969). The prohibition against the arbitrary deprivation and denial of citizenship has most emphatically been reiterated by the Inter-American Court of Human Rights which ruled that:

*Although the determination of who is a national of a particular state continues to fall within the ambit of state sovereignty, states’ discretion must be limited by international human rights that exist to protect individuals against arbitrary state actions (Inter-American Court of Human Rights 2005)*

In *Dilcia Yean and Violeta Bosico v. Dominican Republic* the Inter-American Court concluded that the Dominican Republic’s discriminatory application of nationality and birth registration laws and regulations rendered children of Haitian descent stateless and unable to access other critical rights, such as the right to education, the right to recognition of juridical personality, the right to a name, and the right to equal protection before the law (Inter-American Court of Human Rights 2005). In so doing, it affirmed the human right to nationality as the gateway to the equal enjoyment of all rights as civic members of a state and a means of confronting the country’s xenophobia (Baluarte 2006).

The above mentioned ruling is especially important since it records that international law may regulate nationality by limiting states’ discretion to grant nationality on the basis of 1) the principle of non-discrimination, as illustrated by a state’s obligations to guarantee equal protection before the law; and, 2) the requirement to prevent, avoid, and reduce statelessness. The ruling also affirms that states cannot base the denial of nationality to children on the immigration status of their parents and that the proof required by governments to establish that an individual was born on a state’s territory must be reasonable.

In the context of Africa, the 1981 African Charter on Human and People’s Rights (ACHPR) restates the rights included in the Universal Declaration. Although it does not mention nationality explicitly, it includes several articles that apply the principles of non-discrimination, equality before the law, and the rights of equal access; together, these

articles severely restrict the conditions under which nationality may be denied. Articles 2 and 3 set out the universal provision of human rights, regardless of ‘race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status’; Article 13 extends additional rights to citizens; however, the non-discrimination clause in Article 2 above suggests that it would equally apply to those eligible for citizenship (Organisation of African Unity 1981). Finally, it is important to note that even though the 1999 African Union Charter on the Rights and Welfare of the Child has only been ratified by 45 states, it contains additional provisions that seek to protect children from some of the consequences associated with the arbitrary denial of citizenship and the vulnerability that such practices create.<sup>14</sup> Most important, Article 6 of the African Charter on the Rights and Welfare of the Child proclaims the child’s right to acquire a nationality. Also relevant is article 6 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

Within the European system, a number of central conventions and related instruments have been introduced which specifically prohibit the denial and deprivation of citizenship and significantly advance international jurisprudence in this area. All of the European conventions and the views of international supervisory bodies, including the OSCE High Commissioner on National Minorities and Venice Commission are remarkably consistent in that they emphasise that human rights apply to all people, irrespective of their nationality status. The most important sources of law in this region include the 1950 European Convention on Human Rights (ECHR) and its five protocols, corresponding rulings from the European Court of Human Rights, and the Consolidated Treaties of the European Union.

The 1950 Convention and its protocols contain several provisions that constrain state’s actions to deny or deprive eligible individuals of the right to citizenship. This includes Protocol 12 and Article 8 which concerns the right to private life (Council of Europe 2003). In addition, the 1963 European Convention on the Reduction of Cases of Multiple Nationalities and on military obligations establishes rules to reduce cases of multiple nationalities. In the case of the acquisition of a new nationality or the renunciation of one nationality, it also addresses the legal consequences of loss of nationality for persons concerned, including children.

As regards statelessness, the 1997 European Convention on Nationality (ECN) is a crucial instrument. The main principles of the Convention are the prevention of statelessness and non-discrimination in questions of nationality, in matters of sex, religion, race, colour, national or ethnic origin. It also calls for respect of the rights of persons habitually resident on the territories concerned and thus applies to certain categories of non-citizen. The Convention also provides, amongst other things, for rights to naturalisation for long-term residents. It prohibits the arbitrary withdrawal of nationality and stipulates that the procedures governing applications for nationality must be just, fair and open to appeal (Council of Europe 1997). Of central concern, in the context of post-Cold war Europe, the Convention also lays down the principles concerning persons in danger of being

left stateless as a result of state succession and clarifies military obligations of persons possessing more than one nationality. One of the most significant expressions of concern against arbitrary denial of citizenship is found in the brief Article 4 which sets out the rules on nationality and guiding principles to prevent statelessness. Article 6 further contains rules which specify these principles with regard to acquisition of nationality.<sup>15</sup> The 2006 European Convention on the Avoidance of Statelessness in relation to State Succession, which entered into force on 1 May 2009, sets out important protections including the granting of citizenship to all who had it at the time of state succession on condition of residence and historic connection.

The European Convention on Human Rights has recently been interpreted by the European Court of Human Rights (ECtHR) in the case of Latvia, a country that experienced the turmoil of state restoration following the break-up of the Soviet Union. In a groundbreaking ruling, the ECtHR judged that Latvia was discriminating against a permanent non-citizen on the basis of her citizenship status. On 18 February 2009, the European Court of Human Rights issued a judgment in the case of *Andrejeva v. Latvia* (Application no. 55707/00) which centred on claims of discrimination made by a non-citizen of Latvia who had received a lower pension than Latvian citizens (Council of Europe 2009). Andrejeva, who had arrived in Latvia as a child, had spent her entire working life there and only became stateless as a result of the break-up of the Soviet Union in 1991. Even though she remained in Latvia all her working life, she received a smaller pension than Latvian nationals. The ECtHR upheld her complaint and commented on the disadvantage in Ms Andrejeva's situation as a 'permanently resident non-citizen' of Latvia. It concluded that Latvia was "the only State with which she has any stable legal ties and thus the only State which, objectively, can assume responsibility for her in terms of social security" (Council of Europe 2009).

## 4. Human rights discourse and policy

The development of a body of international jurisprudence on the prohibition of nationality-based discrimination has been further encouraged by the advocacy efforts of international organisations, non-governmental actors, and particular states. High profile organisations and individuals, including the UN Secretary General, have drawn an explicit link between the importance of nationality and the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Further publications by high-level working groups within the UN system, in addition to UN agencies and specialised NGOs, has firmly put the issue of statelessness on the global agenda.

### Advocacy at the United Nations

Within the UN system, several working groups have sought to address the problems related to exclusion and denial of citizenship, above all the Committee on the Elimination of Racial Discrimination (CERD). In March 1997, at its fiftieth session CERD proposed that the Sub-Commission on Prevention of Discrimination and Protection of Minorities prepare a study on the rights of non-citizens. Two years later, the Commission on Human Rights Sub-Commission on the Prevention of Minorities Working Group on Minorities published a report entitled *Citizenship and the Minority Rights of Non-Citizens*. This report examined four questions in the context of citizenship controversies, namely, the status of those who: a) already have the citizenship of the State concerned but are at risk of losing it, b) live in a territory which has come under new sovereignty and thus need a new citizenship, c) are stateless, or d) have moved from his or her country of citizenship to another country for settlement. The report recorded that states may not make distinctions between different sets of applicants for naturalization and that doing so might be a violation of the International Covenant on the Elimination of All Forms of Racial Discrimination. The report also noted that many states ignore this rule (Eide 1999).

