

Equality and Non-Discrimination in Nationality Matters to End Statelessness

*Outcome document prepared following the
OHCHR/UNHCR Virtual Roundtable on Equality
and Non-Discrimination in Nationality Matters to
End Statelessness*

21 October 2021

Executive Summary

As of the end of 2020, an estimated 4.2 million people in 94 countries were reported by the United Nations High Commissioner for Refugees (UNHCR) to be stateless. However, the exact number of persons without a nationality is unknown, and the actual figure is believed to be substantially higher.

Discrimination in nationality laws, policies and practices is a major cause of statelessness. While discrimination is often at the root of statelessness, stateless people also face further discrimination and are deprived of many rights as a result of their lack of nationality.

National, ethnic, religious and linguistic minorities face additional obstacles in accessing their right to nationality. It is estimated that about 75% of the world's known stateless populations belong to minority groups.

The right to a nationality is often a necessary prerequisite for the enjoyment of other human rights. Statelessness *inter alia* affects people's ability to access education, healthcare, legal employment, freedom of movement and development opportunities.

Some groups may face overlapping and compounding forms of discrimination and are therefore particularly impacted by statelessness. These can include women and girls, people with disabilities, forcibly displaced people, and lesbian, gay, bisexual, trans and/or Intersex (LGBTI) individuals, children and youth, older people, among others.

The **right to a nationality** is enshrined in various legally binding international instruments. The general **principles of equality and non-discrimination** lie at the heart of international human rights law and guarantee the right of everyone, without any distinction, to equality in the enjoyment of all fundamental human rights, including the right to a nationality. **A human rights-based approach is key to realizing the goal of UNHCR's #IBelong Campaign to End Statelessness by 2024.**

Strengthened **cooperation among UN Agencies and Entities** can accelerate progress to resolve statelessness and to enhance the protection of stateless minorities. Likewise, improved **partnership and coordination with States, civil society organizations (CSOs), national human rights institutions (NHRIs), community and religious leaders and stateless people** are key.

States ultimately have the responsibility to end statelessness and to remove all forms of discrimination from their nationality laws, policies and practices. States are urged to collect disaggregated data to develop policies and programs to respond to the situation of stateless minorities and to resolve their plight.

I. CONTEXT: OHCHR'S PLEDGE TO ADDRESS STATELESSNESS JOINTLY WITH UNHCR

- 1.** On 7 October 2019, during the High-Level Segment on Statelessness, the Office of the United Nations High Commissioner for Human Rights (OHCHR) pledged “[t]o work jointly with UNHCR to raise awareness on statelessness and its human rights implications and to promote solutions to it.” As part of this commitment, UNHCR and OHCHR jointly organized a Virtual Roundtable on Equality and Non-Discrimination in Nationality Matters to End Statelessness on 21 October 2021. The event focused on the importance of the right to a nationality to the enjoyment of other rights, and highlighted good practices with regard to the promotion and protection of the right to a nationality, including the removal of all forms of discrimination from nationality laws, policies, procedures and practices.
- 2.** This Outcome Document provides a summary of the issues identified by participants during the roundtable regarding the right to a nationality, the various types of discrimination that lead to statelessness as well as the consequences of statelessness for the enjoyment of other human rights. The summary includes a range of observations as concerns particular groups of people facing statelessness. In addition to highlighting good practices implemented by States and UN Agencies, it contains recommendations to encourage greater attention to particular groups affected by statelessness, including minorities and others.

