

Forced Migration Review mini-feature

Statelessness

The four articles in this FMR mini-feature discuss how and why statelessness affects many people, present some of the work that is being done to improve the situation, and analyse continuing obstacles to ensuring the enjoyment of human rights for all. In addition to the articles, there are three 'snapshots' of stateless people in Europe.

This 16-page mini-feature is online at www.fmreview.org/afghanistan/statelessness.pdf. Please feel free to circulate it, link to it, print it out, etc. If you print it out please note that the format is A5 (half of A4); in order to print it out properly, please use your printer's 'Booklet' setting.

If you would like print copies of the full issue in which the mini-feature appears, please email the Editors at fmr@qeh.ox.ac.uk

The four articles and case-study stories are available individually in html, pdf and (for English) audio format at www.fmreview.org/afghanistan. They have been published as part of Forced Migration Review issue 46, 'Afghanistan's displaced people: 2014 and beyond', which is available in English, Arabic, French, Spanish, Dari and Pashto free of charge in print and online at www.fmreview.org/afghanistan. (Please note that the Dari and Pashto editions do not include this 'Statelessness' mini-feature.)

The status of statelessness 60 years on

Volker Türk (UNHCR)

www.fmreview.org/afghanistan/tuerk

Towards the abolition of gender discrimination in nationality laws

Zahra Albarazi and Laura van Waas (Tilburg University Law School)

www.fmreview.org/afghanistan/albarazi-vanwaas

Judicial denationalisation of Dominicans of Haitian descent

Liliana Gamboa and Julia Harrington Reddy (Open Society Justice Initiative)

www.fmreview.org/afghanistan/gamboa-harrington

Snapshots of stateless people in Europe

European Network on Statelessness

www.fmreview.org/afghanistan/ENS

Discrimination and the human security of stateless people

Amal de Chickera and Joanna Whiteman (The Equal Rights Trust)

www.fmreview.org/afghanistan/dechickera-whiteman



The status of statelessness 60 years on

Volker Türk

The 60th anniversary of the 1954 Convention on the Status of Stateless Persons is an opportunity to draw attention to the human face of statelessness, and to increase awareness of the impact of this issue on both the lives of individuals and societies more broadly.

There is a cruel contradiction in a world of nation-states in which millions of individuals are not recognised as belonging to any state. Sixty years ago, the international community agreed on the first international treaty regulating the status of stateless persons (to which 80 states are now party) and in 1961 on the Convention on the Reduction of Statelessness. Yet the scourge of statelessness persists, affecting the lives of individuals and communities the world over.

To be stateless is to not be considered as a national by any state under the operation of its law. Amongst many other things, a nationality entitles an individual to the full protection of a state. To be stateless therefore often implies a denial of the most basic rights, a denial of the documentation required to secure these rights and of many other elements that are necessary to lead a normal life. It also means being shunned and discriminated against, and the added pressure of passing on that stigma to children and future generations.

This is not to say that stateless people do not have ties to a particular country. However, as a result of state action or inaction, because of gaps in laws and procedures or simply because of an unfortunate convergence of circumstances, they have fallen through the cracks. This is almost always by no fault of their own.

In order to ensure every person has a nationality, UNHCR places great emphasis on promoting accession to the 1961 Convention, providing technical advice on the application of the Conventions and relevant human rights standards. However, where obstacles remain, we work towards stateless persons being granted a legal residence status similar to that enjoyed by refugees, allowing

them to access basic services. This is why UNHCR is also committed to promoting accession to the 1954 Convention, which regulates the treatment of stateless persons.

Since 2011 there have been an unprecedented 33 accessions to the two statelessness Conventions, with 22 states across four continents acceding to one or both of the Conventions. Most recently, Hungary and Mexico have withdrawn reservations to the 1954 Convention; Peru, Montenegro, Côte d'Ivoire and Lithuania have all acceded to one or both of the Conventions; and Georgia, Gambia and Colombia have passed the requisite legislation for accession. The intention is that the campaign to commemorate the 60th anniversary of the 1954 Convention will further bolster this momentum.

Positive steps

Preventive action needs to be taken to avert potential instances of mass deprivation of nationality and to ensure new situations of state succession, for example, do not result in statelessness. Further, nationality laws and administrative procedures must be reformed to eliminate discrimination and ensure that adequate safeguards are in place to prevent statelessness, particularly among children. To this end, UNHCR intensified the provision of technical advice and promotion of legal reforms in 2012 and 2013 to address gaps in nationality and related legislation in 56 states, notably from a gender equality and child protection perspective. Twenty-seven countries continue to discriminate against women by failing to allow mothers to confer their nationality on their children on an equal basis with fathers – but Kenya, Senegal and Tunisia have all amended their nationality legislation in recent years to affirm

May 2014

gender equality and thus removed the bars to the passing on by women of nationality.