In 2001, David Weissbrodt, UN Special Rapporteur on Non-Citizens, issued his preliminary report entitled, *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities – the rights of non-citizens*, which was followed by a final report two year later (Weissbrodt 2001, 2003). In these reports, Weissbrodt highlighted the use of measures by states to exclude persons and deprive them of the most fundamental rights, including the right to citizenship. The 2003 report considered the problem of denial of citizenship with particular reference to state succession and provided a working definition of discrimination as an action which ‘lacked objective and reasonable justification’. It also established the parameters under which states may differentiate in their treatment of citizens and non-citizens and criticised the design of restrictive citizenship laws that have either the purpose or effect of discriminating on the basis of race, ethnicity, national origin or other prohibited criteria.

Also in 2003, the UN Commission on Human Security produced a report *Human Security Now* that underlined the importance of citizenship for respect of other rights and the advancement of human security. It defined human security as complementing state

security, furthering human development and enhancing human rights; it also noted that the denial of citizenship undermined the promise of human security.

*Citizenship ...determines whether a person has the right to take part in decisions, voice opinions and benefit from the protection and rights granted by a state. But the outright exclusion and discriminatory practices against people and communities—often on racial, religious, gender or political grounds—makes citizenship ineffective. Without it, people cannot attain human security* (Human Security Commission 2003: 133).

The above argument – that citizenship is essential for human security – became a central focus of inquiry for CERD which issued, in 2004, its *General Recommendation No. 30* drawing attention to the practice of discrimination against non-citizens and connecting the issues of discrimination, denial of citizenship and the social and economic effects of exclusion. In this document, CERD made specific recommendations and noted the problems of denial of citizenship that resulted from barriers to naturalisation and the relationship between denial of citizenship and the Convention's anti-discrimination principles (OHCHR 2004).

In 2008, the Independent Expert on Minorities issued her own report on the discriminatory denial or deprivation of citizenship as a tool for exclusion of national, ethnic, religious and linguistic minorities. The Independent Expert claimed that discrimination was both “a cause and a consequence of State actions that seek to marginalize minorities” (United Nations General Assembly 2008: 6) and reiterated the finding of the Human Rights Committee in its general comment No. 15 which argued against a firm distinction between aliens (non-citizens) and formal citizens. She also illustrated the extent of the problem by recording abuse against minorities who had been denied or deprived of citizenship in Africa, Asia, Europe, Latin America and the Caribbean. Her report concluded with further recommendations to correct and prevent situations that might give rise to the denial and deprivation of nationality; for example, registering all children and issuing birth certificates immediately; allowing for the possibility of multiple nationality; providing full access to identity documentation in a non-discriminatory manner.

In addition, it is important to highlight the work of the Human Rights Council which has passed several resolutions on issues relating to statelessness—most importantly, Resolution 7/10 of 27 March 2008 on Human Rights and the Arbitrary Deprivation of Nationality which called upon the Secretary-General of the United Nations to gather information from states on this matter. In January 2009, the Secretary-General published reports received from 29 states<sup>16</sup> and also included responses from UNHCR, international organisations and non-governmental bodies, including Refugees International (United Nations Human Rights Council 2009a). The Secretary-General's report enabled UNHCR to make general recommendations and publicised the ongoing challenge of statelessness at the highest level within the UN system. More recently, the Human Rights Council issued a resolution requesting the Secretary General to prepare a report on the right to nationality

with emphasis on the issue of arbitrary deprivation of nationality, including cases of state succession.<sup>17</sup>

### **UNHCR, multilaterals and other UN agencies**

Rather than create a new institution, the 1961 Statelessness Convention provided for the establishment of an international body which would serve to examine and assist individual claims. When the Convention came into effect in 1974, the General Assembly asked UNHCR to fulfil this role. Since then, UNHCR's mandate has expanded and the agency now has a global mandate on statelessness which is not limited to action in the state parties to the 1961 or 1954 Conventions. UNHCR now operates a small unit devoted to the issue of statelessness which supports a range of field activities. For example, since 2005, it has assisted 18 countries with surveys, registration campaigns and population censuses. It has also provided technical advice and promoted legal reforms to address gaps in nationality and related legislation in more than 35 States. In addition, UNHCR increasingly took an operational role to prevent and reduce statelessness, most commonly through providing information and legal aid to affected individuals and populations. It has also supported the former Commission on Human Rights and its successor, the Human Rights Council, in the preparation of resolutions on human rights and arbitrary deprivation of nationality.

Over the past decade, in particular, UNHCR has supported more training activities and has performed a vital public information role with the publication of several high profile documents including the *Handbook for Parliamentarians* (Inter-Parliamentary Union 2005) which aims to provide elected representatives with a broad description of the international principles regulating nationality and statelessness as well as a general overview of the problem of statelessness in *Refugees Magazine* (UNHCR 2007). It should be noted that UNHCR has, in addition, supported the gathering of visual documentation through its collaboration with Greg Constantine, a distinguished photojournalist whose work has brought to light the conditions in which stateless populations live. Most importantly, in February 2009, UNHCR published *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*, which is a particularly useful tool that aims to facilitate statelessness determination procedures and to provide a mechanism for analysing situations where persons are stateless or are at risk of becoming stateless (2009b).

According to UNHCR:

*The Framework is designed to identify causes of statelessness, obstacles to acquisition of nationality and the risks faced by stateless persons as well as to highlight the capacities of all concerned stakeholders to minimize those risks* (UNHCR 2009b: iv).

In a different capacity, UNICEF and Plan International have worked simultaneously to call attention to the problems associated with statelessness among children (Crossette 1998). Together, they spearheaded a ten-year long campaign on universal birth registration designed to curtail some of the consequences of vulnerability which affect both *de jure*

and *de facto* stateless persons and which include the challenge of proving one's nationality, accessing basic services, travelling, marrying, founding a family, having a child and protecting one's children from the dangers of legal anonymity. The case for universal birth registration was also made as a means of preventing trafficking. To this end, Plan launched a targeted global campaign in 2005–06 through its regional offices and, with the assistance of UNICEF, lobbied to ensure that birth registration was included as a recommendation in the 2006 *UN Secretary General's Study on Violence Against Children*. In addition, UNICEF highlighted the link between birth registration and statelessness in its 2008 *Child Protection Strategy*: “by documenting the relationship between the child, his or her parents and place of birth, registration facilitates the acquisition of nationality by birth or descent, helping to prevent statelessness” (UNICEF 2008:7). The efforts of these two organisations in particular have drawn attention to the need to ensure that policies are in place to prevent statelessness at birth and also to ensure that governments develop public information campaigns to reach out to those entitled to nationality but unable to access their rights due to lack of funds or for other practical reasons.