Simple measures such as civil registration, combined with legislative reform, are invaluable tools in the acquisition of citizenship for stateless persons. For millions of people around the world, birth certificates – that many of us take for granted – are a dream and a key for a better future. This is poignantly evident in the proud face of every person who receives a birth certificate in Thailand and the Philippines during a recent distribution.

Birth registration, in particular, addresses not only child protection concerns but also statelessness and reintegration issues. Both Georgia and the Russian Federation

have implemented pledges in respect of civil registration and documentation systems, and birth registration will continue to be a priority for UNHCR.

Since stateless people are often without personal documentation, and therefore uncounted and unseen, identifying the magnitude of stateless situations has been a considerable obstacle in addressing this issue. But there is some progress here, with states pledging to undertake studies and surveys, and to report on the issue of statelessness. The Philippines is leading the way in this regard, and a number of countries, including Georgia, Moldova and the UK, have established statelessness determination procedures to improve the identification



IRIN/David Longstreath

A Burmese family registers their child for a Thai birth certificate at Mae Tao clinic in Mae Sot, Thailand.

and protection of stateless persons. UNHCR has advocated for and provided technical advice on the need to institute simple but effective statelessness determination procedures in 39 states, including the US, Brazil, Uruguay, Costa Rica and Panama.

Reducing statelessness

Many countries including Côte d'Ivoire, the Kyrgyz Republic, Turkmenistan, Sri Lanka, Bangladesh and the Russian Federation have made considerable progress in resolving long-standing situations of statelessness by granting nationality to stateless populations. Increasingly, governments have recognised the cost of statelessness in terms of human rights, slower growth and development and social diversity, which in extreme cases has led to conflict. Consequently, a number of states have taken the initiative to reform their nationality laws and policies over the last decade. Bangladesh, for example, has recognised the citizenship of large numbers of people who had previously been stateless, while Côte d'Ivoire is taking important steps to resolve the protracted stateless situation there and prevent further generations of stateless persons.

It is extremely encouraging to note the greater interest among NGOs to rally behind the cause of ending statelessness. With this growing civil society interest, UNHCR is committed to supporting the establishment of a global civil society movement focused on ensuring greater action on statelessness. To this end, UNHCR will continue to facilitate an annual retreat on statelessness, which brings together participants from at least 25 NGOs to promote coordination amongst civil society organisations, with the objective of strengthening and expanding the network of civil society partners working on the issue of statelessness.

In recent years, UNHCR has considerably increased its activities relating to statelessness, supported by legal initiatives such as developing guidelines setting out the applicable framework on nationality of children,¹ and a *Handbook on the*

Protection of Stateless Persons. It also runs legal aid programmes to assist stateless persons with civil status and identity documentation, providing stateless persons with access to services and supporting efforts for change in laws and policies on civil documentation in 25 countries.

At the global level UNHCR works closely with UNICEF on matters relating to birth registration, whilst working to strengthen the coordination of UN Country Teams on issues of statelessness; particularly good examples of such coordination can be found in joint action to resolve protracted statelessness in Kyrgyzstan and technical advice provided to Nepal's Constituent Assembly.

We continue to see solid progress in the endeavour to eradicate statelessness, including by states finding new and innovative ways of engaging in the debate, for example through efforts of the US to advocate in human rights fora for action by other states to reduce statelessness, or technical advice provided by Hungary to a range of states. The fact remains, however, that there are still at least 20 situations in which populations of more than 25,000 people have been stateless for over a decade.

This year UNHCR launches a campaign which includes a series of dialogues with groups of stateless persons, the dissemination of testimonies, the publication of a collection of good practices, the first Global Forum on Statelessness, and regional and national inter-governmental meetings. The campaign aims to eliminate, within the next ten years, the phenomenon of statelessness which continues to render a legally invisible population liable to discrimination, exploitation, harassment and a host of other protection challenges.

Volker Türk turk@unhcr.org is Director of International Protection at UNHCR Headquarters in Geneva. www.unhcr.org

1. *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*
www.refworld.org/docid/50d460c72.html

May 2014

Towards the abolition of gender discrimination in nationality laws

Zahra Albarazi and Laura van Waas

The contribution of gender discrimination to generating and perpetuating statelessness is considerable, and there continues to be a need to address such discrimination in nationality laws.

Discriminatory nationality laws disrupt people's lives in many ways. Women choosing not to have children for fear of the problems those children will face. Young, eligible men unable to find a wife because their statelessness would affect the whole family, including by being passed on to their children. Loving couples under pressure to divorce in the hope that this may open up a pathway to nationality and a more secure future for their children. Children who cannot complete their schooling, access health care, find a decent job when they grow up, inherit property, travel or vote. These are not the intended effects of nationality laws that permit men, but not women, to transmit nationality to their children. Quite the reverse: the historic purpose of systems under which the father's nationality is decisive for that of his children was to bring unity and stability to families. Yet, in reality, where a child is not able to access its mother's nationality due to discriminatory laws, the impact can be harsh.¹ In particular, if the father is stateless, unknown, deceased or unable or unwilling to pass on his own nationality, a child may be left without any nationality.

Legislating so that nationality can be transmitted from either father or mother to the child is all it takes. In the simple but effective addition of two words – "or mother" – lies one of the emerging success stories in the fight against statelessness. Awareness of the importance of gender-neutral nationality rules is increasing and, with it, mobilisation behind the cause. Pressure is now mounting on those states which retain discriminatory legislation.

Several countries with large stateless populations are among those where

discriminatory laws are still in place. For example, in Kuwait, Syria and Malaysia, children of stateless fathers are inheriting this statelessness and related problems, even if their mothers enjoy nationality; conversely, those whose mothers are stateless and whose fathers hold nationality are rescued from this fate. There are 27 countries in which it is difficult or impossible for a child to acquire his or her mother's nationality.² Even if they were born in and have always lived in that country, they may be at risk of deportation, lack access to government-funded services such as health care or education, and be prevented from owning property or practising certain professions. Exclusion from their mother's nationality can also cause significant psychological problems around identity formation and belonging.

Today, the notion that men and women should be equal before the law is generally accepted around the world – and even protected under the Constitutions of many countries. But this is only a relatively recent development and there is still work to be done to ensure that the principle of gender equality is translated into gender-neutral law, policy and practice. Prior to the passing of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, dozens of states did not grant equal nationality rights to women and men. A woman holding the nationality of the Netherlands, Pakistan, Thailand or Ivory Coast was not entitled to pass her nationality on to her children on the same terms as men until 1985, 1987, 1992 and 1998 respectively.

Since then gender-biased nationality laws have toppled like dominoes around the

globe, with more than twenty reforms since the year 2000. Senegal was the most recent of these, amending its nationality law in June 2013, and a number of other countries are already discussing change.

Sticking points

Elsewhere though, the issue seems to have gained little traction. Despite examples of reform worldwide, gender discrimination has not yet been entirely abolished in nationality laws. The answer to the question of why not inevitably varies from one state to another but there appear to be some common factors that stand in the way of change. One argument repeatedly made by states seeking to justify the retention of discriminatory laws is that allowing women to transfer their nationality to their children would violate the state's prohibition of dual nationality: the children could in some circumstances acquire two nationalities at birth. Yet, the same could apply when a national man marries a

foreign woman, and plenty of countries use other methods to ensure that the children ultimately retain only one nationality.

One way to break down the barriers to legal reform is to understand the process under which it was achieved elsewhere. In order to counteract states' resistance to change it seems that there needs to be a unified lobbying effort, as was seen in Egypt (see Box). However, in some states advocacy initiatives have not developed to the same extent. One reason for this is that there may be little awareness amongst civil society, the media and the public that discriminatory nationality laws may leave children stateless and unable to exercise many fundamental rights. This gap in knowledge presents a challenge and obstructs positive public engagement in some countries that retain discrimination – especially when political rhetoric plays on fears surrounding security or demographics.

Egypt's road to reform

Egypt has historically provided in its law for the conferral of nationality only from a father to his child. The government's justification for this discrimination was that it prevented the "child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future [and] the child's acquisition of his father's nationality is the procedure most suitable for the child".³ Change came in 2004, when an amendment inserted the words "or a mother" in the clause regulating acquisition of nationality by descent.⁴ This marked the culmination of a successful civil society-led advocacy campaign.

In 1998 a national coalition was formed through which many women's rights NGOs worked to compile a collective civil society 'shadow report' for the UN CEDAW Committee on the government's progress towards implementing its obligations under the Convention; the process of undertaking joint research and advocacy under the umbrella of this coalition laid the foundations for further collaboration on the issue.⁵ By 2002 several women's rights organisations had initiated the 'Down with the Nationality Law' campaign, drawing in a range of human rights organisations, especially children's rights actors, to support the cause. These groups held public protests and used the media to

highlight their cause. The Collective for Research and Training and Development Action (CRTDA), an organisation based in Lebanon that has been at the forefront of women's rights campaigning on this issue in the Middle East and North Africa, published a report that documented some of the human rights problems that were caused by the discriminatory nationality laws in Egypt. This evidence fuelled the campaign while at the same time the organisations continued to argue that the law was unconstitutional, because under the Egyptian Constitution men and women enjoy equality.

After a year of campaigning the government confirmed that it would study the issue and subsequently declared that although it would stop short of granting citizenship to children born to Egyptian mothers, it would give these children rights similar to those enjoyed by citizens. However, the women's rights organisations were not satisfied with this half-measure and continued their lobbying and, soon after, the government conceded that reform was needed. In 2004 the law was reformed with retroactive effect and any child of an Egyptian mother born before or after the date of entry into force of the amendment became entitled to Egyptian nationality.

May 2014

Where there is civil society interest and mobilisation, this does not always include efforts to involve stateless people themselves, leaving them feeling disenfranchised. An example of this is where civil society focuses purely on the subject as a women's rights issue, whereas the women involved are predominantly concerned about the lives of their children, both male and female. Lack of participation by the affected population can also stem from fear of being identified and subjected to some form of official harassment.