In parallel to the Plan/UNICEF campaign, the Asian Development Bank (ADB) has examined the impact of birth registration campaigns in Asia and has reached different conclusions. While it recognised that birth registration may provide a route to security, field research in Bangladesh, Cambodia and Nepal revealed that other means of documentation are also increasingly important and may substitute for birth certificates. The increase in other methods of identification may conversely devalue real documents by encouraging bribery and corruption and the creation of black markets which negatively affect poor and vulnerable populations and may exacerbate their exclusion (Vandenabeele 2007; Vandenabeele & Lao 2007). The policy implications of the ADB's findings for national governments demonstrate a need to pay greater attention to local political and economic conditions and to exhibit more flexibility when determining nationality; they also suggest that reform of the governance sector may help reduce the problems of statelessness as a result of non-registration of births.

### **National policy actions and state reporting on statelessness**

While more states have been urged to accede to the statelessness conventions, non-parties have been able to address some of the symptoms of statelessness through national legislation. The most high profile example is the United States where a bill introduced by Rep. Sheila Jackson-Lee (Texas) in January 2009 has been referred to the Committee on Foreign Affairs. The proposed legislation seeks to prevent statelessness by decreasing trafficking and discrimination. The author notes that the lack of nationality (citizenship) and the lack of national documentation often result in:

*severe hardships and discrimination, particularly the inability to pursue lawful employment and a sustainable livelihood, own property, or enjoy legally protected family bonds and increases the likelihood that such persons may fall victim to traffickers and organized*

*criminal groups who prey on the vulnerability of unprotected de jure or de facto stateless persons* (United States Congress 2009).

Specifically, the bill seeks to increase political and financial support for UNHCR's work on the prevention and elimination of both *de jure* and *de facto* statelessness, including US\$ 5 million of appropriations to UNHCR and US\$ 3 million to UNICEF. It also calls for the creation of an Inter-Agency Task Force on Statelessness composed of representatives from UNHCR, UNICEF and related UN agencies.

Since 2008, the US State Department has monitored the situation of stateless people and detailed their conditions in its annual Human Rights reports. It has also dedicated staff in the Office of Policy and Resource Planning (based in the Bureau of Population, Refugees, and Migration) who are both monitoring the plight of stateless people and acting as a point of coordination regarding US governmental policy.

In addition to the United States, a handful of advanced democracies have sought to address the problems of statelessness by introducing determination procedures and mechanisms for handling stateless populations within their borders. Most notably, Spain and Hungary have emerged as pacesetters by amending their nationality legislation to this end. In Hungary, the government amended the Aliens Legislation to establish a formal stateless determination procedure which 'ensures access to a legal identity and the right to a protection status on the sole ground of being stateless' (Gyulai 2007: 22). Bangladesh, Sri Lanka, Nepal and Mauritania have also introduced domestic legislation to address their historic problems of statelessness. The achievement of these countries in addressing the problem of statelessness, and specifically the creative approach taken by Hungary and Spain, sets an important precedent for other states.

### **Advocacy by Western NGOs**

Several non-governmental actors have sought to advance an agenda for the protection of statelessness. Among the most active are Refugees International and the Open Society Institute's Justice Initiative, both based in the USA, which have paved the way for international advocacy efforts. In 2005, Refugees International mapped out the problem of denial of citizenship in a study entitled *Lives on Hold: the Human Cost of Statelessness* (Lynch 2005). This report was the first global survey of its kind and included case studies based on fact-finding visits to Bangladesh, Estonia and the UAE as well as brief reports on the situation in some 70 countries around the world. In March 2009, Refugees International published a follow-up, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness* which presented a more comprehensive view of the plight of stateless people and is the most authoritative survey on the subject (Southwick & Lynch 2009).

For its part, the OSI Justice Initiative has hosted several thematic sessions on nationality problems, primarily, though not exclusively, in the African context. Through the OSI network, the Justice Initiative has carved out a particularly influential role by drawing



together experts from the region to design both legislation and support international litigation, most famously against the Dominican Republic in the case of *Dilcia Yean and Violeta Bosico v. Dominican Republic* as described above.<sup>18</sup> Through the Africa Governance Monitoring and Advocacy Project (AfriMAP), an initiative of the Open Society Institute network's four African foundations, the OSI has also promoted advocacy work around gaps in citizenship protections at African Union level and is currently developing a proposed protocol to strengthen protection for stateless people and unprotected minorities within the African Union.

Two London-based organisations, the Equal Rights Trust (which works to combat discrimination and promote equality) and the London Detainee Support Group have highlighted the vulnerability of people who have been detained while their immigration status is under review; many of these people are de facto stateless. The London Detainee Support Group, in particular, has considered the implications of indefinite detention and the human rights implications this poses for state parties to the above-mentioned conventions and European instruments. Finally, it should be noted that, at particular times, celebrated human rights organisations, Amnesty International, Minority Rights Group International and Human Rights Watch have played a prominent role in advancing an agenda on behalf of stateless populations by publishing occasional reports, participating in parliamentary and congressional hearings and by appearing at the 2001 UN World Conference Against Racism in Durban.

### **Local NGOs, individual efforts and grassroots campaigns**

Some of the above mentioned organisations have worked in partnership with NGOs in the field to advance agendas aimed at local policymakers. Most notably, the OSI network has collaborated with several African NGOs to support awareness raising and monitoring projects, for example, on the repatriation of Mauritians from Senegal. Partners include Anti-Slavery International and the West African Refugees and Internally Displaced Persons Network (WARIPNet).

Many other local organisations have developed particular capacity to address citizenship and nationality issues under the umbrella of human rights and equality. For example, from Kathmandu JAGRIT Nepal has used the internet to send regular briefings to raise awareness in the West about mobilisation campaigns in support of the landless Madhesi communities in the Terai plains; the Association of Human Rights Activists has campaigned on behalf of the tens of thousands of refugees expelled from Bhutan on account of their contested nationality status. In South Asia, following a 2003 high court ruling which allowed 10 Biharis to obtain citizenship and voting rights in Bangladesh, organised Bihari groups have become increasingly vocal and have pressured, with some success, the Bangladeshi government to bring a resolution to their protracted status as unwanted and stateless persons born in Bangladesh. The Arakan Project based out of Bangkok has served as the most authoritative independent monitor of the plight of the hundreds of thousands of Rohingya who have endured longstanding persecution by the

Burmese junta and has made several submissions before UN bodies, most recently the Committee on the Elimination of Discrimination Against Women (CEDAW) (Arakan Project 2008). Through its work, the Arakan project has raised media awareness and called attention to the emergency situation of the large numbers of Rohingya boatpeople who have been captured by Thai and Indonesian authorities and others who have drowned at sea (Mydans 2009).