After confirmation of their citizenship, Biharis in Bangladesh can now have hope of leading a normal life after decades of exclusion.

While it is important to identify and acknowledge the obstacles that remain to the abolition of gendered nationality laws, undeniably momentum is building for the eradication of gender discrimination in the transmission of nationality from parent to child. Many countries have already pledged to reform their laws or are currently discussing the mechanics of reform. The number of states where problematic laws are still in place is likely to drop below twenty in the foreseeable future and this in itself is likely to send a strong message to those governments that have yet to commit to change.

Meanwhile, civil society engagement is expanding geographically and growing increasingly sophisticated. National and regional lobbying efforts are feeding an emerging global advocacy campaign to end all discrimination in nationality laws. Organisations concerned with promoting women's rights, fighting discrimination and addressing statelessness are joining forces to pursue the common goal of raising awareness of the impact of gendered nationality laws and pushing for their universal abolition.⁶ The women and their families who are affected by these laws worldwide are now being heard. Lessons are being drawn from the successes achieved to date and the agenda for change is clear.

Zahra Albarazi is Researcher and Laura van Waas is Senior Researcher and Manager of the Statelessness Programme, Tilburg University Law School.

**Z.Albarazi@uvt.nl, Laura.vanWaas@uvt.nl
www.tilburguniversity.edu/about/schools/law**

1. See, for instance, UNHCR and CRTDA (2012) *A Regional Dialogue on Gender Equality, Nationality and Statelessness: Overview and Key Findings* www.refworld.org/docid/4f267ec72.html; Equality Now (2013) *Campaign to End Gender Discrimination in Nationality and Citizenship Laws* www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf; Women's Refugee Commission and Tilburg University (2013) *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa* www.unhcr.org/refworld/docid/4f267ec72.html
2. Bahamas, Bahrain, Barbados, Brunei Darussalam, Burundi, Iran, Iraq, Jordan, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Sierra Leone, Somalia, Sudan, Suriname, Swaziland, Syria, Togo and United Arab Emirates. UNHCR (2014) *Background Note on Gender Equality, Nationality Laws and Statelessness* www.refworld.org/docid/532075964.html
3. UN Division for the Advancement of Women www.un.org/womenwatch/daw/cedaw/reservations.htm
4. Article 1, paragraph 3a
5. Mackay C (2012) *Exploring the Impact of the 2004 Nationality Law Reform Campaign on Gender Equality in Egypt* <https://dar.acucegypt.edu/bitstream/handle/10526/3087/C.MacKay%20Thesis%20Final%20Draft.pdf?sequence=3>
6. The Women's Refugee Commission, UNHCR, Equality Now, Equal Rights Trust and Tilburg University Statelessness Programme are working together to lay the foundations for a global campaign to end gender discrimination in nationality law. The campaign is being launched in mid 2014.

Judicial denationalisation of Dominicans of Haitian descent

Liliana Gamboa and Julia Harrington Reddy

A recent Constitutional Tribunal decision in the Dominican Republic, if implemented as drafted, will leave thousands of Dominicans stateless and send a lesson to other states that mass arbitrary denationalisations are acceptable as long as they are judicially mandated.

In the Dominican Republic (DR) enjoyment of nationality and its attendant rights has become all but impossible for persons of Haitian descent – a population that numbers between 250,000 and 500,000 in a population of about ten million.¹ Recent changes in the DR's constitution, followed by a perverse interpretation by the Constitutional Court in September 2013, have heightened the threat that Dominicans of Haitian descent – although citizens under a plain reading of the constitution – will become permanently stateless, as defined by international law.

An important cause of the marginalisation of Dominicans of Haitian descent is the state's longstanding reluctance to recognise their Dominican nationality. From 1929 until January 2010 the Dominican constitution granted Dominican nationality to all children born on national territory, except for those born to diplomats and to parents who were "in transit" at the time of the child's birth. For years the DR insisted that individuals of Haitian descent born in the DR had no right to Dominican nationality because their parents were in transit, even when these families had been in the country for multiple generations.

In September 2005, the Inter-American Court of Human Rights became the first international tribunal to find unequivocally that the prohibition on racial discrimination applies to nationality. In a landmark judgment, *Yean and Bosico v. Dominican Republic*, it ruled that the DR's discriminatory application of its constitution, citizenship and birth-registration laws and regulations rendered children of Haitian descent stateless

and unable to access equal protection before the law. The Court affirmed 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. States are particularly limited in their discretion to grant nationality by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness."²

Notwithstanding that it is a legally binding decision, the Court's ruling had the opposite of its intended effect at the national level. Even before *Yean and Bosico*, in 2004 the government passed a migration law that expanded the definition of "in transit" to include all "non-residents", a broad category which included anyone who could not prove their lawful residency in the country. In this way the meaning of the nationality provision of the constitution was changed without changing its wording. After *Yean and Bosico*, application of this law was stepped up. Although intended to be applied prospectively, the Dominican civil registry agency (JCE) began using it retroactively to withdraw citizenship from Dominicans of Haitian descent whose nationality it had previously recognised.

On 26th January 2010, the DR adopted a heavily revised constitution which accords citizenship only to children of "residents" born on Dominican soil. Thus individuals born in the DR after January 2010 who do not have documentary proof of their parents' Dominican citizenship or legal residency

May 2014

no longer have the right to Dominican nationality, as their parents are now categorised as non-residents – regardless of how long they or their families have lived in the DR, which might extend to generations.

Equally disturbing, it is now government-issued documentary proof of legal residency that determines what rights an individual has, rather than real events. An individual's parents or grandparents may have had every right to citizenship under the earlier Dominican constitution, yet been denied that proof due to bureaucratic or logistical failings of the state, or discrimination. The new constitution thus elevates the historic actions of the state – even though they may have been wrong or flawed at the time they were committed – to be determining factors of the rights of individuals today.

After the JCE began refusing to give Dominicans of Haitian descent identity documents such as national identity cards and birth certificates without official recognition – documentary proof – of their nationality, many of them experienced an erosion of their quality of life. Due to citizenship's character as a 'gateway', it is not only the right to nationality that is at stake but also the rights to juridical personality, equality before the law, family life, education, political participation and freedom of movement. Without access to their lawful nationality, Dominicans of Haitian descent will continue to be consigned by their own government to a status of permanent illegality in their own country.

Recent developments

The latest blow was a ruling of the Constitutional Tribunal (CT) on 23rd September 2013 which ruled that Juliana Deguis Pierre, who was born in the Dominican Republic in 1984, had been wrongly registered as Dominican at her birth. The CT decided that her parents, who allegedly could not prove that their migration status in the DR was "regular", were therefore "foreigners in transit"

for the purposes of Dominican domestic legislation. Therefore, Juliana was not entitled to the citizenship she was granted at birth and must be denationalised. Going further, the CT also ordered the JCE to thoroughly examine all birth registries since 1929 and remove from them all persons who were supposedly wrongly registered and recognised as Dominican citizens.

The CT decision is unprecedented. Firstly, in the numbers affected: some argue that as many as 200,000 persons will be made stateless. Their prior recognition as Dominicans makes them ineligible for Haitian nationality except by naturalisation, which in turn requires residence in Haiti.

Secondly, the CT decision is in flagrant disregard of the legally binding *Yean and Bosico* decision, and violates the Dominican constitution, which provides that its provisions should not be applied retroactively and which also holds that where two legal authorities contradict each other, the principle most protective of individual rights should be upheld. Beyond the Inter-American Court and the Dominican constitution, there are three basic human rights principles that frame the regulation of citizenship: the prohibition against racial discrimination; the prohibition against statelessness; and the prohibition on arbitrary deprivation of citizenship. The ruling violates all three principles.

Reactions to the ruling

The decision sent shockwaves throughout the country, the region and the wider human rights community. What can it mean when the body charged with interpreting the constitution takes a decision at odds with the constitution's plain language meaning? Where does the rule of law stand?

Arguably, the Dominican executive should not implement the ruling out of respect for the constitution itself; however, many Dominicans, while recognising the ruling's flaws, believe that it must be respected

simply because it was issued by the nation's highest court.

Statements of concern were issued by UNHCR, UNICEF, the US and the European Union. The Caribbean Community (CARICOM) has been outspoken in its condemnation of the ruling; it suspended consideration of DR's application to join CARICOM and demanded that the situation be discussed, twice, in the Organization of American States Permanent Council. The Dominican diaspora in the US seems generally critical of the ruling – perhaps because it is easy to imagine the devastation that would be wrought in their lives if the US ever applied a similar principle.

Now all eyes turn to President Medina of the Dominican Republic, head of the branch of government that must implement the CT decision. Immediately after the ruling he apologised to those affected, saying he would ensure that no one would be denationalised; then he retracted the apology, stating that the rule of law must be respected, although he was concerned by the humanitarian effects of the ruling; then he called for an analysis and assessment of the numbers of those affected, before finally announcing that the government would proceed with full implementation of the ruling.

Within three months of the CT ruling, the Inter-American Commission of Human Rights visited the DR. During the mission, President Medina announced that a special naturalisation bill would be submitted to Congress to restore the nationality of those affected by the ruling whose citizenship had already been recognised by the JCE. However, this 'special naturalisation bill' has been repeatedly delayed.

Following its mission, the Commission specified that implementing measures of the CT ruling should:

- guarantee the right to nationality of those individuals who already had this right

under the domestic legal system in effect from 1929 to 2010

- not require people such as those who were technically denationalised by the ruling to register as foreigners as a prerequisite for their rights to be recognised
- ensure that guarantees of the right to nationality of those affected by the CT ruling are general and automatic, and must not be discretionary or implemented in a discriminatory fashion
- ensure that mechanisms to restore or guarantee citizenship must be financially accessible
- involve civil society and representatives of the populations affected by the court decision.³

If these principles are reflected in the 'Regularization Plan for Foreigners in an Irregular Migratory Status in the Dominican Republic', part of the worst injustice inherent in the CT ruling may yet be averted.