In Africa, the Nairobi-based Centre for Minority Rights (CEMIRIDE) has published extensive research on the situation of the statelessness of Nubians in Kenya and has called attention to the plight of pastoralists also in Kenya. Through media training, research, and facilitated talks with the Government of Kenya, CEMIRIDE has helped to provide a forum for minority rights and has been credited with reactivating the Pastoralist Parliamentary Group (PPG) in Parliament. Similarly, from the Great Lakes area, Action pour la Promotion et la Défense des Droits des Personnes Défavorisées (APRODEPED) has worked to advance the human rights of stateless Banyamulenge and others by providing legal aid and representation before the courts. In addition, the tireless work of Judge Unity Dow in Botswana should be recorded most notably for her efforts to challenge the citizenship laws. In *Attorney General v Unity Dow* (CA No. 4/91, 3 July 1992), Dow, a distinguished human rights activist, successfully challenged the legitimacy of the Citizenship Act, which denied Botswana citizenship to her children on the basis that her husband is a foreigner. The gender discrimination inherent within the Botswana Citizenship Act was found first by the High Court, and later by the Court of Appeal, to be in violation of the Constitution (Dow 1995).

In the Middle East, human rights organisations working on issues of nationality have had to contend with repressive governments and multiple forms of abuse including the withdrawal of citizenship, discrimination on the grounds of religious belief, and gender-based policies that have excluded women from enjoyment of their civil and political rights. In the Gulf states, the plight of the Bidun, a theme taken up by Refugees International, has mobilised local actors in Kuwait and the UAE, primarily the Kuwait Society for Human Rights (KSHR), an organisation which was only licensed in August 2004, after 10 years of operating without formal government approval. The KSHR has worked with independent filmmaker Norah Hadeed who produced a short documentary on the plight of the Bidun. A new Islamic NGO, the Kuwaiti Society for Fundamental Human Rights (KSFHR) has also spoken out on the situation of the Bidun in Kuwait (US State Department 2007). Another longstanding issue is the ongoing situation of Palestinians within Israel and those under the jurisdiction of the Palestinian Authority and UNRWA (e.g. Gaza, West Bank, Lebanon). Within Israel and the Palestinian Authority, the Legal Centre for Arab Minority Rights in Israel (ADALAH) has provided legal aid and supported both local and international advocacy campaigns; most recently, it has challenged the constitutionality of the Israeli Citizenship Law regarding the ban on family unification, and the right to family life.

With offices in Washington DC, San Jose (Costa Rica), Rio de Janeiro and Buenos Aires, the Center for Justice and International Law (CEJIL) has emerged over the past fifteen

years as one of the most effective human rights advocacy organisations to champion the cause of nationality issues in the Americas. In collaboration with Roxana Altholz of the International Human Rights Law Clinic at the University of California at Berkeley, CEJIL worked to provide legal assistance to the Centro de Mujeres Dominicano-Haitianas – MUDHA – as they took the case of Yean and Bosico to the Inter-American Court of Human Rights. With the dynamic head of MUDHA, CEJIL has steadfastly kept the pressure on the government of Dominican Republic to implement the decision of the Inter-American Court.

In Europe, Roma organisations monitor the discriminatory treatment of minority groups and have provided legal aid, community support, education and training. Most notable is the Budapest-based European Roma Rights Centre, a public interest law organisation which has led concerted advocacy campaigns at the international level, often in conjunction with the Open Society Institute, to promote the rights of Roma, Sinti, Gypsy and other groups. The ERRC has also led domestic efforts to monitor and promote the implementation of anti-discrimination legislation. In particular, the ERRC has called attention to the problem of undocumented people who are unable to access public services and are, in many cases, *de facto* stateless (Perić 2003, Struharova 1999). While the ERRC works in over 30 European countries, there are a substantial number of organisations working on Roma issues such as the Roma Education Fund based in Budapest and the National Roma Centrum in Kumaovo, Macedonia, which provides legal aid.

Grassroots campaigns in the West have also played a key political role, raising awareness alongside international litigation. The focus of grassroots efforts has been on both the need to regularize the status of irregular workers, unsuccessful asylum seekers and overstayers, and the inclusion of discriminated minorities. Some protests have been organised through local NGOs, such as the Joint Council for the Welfare of Immigrants (JWC) in the United Kingdom, but other mass protests have been coordinated by non-professional associations, above all migrant community organisations and collectives. Notable events have taken place across Europe. In May 2007, there was a public rally entitled ‘From Strangers into Citizens’, which was motivated by the desire to create a one-off regularisation—or ‘pathway into citizenship’. Specifically, the event aimed to ensure that migrants who have been in the UK for four years or more should be granted a two-year work permit and at the end of that period, subject to employer and character references, they should be granted leave to remain. While these activities do not necessarily relate to stateless populations but rather the integration of immigrants whose nationality may not be in question, some stateless individuals have benefited from the increased public attention (See Blitz and Otero-Iglesias 2010).

Other targeted campaigns occurred in major European cities. In France, the debate over the ‘sans papiers’, the undocumented former migrants from North Africa, was revived nine years after the first major occupation of a public building. In April 2007, more than 90 individuals occupied the Church of Saint Paul de Massy in l’Essonne, just south of Paris, demanding that their contribution to the French economy be recognised and insisting

on regularisation of their rights to work, social security and education. Smaller, yet pan-European, actions in 2007 also included the ‘caravan of the erased’ where a convoy of activists travelled from Ljubljana to Brussels via several European cities to protest the cancellation of residency rights and mistreatment of more than 18,000 people who were struck off the national register and lost their social, economic and political rights shortly after Slovenia achieved independence in 1991. Through the Peace Institute in Ljubljana, the Equal Rights Trust and the OSI Justice Initiative and with the assistance of an Italian legal team, the local Slovene groups also sponsored the pending litigation before the European Court of Human Rights, *Makuc and Others v. Slovenia* (Council of Europe 2007).

### **Further policy considerations**

The recent increase in public information and advocacy has served to remind international bodies and non-governmental organisations that the persistence of statelessness is a complex matter that underlines the centrality of effective protection. While several international legal instruments offer a means of protecting those who are currently stateless—or at risk of becoming stateless—the failure to ratify and comply with the conventions on statelessness, as well as the 1951 Refugee Convention, and the deliberate discrimination against specific populations who are unable to realise their rights to nationality and, hence, state protection, have exposed major holes in the human rights regime. While there are considerably more mechanisms for protection since Arendt (2004) first described how the danger of human vulnerability hinges on state actions, the central tussle between state’s claims of internal sovereignty and the enforcement of universal human rights has not been resolved. Indeed, the most glaring contemporary example of the gulf between the human right to life and the exertion of sovereignty over nationality is illustrated by the precarious fate of the Rohingya ‘boat people’ whose claim to Burmese nationality has been contested by the government which demands that they prove they are Bengalis born in Burma – an unreasonable request given the fact that the authorities have issued registration cards that fail to mention the bearer’s place of birth and explicitly state that it cannot be used to claim citizenship (Arakan Project 2008). In the meantime, few states are prepared to take them in as refugees and, consequently, hundreds have drowned trying to reach a place of safety (Mydans 2009).

The persistence of statelessness raises several policy considerations. The non-adherence to the statelessness conventions, in addition to the limited effects of international advocacy on state actions, has given licence to discriminatory traditions which have intensified the vulnerability of certain populations. As a result, several stateless groups have remained out of reach of the international community and linger in appalling conditions while various aid projects and social assistance programmes have been developed quite literally around them, as is the case of stateless Nubians living in the Kibera slum on the outskirts of Nairobi. Addressing these concerns requires both greater commitment on the part of states to respect the obligations of the above international legal instruments – even if they have not officially acceded to the statelessness conventions – and the development of

anti-discriminatory policies and practices, including training of civil servants, reform of judicial institutions and the creation of a climate that respects the rule of law.

The capacity of states to deliver services in a non-discriminatory manner remains a major impediment to the elimination and prevention of statelessness, as noted in Farzana's (2008) study on the delivery of food aid to Bihari communities in Bangladesh and the extent of state bias in the provision of essential social services. In light of persistent discrimination, it is imperative that aid donors are given greater access to vulnerable and stateless populations. Where states continue to discriminate against stateless minorities, the burden on relief organisations is especially notable; arguably such excluded groups should feature more prominently in pro-poor development and social assistance policies sponsored by foreign donors (2008).

Equally, the challenges of reducing and preventing statelessness must be addressed through reform of the governance sector. This is especially relevant in the reduction of statelessness from birth. In spite of the remarkable achievements generated by the joint UNICEF and Plan International global advocacy campaign on birth registration, the introduction of civil registration systems has not been universally effective. As Vandenaabeele and Lao record in their 2007 study by for the Asian Development Bank, in the absence of the rule of law, poor populations are vulnerable to bribery and other hidden costs that may deter them from seeking to register the births of their children. Equally, the proliferation of black markets for documents, for example in Bangladesh, undermines the realisation of the human rights to nationality and identity, among others (Vandenaabeele & Lao 2007). Thus the need to build statelessness into the good governance agenda and, equally, the need for joined-up policy approaches to strengthen mechanisms that may address both primary and secondary causes of statelessness is apparent.

Finally, it is important to recognise the role of UNHCR as an organisation that has provided technical assistance for legislation to reduce and prevent statelessness. Evidence of good practice can be found in the cases of Ukraine, Sri Lanka and Nepal where the introduction and enforcement of new legislation has ensured that millions of formerly disenfranchised people have been given nationality and the prospect of a more secure life. While these countries have not necessarily achieved a comprehensive resolution to the problems of statelessness and the associated effects of exclusion, many of the remaining issues are essentially problems of governance, infrastructure and endemic poverty. Such problems are now arguably the concern of national governments, multilateral agencies and international donors and may be addressed through specific programmes to combat social exclusion, for instance in the case of the Dalits in Nepal who have been disadvantaged by both high fees and the long distances they must travel in order to reach documentation centres, or the Crimean Tartars in Ukraine who still struggle to find decent housing.

## 5 Recommendations

There is growing pressure, principally from international NGOs, refugee organisations, and human rights monitoring bodies for states to provide protection to those who do not fall under either the Refugee Convention or the 1954 and 1961 Conventions on statelessness, including children (Boyden & Hart 2007).

This paper has drawn attention to the increasingly narrow gap between the rights afforded to citizens and non-citizens and the need to address problems of statelessness as violations of international human rights norms (Van Waas 2008; Weissbrodt 2008).

The persistent problems associated with statelessness noted above are equally a matter for development agencies. As recorded above, in addition to the violation of several human rights, the denial and deprivation of nationality and the discriminatory exclusion of particular communities has a poverty-generating function.

Further recommendations to eliminate and reduce stateless therefore include the following actions:

1. States should ratify the 1954 and 1961 Conventions on Statelessness and should fulfil the obligations of these instruments including the introduction of necessary domestic legislation to provide procedures to determine status;
2. States should honour their human rights obligations to all those within the state's territory, irrespective of nationality status;
3. States should put in place adequate mechanisms to protect people from abuses that particularly affect stateless people, including human trafficking and the use of indefinite detention;
4. States should develop anti-discriminatory policies and practices, including the training of civil servants, reform of judicial institutions and the creation of a climate that respects the rule of law;
5. States should ensure that children are provided with the means to acquire a nationality at birth;
6. States should implement birth registration campaigns in cooperation with UNICEF and Plan International and provide mobile birth registration teams where necessary;
7. States should facilitate the naturalisation of stateless people, for example by relying on reasonable use of residency and language criteria, and by relaxing the requirements for naturalisation in cases involving stateless persons;
8. States should improve access to procedures relating to the acquisition, confirmation or documentation of nationality so that those eligible to receive citizenship are not

overburdened by fees; where necessary they should provide mobile registration units to ensure greater physical access to public administrative bodies responsible for issuing citizenship certificates

9. International donor governments should provide greater assistance to UNHCR to strengthen its work on the prevention and reduction of statelessness;
10. International donor governments and development agencies should ensure that aid effectively reach stateless groups;
11. States and international development agencies must improve the monitoring of the status of stateless people through their overseas embassies and in their human rights and country reports;
12. International funding bodies should support applied research by academics and non-governmental organisations in mapping the relationship between statelessness, poverty and vulnerability and in understanding the mechanisms that have encouraged effective reform.

# Annex 1: Literature on statelessness

## General themes

There is an emerging body of research that is related to the problem of statelessness and which has several intellectual sources. Some of the most widely cited publications include reports and articles on human security and specifically the rights of non-citizens (Aurescu 2007; Bhabha 1998; Frelick and Lynch 2005; Goldston 2006; Human Security Commission 2003; Lynch 2005; Weissbrodt 2003) (Sokoloff and Lewis 2005; Southwick and Lynch 2009).