Now is the time for the international community to find a way to articulate that 'rule of law' does not refer to anything and everything handed down by a court but has substantive as well as procedural content, and to raise the political cost to the DR of implementing the CT decision as it stands.

Liliana Gamboa is Program Officer for Equality and Citizenship and Julia Harrington Reddy is Senior Legal Officer for Equality and Citizenship in the Open Society Justice Initiative.
liliana.gamboa@opensocietyfoundations.org
julia.harringtonreddy@opensocietyfoundations.org
www.justiceinitiative.org

1. See Wooding B 'Contesting discrimination and statelessness in the Dominican Republic', *Forced Migration Review* issue 32 'Statelessness' www.fmreview.org/en/FMRpdfs/FMR32/23-25.pdf

2. *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Int. Am. Ct. H.R. Case No. 12.189 (Sept. 8, 2005).

3. 'Preliminary Observations from the IACHR's Visit to the Dominican Republic', Inter American Commission on Human Rights, Santo Domingo, December 6, 2013 www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp

May 2014

Snapshots of stateless people in Europe

These stories¹ come from the European Network on Statelessness – a civil society alliance currently with 53 member organisations in 33 countries – which is gathering case-studies for a campaign that seeks to put a human face on statelessness and demonstrate why further policy action is needed to improve the protection of stateless people. The campaign is organising a petition (available online from 28 May 2014) calling on European leaders to accede to the 1954 Convention relating to the Status of Stateless Persons (in those countries which have yet to do so) and to commit to establishing a statelessness determination procedure. www.statelessness.eu

There are many stateless people in Europe who face human rights abuses every day, from destitution on the streets to long periods of immigration detention. However, the solution is simple: set up a functioning statelessness determination procedure.

1. All names have been changed.

Isa

Isa was born in Kosovo and fled to Serbia following the 1999 conflict but because he did not have any identity papers he was never registered as an internally displaced person. He did not attend school, nor did he have health insurance and the only evidence for his residence are the statements of his common-law spouse and his neighbours. His very first document, his birth certificate, was issued in 2013 when he was 29; this was only possible due to a new procedure introduced in 2012.

However, despite managing to register his birth, Isa remains without a nationality. He cannot 'inherit' his father's nationality (since he too does not have one) or his mother's (she left when he was only two weeks old and Isa does not know if she held any nationality at the time of his birth). Without nationality, Isa remains deprived of rights and services.

"I cannot get married, be recognised as my children's father, visit my family in Kosovo. I cannot work legally, receive social welfare assistance or register for health insurance. People treat me as if I do not exist or am a criminal."

Serbia currently lacks a procedure to recognise statelessness and regularise Isa's status. The only option open to Isa is to try to acquire Serbian nationality through naturalisation but unfortunately Isa cannot provide written proof of his residence, which is one of the legal requirements. So he remains stuck in limbo.

Sarah

Sarah was born and raised in the Democratic Republic of Congo (DRC) with a Rwandan father and a Congolese mother. In 2001, during the conflict between the two neighbouring countries, Sarah's parents were arrested and at the age of 15 Sarah was left on her own. A year after her parents were put in jail, she decided to flee to the Netherlands.

On arrival she applied for a residence permit as an unaccompanied minor asylum seeker but her application was rejected and the process of repatriation commenced. However, two days prior to her return to DRC the Dutch authorities said that the Laissez-Passer needed for her deportation and previously granted by the Congolese authorities had been withdrawn. This suspended the deportation process and Sarah was allowed to stay. In order to regularise her status Sarah applied for a Dutch 'no-fault residence permit', a one-year permit for those who cannot leave the Netherlands through no fault of their own. As part of her application she had to acquire proof of identity documentation from the Congolese authorities and it was at this point Sarah for the first time realised that she was stateless.

The Congolese Embassy in the Netherlands stated that she automatically lost her Congolese nationality at the age of 18, as people with dual nationality are obliged to opt for one nationality when they turn 18. Sarah was not aware of this. The Rwandan Embassy told her that she cannot be recognised as Rwandan because she was not born in Rwanda, and has no close links to the country.

Twelve years on, Sarah is still unable to (re)acquire her Congolese or Rwandan identity documents and because the Netherlands currently has no procedure to recognise or regularise stateless persons, Sarah has no solution in sight.

"When I was in the process of applying for a residence permit, at least I had the chance to study and make friends. Right now I feel isolated. I stay at home every day. I wish I could start a family but I cannot, looking at my situation."

Luka

"I only want to work. Why do they not give me a residence permit so I am allowed to work? They force me to work illegally. I am tired."

Luka was born in Ukraine when it was still part of the Soviet Union. He grew up in an orphanage and moved to Slovakia in 1991 when he was 15 years old. Luka never had any documents from the Ukrainian state confirming his nationality.