Within the world of academia, one of the most influential writers on human security, Amartya Sen, has drawn attention to the problems associated with the lack of citizenship for personal and social development. Sen (2001) argues that citizenship is integrally connected with the possible enhancement of human capabilities; hence, the granting of citizenship removes some of the ‘unfreedoms’ that place people at risk from want and fear.

Others, however, challenge Sen’s claims and note that human security is often undermined by other domestic factors that operate at the sub-national level. One important counter argument is that in both weak and strong states where political divisions are defined by gender, ethno-national, religious, tribal, and party affiliations, there are many layers of discrimination that dilute the potency of citizenship by reinforcing discriminatory structures (Elman 2001).<sup>19</sup> Thus, rather than considering citizenship to be a unifying force, one may speak of several classes of citizenship and a range of entitlements (Cohen 1989).<sup>20</sup>

The vast majority of writing on statelessness and related issues, however, has not introduced theoretical considerations but has taken the form of descriptive reports which have sought to set an agenda at critical times. In the late 1990s, a precursor to the discourse on statelessness—primarily a discourse on the rights of non-citizens who were not necessarily stateless—centred on issues of equality and were justified on the grounds that exclusion fosters inequality and hence, insecurity.

Indeed, this was one of the central premises of the UNDP’s 1994 *Human Development Report* and the more influential Human Security Commission report entitled *Human Security Now: Protecting and Empowering People* (2003). The reasons why this discourse was important to the emergence of a new and explicit discourse on statelessness lie in the fact that through these publications the UN had identified a causal connection between developmental concerns such as poverty and deprivation, the protection of human rights, and problems of governance—all of which directly relate to statelessness:

In the final analysis, human security is a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced. Human security is not a concern with weapons—it is a concern with human life and dignity (UNDP 1994:22).

Over the past five years, the policy language has shifted from a development focus to a rights-based theme and, in addition to UNHCR, a number of UN monitoring bodies and



NGOs have drawn particular attention to the practice of denying and revoking rights to citizenship and the related problem of linking minority rights, namely the rights to enjoy and practice one's culture, language, or religion, to citizenship status (Goldston 2006; Open Society Justice Initiative 2006; UN Human Rights Council 2009; UNHCR 2007).

In 2008, the UN Independent Expert on Minorities devoted a section of her annual report to the arbitrary denial and deprivation of citizenship (UN General Assembly 2008). The United Nations Human Rights Council recently adopted a resolution on the human rights and arbitrary deprivation of nationality which named statelessness as a human rights issue and reaffirmed that the right to a nationality of every human person is a fundamental human right (UN Human Rights Council 2009).

To date, the most comprehensive studies on statelessness include the 2008 publication, *Nationality Matters: Statelessness under International Law* by Laura Van Waas and the 2009 report by Katherine Southwick and Maureen Lynch on behalf of Refugees International, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*. Van Waas dissects the two statelessness conventions and related international instruments and examines the legal provisions for stateless people and the need for reform in key areas including conflict of laws, state succession, and arbitrary deprivation of nationality, birth registration and migration.

The report, 'Nationality Rights for All: A Progress Report and Global Survey', like the 2005 *Refugees International* study 'Lives on Hold: the Human Cost of Statelessness', provides a wide-ranging overview of the political and human rights challenges that stem from the lack of nationality and offers a useful global survey of the problem on a country-by-country basis. The publications produced by *Refugees International* include interview data gathered during field visits to the region. The value added of the reports and field studies by Refugees International lies in the inclusion of historical details and micro-level descriptions of the way in which repression and the denial of human rights affects individuals on the ground.

Another influential publication is James Goldston's 2006 article in *Ethics and International Affairs*.<sup>21</sup> Goldston acknowledges that while there is growing consensus that nationality laws and practice must be consistent with general principles of international law above all human rights law, there is a clear protection gap. He then illustrates how the denial of citizenship excludes people from the enjoyment of rights and pays particular attention to 'indirect discrimination' which occurs when "a practice, rule, requirement, or condition is neutral on its face but impacts particular groups disproportionately, absent objective and reasonable justification" (Goldston 2006:328). He concludes that the growing divide between citizens and non-citizens in practice is "primarily a problem of lapsed enforcement of existing norms" (Goldston 2006:341) and offers a set of useful recommendations to remedy this situation.

In addition to the above experts, several academics have touched on the issue of statelessness in their philosophical and sociological studies; interpretations of international law; examinations of regional conventions and treaty systems; research on children, gender issues and birth registration; and most recently, through their investigations of the effects of the war on terror, for individuals held in detention. These are briefly discussed below.

### **Philosophical and sociological studies**

Within the fields of social and political theory, there has been a growing interest in Hannah Arendt's work, which has led to a re-examination of her brief writings on statelessness included in *The Origins of Totalitarianism* (2004). In Arendt's account, statelessness was symptomatic of the hollowness of human rights that could only be guaranteed by states. However, only a few scholars have linked Arendt's work to the failure of the human rights regime to provide protection for today's stateless populations (Leibovici 2006; Parekh 2004; Tubb 2006). One notable exception is Richard Bernstein (2005; 2008), a peer and colleague of Arendt. In general, one may observe that the issue of statelessness has not been addressed squarely among contemporary authors—only indirectly in the context of alienage (Benhabib 2004; Carens 2005). For example, Gillian Brock and Harry Brighouse (2005) make an important contribution to contemporary political theory and cosmopolitan claims to citizenship by bringing together scholars who examine the moral obligations to foreigner residents on the basis of national identity; but the authors do not single out those who are excluded from participating on account of their nationality status. More influential is the work of Seyla Benhabib (2004) who goes further than Brock and Brighouse in her condemnation of the denial of access to aliens, a term which is open to both foreign non-citizens and *de facto* stateless persons.

Others who have approached the issue of nationality have often addressed the subject not from the perspective of rights per se but from a pragmatic problem of the politics of integration which has implicitly drawn attention to *de facto* stateless persons. For example, Rainer Bauböck (2006) records in his study on acquisition and loss of nationality that political pressure from pro or anti-immigrant forces has been especially significant in helping to define the situation for non-citizens, some of whom have been regularised as a result of activist campaigns. Arguably, the primary contribution of scholars writing on citizenship has not been in defining the problem of statelessness but rather in pushing some of the boundaries of liberal political theory and articulating challenges to realist constants of sovereignty, fixed notions of membership, and the conceptual division of state responsibility between domestic and external arenas as recorded in the literature on cosmopolitanism.