Luka has been repeatedly detained in Slovakia, the last time in 2010 when he spent 14 months in a detention centre. He was released after a court decision that his expulsion from Slovakia was not possible and was granted tolerated stay. The Slovak authorities simply recorded his citizenship as "undetermined"; all the evidence, however, suggests that he is indeed stateless. When Luka tried to submit an application for extension of his tolerated stay, he was asked to submit new documents confirming that the Ukrainian embassy refused to issue him with replacement travel document. Although the police already had proof that Ukraine did not accept Luka as a citizen they still refused to accept his application. Instead they issued Luka with a fine of €80 for the misdemeanour of illegal stay. One week later he was given another fine, this time of €160.

After living in Slovakia for over 20 years, Luka is still not recognised as being stateless and his tolerated stay status still does not allow him to work or to have health insurance. He cannot marry his partner, the mother of his 8-year-old son who is a Slovak citizen and who lives with him and his mother.

"I am not recognised officially as the father of my son. My name is not on his birth certificate. They refused to write it there because I don't have any documents proving my identity."

Discrimination and the human security of stateless people

Amal de Chickera and Joanna Whiteman

Exploring the interconnections between statelessness and discrimination offers useful insight into the multiple vulnerabilities associated with statelessness and provides a framework through which these vulnerabilities can be addressed.

Statelessness has a significant impact on human security, access to development and enjoyment of human rights. The Equal Rights Trust approaches statelessness from an equality and non-discrimination perspective. The right of all human beings, including the stateless, to be free from discrimination in

all aspects of their life is protected in all the major international and regional human rights treaties. The right to non-discrimination does not only require states not to discriminate against individuals but imposes certain positive duties on states to take measures to protect the right; these duties include

May 2014



Sajful Huq Omi

The photographer's guide, Abul Kalam, points toward his home on the other side of the river Naaf, which divides Burma and Bangladesh. Kalam, a stateless Rohingya, was born in Burma but has lived in a refugee camp in Bangladesh for years. Cox's Bazar, Bangladesh, 2009.

identifying and tackling discrimination by individuals against stateless persons through appropriate legal and policy measures to prevent and punish such acts.

In addition, in order to ensure the full equality of stateless persons, states must take positive action to rectify the disadvantages they suffer. This means that states should look at the particular needs of the stateless population and take measures to meet them – ensuring full liberty and security, education, health care and access to employment as necessary. There is a long way to go before any state in the world can be held up as an example for meeting its obligations in this respect.

The relationship between statelessness and discrimination is clear. For a start, statelessness often occurs as a result of direct discrimination, that is, less favourable treatment of a person because of one or more 'protected characteristics' such as their race, ethnicity or gender. Then, once stateless, a person is especially vulnerable

both to direct and indirect discrimination, that is, being put at a disadvantage by a particular provision, criterion or practice which cannot be objectively justified.

There are several examples of how discrimination causes statelessness. Firstly, statelessness may result from discriminatory laws which prevent a woman from conferring her nationality on her children. State succession is another cause of statelessness. While historically this has been seen as a 'technical' cause of statelessness, closer analysis reveals that discrimination plays a significant role. The majority of persons made stateless as a result of state succession belong to ethnic minorities such as the ethnic Russians in Latvia or Eritreans in Ethiopia.¹

Case study: the Rohingya

Statelessness may also be caused by direct racial or ethnic discrimination as in the case of the Rohingya. The Rohingya are considered by their home country, Myanmar, to be illegal immigrants from Bangladesh, despite having lived in Myanmar for many generations.

The Rohingya have been stateless since Myanmar stripped them of their nationality in 1982 on grounds of their ethnicity. They are subjected to discriminatory treatment and persecution affecting every aspect of their lives from their ability to move freely, marry and earn a living, to the imposition of arbitrary taxes, arbitrary arrest and torture.

Consequently, hundreds of thousands of Rohingya have fled Myanmar in search of security. They have then faced the reality faced by most stateless people living in a migratory context, namely further discrimination. A stateless person, as a member of a minority and 'outsider' in the host country, both faces discriminatory persecution from others and is subjected to discriminatory laws, policies and practices. It is standard practice for states to restrict access to a wide range of rights such as education, employment and health care for non-nationals. It is a common misunderstanding that states are entitled to discriminate as they want in this respect; in fact, any such discrimination must be objectively justifiable in order to comply with human rights law. Furthermore, even when access to such rights is in principle available to the stateless, practices may bar this access in reality so as to indirectly discriminate against stateless persons. For example, a requirement that identity documents be provided in order to see a doctor causes a particular disadvantage to stateless persons who are less likely to have such documents.

"We do not have any legal document. We do not have any country."

Tarik is a stateless Rohingya who fled Myanmar in 1989 and was trafficked into Malaysia in 1991.² He was in bonded labour in Thailand for three months until he paid off his debts. He continued to suffer discrimination in Malaysia, affecting his enjoyment of fundamental rights including liberty and security of the person and various socio-economic rights. Treated as an 'illegal immigrant' under Malaysian law, Tarik is not allowed to work, leading to his arrest for working illegally, detention

and 'deportation' into the hands of traffickers on three separate occasions.