### **Legal analyses**

Within the field of International Law, some older texts provide an interesting historical account of the development of UN legislation on statelessness and the impact of the conflict of nationality laws on the creation of stateless populations (Aleinikoff 1986; Brownlie 1963;

Ginsburgs 1966; Loewenfeld 1941; Samore 1951). While these publications are set in the context of Cold War divisions, and have been supplemented by more recent writings that reflect contemporary geo-political realities in newly independent states (Bowring 2008a; Craven 2000), one of the most comprehensive treatments of this subject from a rights-based perspective remains Paul Weis's 1979 *Nationality and Statelessness in International Law*. Weis's book addresses the conceptual challenge of placing nationality in the context of international law and examines conditions under which it may be withdrawn, and multiple nationality granted. Among the most useful chapters is his study of nationality in composite states and dependencies which pays particular attention to the operations of the British Commonwealth in the context of nationality rights; the chapter on conflict rules also offers an initial attempt to set out typologies of statelessness (Weis 1979).

Several well-known legal experts have further evaluated the right to nationality and the principle of non-discrimination within international human rights law (Aurescu 2007) (Adjami and Harrington 2008; Doek 2006; Donner 1994; Goldston 2006; Weissbrodt 2001, 2003, 2008). Most important of these is David Weissbrodt's (Weissbrodt 2008) *The Human Rights of Non-citizens*. Weissbrodt reiterates his conclusion from his 2003 report and argues that regardless of their citizenship status, non-citizens should enjoy all human rights just as formal citizens unless exceptional distinctions serve a legitimate state objective. Further relevant studies have appeared as a result of examinations of related international instruments including the Convention on the Rights of the Child (Buck 2005; Detrick 1999). Many of these studies are cited by (Van Waas 2008; Weissbrodt 2008) who also includes a detailed review of the literature on the above-mentioned aspects of law.

One central theme which links the studies on international instruments to the broader problem of human security and the practical aspects of protection is the issue of implementation and the identification of a gap between the rights that international human rights law guarantees to non-citizens and the realities they face (Batchelor 1995; Gyulai 2007; Hodgson 1993). Also relevant is the distinction between the treatment of refugees and stateless people under law and the human rights obligations of states to both populations (Anderson 2005; Batchelor 1995; Boyden and Hart 2007; Grant 2005; Weissbrodt and Collins 2006; Weissbrodt 2008). In recognition of these obligations, some practitioners have sought to examine the possibility of transforming international legal principles into law (Batchelor 2006; Gyulai 2007; Van Waas 2008). For example, Van Waas presents an interpretation of the existing international framework to explore the scope of the civil and political as well as the economic, social and cultural rights of stateless populations under international human rights laws.

## **Regional studies**

There have been some notable studies of regional conventions and the commitments of regional treaty bodies with respect to stateless persons and non-citizens. Several have focused in particular on the European region with an emphasis on the European Union (Batchelor 2006; Dell'Olio 2005; Shaw 2007) and the Council of Europe's Convention on

Nationality; others have examined the problems of dual nationality and the challenges of state succession, most notably in the Baltic states and former Soviet Union (Barrington 1995; Bowring 2008a) (Brubaker 1992; Gelazis 2004). Other regions have featured as well; for example, the Open Society Institute has published the influential Africa Citizenship and Discrimination Audit (OSI 2005). Most international legal studies that do not focus either on the development of international instruments or the expansion of European-specific jurisprudence tend to focus on selected regions. These are briefly described below.

### *Africa*

While Africa has been the site of considerable international advocacy on issues of nationality (Blitz 2009), relatively few academics have, until recently, written on the subject. The most widely reported include articles on state failure and related country-specific reports on the conflict between Ethiopia and Eritrea (Human Rights Watch 2003) and the internal conflict and state collapse in Somalia (Menkhaus and Prendergast 1995; Menkhaus 1998). These writings describe the context in which nationality laws were designed and focus on issues of governance alongside discrimination and citizenship. For example, the 2003 report by *Human Rights Watch* documents how the expulsion of people from Ethiopia, who had not taken up Eritrean citizenship, led to multiple instances of statelessness. Also relevant are writings on specific communities which highlight particular problems of citizenship in Kenya where stateless people are included among refugees (Bartolomei et al. 2003) and Southern Africa where there are large populations of *de facto* stateless people (Crush and Pendleton 2007).

### *Americas*

Historically, in the Americas where most states operate on the basis of *jus soli*, nationality issues have been less contested than in other regions. Nonetheless, certain human rights issues have attracted attention. These include important writings on racial discrimination and denial of citizenship in the Dominican Republic (Baluarte 2006; Human Rights Watch 2002; Wooding 2008). The USA has also come under scrutiny for its historical and current treatment of non-citizens (Aleinikoff and Klusmeyer 2000; Ansley 2005; Camerota 2005; Kerber 2005, 2007). In other parts of the Americas, contemporary flows of asylum seekers from the conflict in Colombia have also been the subject of academic investigation (Korovkin 2008).

### *Asia*

There have been several important studies on stateless populations in Asia. Most of them relate to protracted situations. For example, the Biharis (Farzana 2008; Lynch and Cook 2006; Paulsen 2006; Sen 2001) and Rohingya in Bangladesh and Myanmar have featured in major investigative reports (Amnesty International 2004; Arakan Project 2008; Refugees International 2008a); the Estate Tamils in Sri Lanka have also been the subject of research (Phadnis 1967; Van Waas 2008). The expulsion of ethnic Nepalese from Bhutan has been noted as well (Amnesty International 2000) (Hutt 2003) as has the fate of Tibetans (Hess 2006). Some studies have also highlighted the relationship between trafficking and statelessness in South Asia (Lee 2005) in addition to the particular

vulnerability of women, children and other forced migrants from Burma, many of whom are Rohingya who have been coerced at the hands of criminal organisations to transit through Thailand and the neighbouring states (Anderson 2005; Arakan Project 2008; Mydans 2009; Nyo 2001; Refugees International 2004). Recently some parliamentarians have drawn attention to the several hundred ethnic minorities in Hong Kong who hold British Nationals Overseas Passports but have been unable to register themselves in Hong Kong and now remain *de facto* stateless (Avebury 2009).

### *Europe*

Within the field of European studies, there has been renewed interest in the problems of nationality and the incorporation of non-nationals. One major tendency within a number of these studies has been their primary emphasis on legal residents (Beckman 2006) (Dell'Olio 2005; Pattie et al. 2004; Shaw 2007; Soysal 1994) and established ethno-national minorities (Minahan 2002). That said, the fate of undocumented migrants and the revision of nationality laws has featured in some excellent work. This includes reports on the resettlement of deported persons, principally Crimean Tatars, and evaluations of the Ukrainian government's efforts to reduce statelessness (Ablyatifov 2004; Uehling 2004, 2008), as well as critical studies on the barriers which Roma have faced as a result of discriminatory naturalisation requirements in the Czech and Slovak Republics (Linde 2006; Perić 2003; Struharova 1999).