"Police can arrest us whenever they wish." Tarik sees this as a question of security, belonging and identity: "We Rohingya do not have any security in this country. We do not have our own country. Everybody oppresses us. Life is very hard for us both in Malaysia and Burma... The place where I was born is now foreign to me. We cannot claim our birthplace as our own land... I am worried about the future of my children. They are neither Malaysian nor Burmese. I do not know what will happen to them."

Tarik's vulnerability as an undocumented stateless person has been transferred to his family. His status has also affected his children's education who were enrolled in a Malaysian school for two years but were then expelled because they had no documentation. Consequently, Tarik and a few Rohingya neighbours started an informal *madrasa* (religious school) for their children.

Tarik was made stateless in Myanmar. His children continue to be stateless in Malaysia. Unless a sustainable rights-based solution is found, there is every likelihood that his grandchildren will be stateless as well. Tarik is literate but his children have no access to formal education, and it is only due to his extraordinary efforts that they receive any education at all. Tarik's children may not be as able as he to compensate for the lack of formal schooling if their own children too are excluded from education. Similarly, Tarik enjoyed basic socio-economic security growing up. His children are growing up in poverty. It is likely that their children will face even greater poverty and will not possess the tools to climb out of it. Such is the effect of inherited statelessness.

Conclusion

From a human rights perspective, it is easy to draw up a list of rights that Tarik and his family have been denied access to. These would include civil and political rights, such as freedom of movement and the right to liberty and security of the

May 2014

person, and socio-economic rights, such as the right to an education and the right to a livelihood. In development terms, the achievement of equality is central to the post-2015 development agenda. From a human security perspective, the preoccupation of states with national security – seeing the irregular migration of vulnerable, often persecuted, people not in terms of their protection but in terms of border control – exacerbates and entrenches the vulnerabilities of stateless persons such as Tarik.

Although some work has been done in the human rights field, there is a need for the impact of discrimination to be explored more fully by those approaching the issue of statelessness from a human security perspective. The same is true for those in the development community – indeed The Equal

Rights Trust is actively involved in seeking to ensure that the achievement of equality is central to the post-2015 development agenda. But regardless of the lens through which one seeks to tackle the disadvantage faced by stateless persons – be it that of human security, development or human rights – it is critical that the central relevance of discrimination in their story is addressed so that the cycle of disadvantage can be broken.

Amal de Chickera is Head of Statelessness and Nationality Projects and Joanna Whiteman is Legal Officer at The Equal Rights Trust.
amal.dechickera@equalrightstrust.org
joanna.whiteman@equalrightstrust.org
www.equalrightstrust.org

1. See Southwick K (2009) 'Ethiopia-Eritrea: statelessness and state succession', *Forced Migration Review* issue 32. www.fmreview.org/en/FMRpdfs/FMR32/15-17.pdf
2. Not his real name. He was interviewed by The Equal Rights Trust in October 2012.

Global Forum on Statelessness: New Directions in Statelessness Research and Policy 15-17 September 2014

In 2014 we will commemorate the 60th anniversary of the adoption of the first United Nations Convention to address the problem of statelessness: the 1954 Convention relating to the Status of Stateless Persons. The momentum on action to address statelessness has increased in recent years, owing to the joint efforts of governments, NGOs, academic institutions and UNHCR.

2014 is an opportune moment to take stock and debate the next steps, through the convening of the First Global Forum on Statelessness, which will take place in The Hague, the Netherlands. The three-day event is co-hosted by UNHCR and the Statelessness Programme of Tilburg University, and is aimed at UN staff, government representatives, academics, NGO staff, legal practitioners, and stateless and formerly stateless people.

The programme will comprise both plenary and workshop sessions, around three sub-themes: Stateless Children, Statelessness and Security, and Responses to Statelessness. The programme consists of panel sessions, workshops and poster presentations about a broad range of topics related to statelessness, such as:

- The prevention of statelessness: contemporary tools and challenges

- Statelessness and (social) media
- Denationalisation as persecution
- Statelessness and the right to education, work and health
- Protecting stateless persons from arbitrary detention
- Building a protection framework for stateless people
- Gender discrimination and statelessness: a field research perspective
- Statelessness and human trafficking
- Networking for change: the importance of collaboration on statelessness
- Children's experiences of statelessness
- There will also be a variety of presentations focusing on statelessness in specific regions and countries.

Keynote speakers: Volker Türk, Director of International Protection, UNHCR; Irene Khan, Director-General of the International Development Law Organization; and Nils Muižnieks, Commissioner for Human Rights of the Council of Europe.

For more details, including a list of confirmed speakers, or to register, please visit www.tilburguniversity.edu/statelessness2014



After confirmation of their citizenship, Biharis in Bangladesh can now have hope of leading a normal life after decades of exclusion.