It is also important to highlight some comparative studies (Hansen and Weil 2000) and work on nationality issues in advanced states such as Germany (Green 2000; Groenendijk and Hart 2007), Hungary (Magocsi 1997) and, in particular, Bauböck's research on ethnic Turks, the descendants of former guest workers in Germany and Austria, and recent pan-European investigations of membership rights in Europe (Bauböck 2006, 2007). Research on the problem of refused asylum seekers in the United Kingdom is also serving to fill an important gap (Blitz and Otero forthcoming; Coventry Peace House 2008; Equal Rights Trust 2009a, 2009b); (London Detainee Support Group 2007, 2008, 2009; Sawyer and Turpin 2005).

The most relevant studies that relate to the problem of statelessness tend to highlight the nationality problems associated with state restoration and the treatment of ethnic Russians in Estonia and Latvia (Barrington 1995; Bowring 2008a; Fehervary 1993; Ginsburgs 2000; Hughes 2005; Kionka and Vetik 1996; Vetik 1993, 2001, 2002; Wiegandt 1995). Studies also discuss the case of the 'erased' in Slovenia—the non-ethnic Slovenes who saw their residency rights cancelled shortly after Slovenia declared independence from the Socialist Federal Republic of Yugoslavia (Andreev 2003; Blitz 2006; Dedić et al. 2003; Jalušič and Dedić 2008; Zorn 2005).

### *Middle East*

Research on statelessness in the Middle East has identified some important instances of discrimination on the basis of nationality. Curtis Doebbler (2002) and Abbas Shiblak (2009) argue that there has been a systematic failure to apply international human rights

instruments to alleviate the plight of stateless people in the Middle East. The most widely researched groups include the Bidun (Ali 2006; Barbieri 2007; Rizzo et al. 2007) and, to a much lesser extent, the denationalised Kurds of Syria (Bryce and A.J. & Toyne 2000; Lynch and Ali 2006). The issue of Palestinian rights to nationality features prominently, not only in regard to Israel and international law (Feldman 2008; Peled 2005, 2008; Takkenberg 1988) but also to a much lesser extent in the context of historic discrimination by Arab host states (Knudsen 2009; Mavroudi 2008; Shiblak 2006, 2009).

#### *New Dimensions of Statelessness*

Global issues and challenges have given rise to important publications that have increased understanding not only about some of the causes of statelessness but also previously under-researched populations. For example, trafficking and children have recently featured in important studies by academics and advocacy organisations such as *Refugees International* and *Youth Advocate Program International* (YAP) (Berezina 2004; Bhabha 2003; Lynch 2008). An additional global issue concerns the war on terror. Since 2001, the relationship between statelessness and the war on terror has attracted the attention of some notable scholars and journalists on both sides of the Atlantic, not least because of the practice of placing foreign nationals in indefinite detention (Bowring 2008; Brouwer 2003; Equal Rights Trust 2009a, 2009b; Hegland 2007; London Detainee Support Group 2008, 2009; Stevens 2006; Wright 2009).

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# Endnotes

1. To date, 63 countries have become party to the 1954 Convention relating to the Status of Stateless Persons, and 35 countries have acceded to the 1961 Convention on the Reduction of Statelessness.
2. The Final Act makes reference to persons having renounced protection of their state for reasons considered valid. At the time this was equated with *de facto* statelessness.
3. Recent reforms have solved some of the above-mentioned problems of statelessness.
4. Other means of documentation are also increasingly important and may act as substitutes in some developing country contexts See: Vandenaabeele 2007; Vandenaabeele, C. & Lao, C.V 2007.
5. Under Article 27 the Covenant declares that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."
6. While states may insist on language tests as a condition for the acquisition of citizenship, the Article 27 affirms the rights of minorities to maintain and preserve their cultural identity and thus prohibits attempts to deny nationality on the grounds that minorities may speak another language or engage in different cultural practices.
7. For example, the nationality of married women and children is first mentioned in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws under chapters III and IV, respectively. The rights of married women have been further elaborated in the 1957 Convention on the Nationality of Married Woman. These principles have found an even stronger expression under Article 9 of the 1979 Convention on the Elimination of Discrimination against Women (CEDAW).
8. Although only 35 states have signed onto this new convention, this convention is significant because it explicitly acknowledges the role which the migration of workers plays in the global economy and applies the concept of "equality of treatment" in the case of non-citizens to the workplace. Under Article 25, this convention specifically prohibits the exploitation of migrants and calls upon states not to distinguish between citizens and non-citizens.
9. The text states that: "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
10. These include: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit; (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association.
11. Economic, social and cultural rights include (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions; (iii) The right to housing; (iv) The right to public health, medical care, social security and social services; (v) The right to education and training; (vi) The right to equal participation in cultural activities; (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.
12. Under Articles 20-23, and 24, the Convention calls upon states to treat stateless persons no less favourably than nationals with respect to rationing, housing, public education, public relief; and, social security, respectively.
13. Article 17 states that: 1) The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment; and, 2) The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.
14. See African Charter On The Rights And Welfare Of The Child available at [www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf](http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf)

15. The Convention states that: a) everyone has the right to a nationality; b) statelessness shall be avoided; c) no one shall be arbitrarily deprived of his or her nationality; d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.
16. Responses were received from: Algeria, Angola, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Colombia, Congo, Costa Rica, Ecuador, Finland, Georgia, Greece, Guatemala, Iraq, the Islamic Republic of Iran, Jamaica, Kuwait, Mauritius, Monaco, Montenegro, Qatar, Russian Federation, Spain, the Syrian Arab Republic, Ukraine and Venezuela.
17. See. Resolution 10/13 under United Nations Human Rights Council 2009b, pp. 49-53.
18. While the most important case was the 2005 ruling of the Inter-American Court in the case of *Yean and Bosico v. Dominican Republic*, other cases taken up by OSI include: *Good v. Botswana*, *People v. Côte d'Ivoire*, *Institute for Human Rights and Development in Africa v. Republic of Guinea Conakry and Makuc and Others v. Slovenia* regarding the 'erased' (pending).
19. See, for example, R.A. Elman, 'Testing the Limits of European Citizenship: Ethnic Hatred and Male Violence', *NWSA Journal*, 13/3 (2001), 49-69.
20. See the widely cited R. Cohen, 'Citizens, Denizens and Helots: The Politics of International Migration Flows in the Post-War World', *Hitotsubashi Journal of Social Studies* 21/1 (1989), 153-65.
21. See J.A. Goldston, 'Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens', *Ethics & International Affairs*, 20 (2006), 321-47.

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