II. VIRTUAL ROUNDTABLE ON EQUALITY AND NON-DISCRIMINATION IN NATIONALITY MATTERS TO END STATELESSNESS ON 21 OCTOBER 2021

- 3.** The Virtual Roundtable on Equality and Non-Discrimination in Nationality Matters to End Statelessness (Virtual Roundtable) fits in well with other efforts by relevant United Nations mechanisms to promote human rights for all, including in times of crisis. In particular, the roundtable aligned with global initiatives such as the Secretary General’s “Highest Aspiration: A Call to Action for Human Rights” (Call to Action) launched in February 2020 to further transformational change in the way that the UN and its partners engage with human rights.¹ Among the Call to Action’s guiding principles, the prohibition of discrimination on any basis and the emphasis on equality are considered central to advance the global human rights agenda.² The event also echoed UNHCR’s recently launched Human Rights Engagement Strategy which identified the different ways in which UNHCR can act as a “strong, principled and persuasive advocate” for the rights and needs of stateless persons.³
- 4.** In preparation for the Virtual Roundtable, OHCHR and UNHCR undertook a stocktaking of national laws, policies, and practices concerning the acquisition, conferral, change, retention, and loss of nationality. In July 2021, a public survey was issued requesting civil society, UN Agencies, affected groups and human rights defenders to comment on discriminatory elements in States’ nationality laws, policies and practices. States were also requested to complete the survey. The results of this survey fed into a Background Non-paper that UNHCR and OHCHR circulated to the participants of the virtual roundtable in October 2021 (see Annex I). The Background Non-Paper provides a summary of statelessness and deprivation of nationality issues resulting from racial discrimination⁴

1. See, UN Secretary General, “The Highest Aspiration: A call to Action for Human Rights,” 2020, available at: https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf.

2. *Ibid.*, p. 3-4.

3. UNHCR, “Human Rights Engagement Strategy: The Case for Inclusion, 2020-2023,” available at: <https://www.unhcr.org/protection/operations/5fb681264/unhcrs-human-rights-engagement-strategy-2020-2023.html>.

4. Under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the term “racial discrimination” refers to “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying

and other forms of discrimination such as on the grounds of age, gender identity or gender expression, disability, language, minority status, religion or belief, sex, sex characteristics or sexual orientation, or as a result of the compounding impact of discrimination on more than one ground. It concluded that access to nationality in many countries is constrained by requirements that are, either explicitly or implicitly, discriminatory against certain individuals or groups, or have discriminatory impacts.

- 5.** The Virtual Roundtable gathered more than 150 participants, including State representatives, UN Agencies, representatives of UN human rights mechanisms, intergovernmental organizations, regional and national human rights organizations and institutions, academics, experts on statelessness, representatives of stateless populations and non-governmental organizations (NGOs) active in the field of human rights and statelessness. The event featured distinguished speakers in two panels, with the first panel focusing on discriminatory nationality laws as a cause of statelessness and good practices to address it, and the second panel zooming in on the need for an intersectional approach to the right to a nationality among UN human rights mechanisms and NHRIs.

Virtual Roundtable Agenda

Opening Remarks by the UNHCR Assistant High Commissioner for Protection, *Gillian Triggs* and OHCHR Assistant Secretary-General for Human Rights, *Ilze Brands Kehris*

First panel discussion

Discriminatory nationality laws as a cause of statelessness and good practices to address it

Moderator: Patrick Eba, Deputy Director in the Division of International Protection, UNHCR

Elvis Beriša, Executive Director of Roma Youth Organization Walk with Us – Phiren Amen

Kotevu Caesar, Senior Immigration Officer, Ministry of Internal Affairs of Uganda

Hanitriniaina Belalahy, Director for Human Rights and International Relations, Ministry of Justice of Madagascar

Nahla Haidar, Vice-Chair of the UN Committee on the Elimination of Discrimination against Women (CEDAW)

Fernand de Varennes, Special Rapporteur on Minority Issues

Questions and Answers

Second panel discussion

An intersectional approach to the right to nationality among UN human rights mechanisms and NHRIs

Moderator: *Mona Rishmawi*, Chief of the Rule of Law, Equality and Non-Discrimination Branch, OHCHR

Amal de Chickera, Co-founder and Co-Director of the Institute on Statelessness and Inclusion

Photini Pazartzis, Chair of the UN Human Rights Committee (CCPR)

Rita Izsák-Ndiaye, Member of the UN Committee on the Elimination of Racial Discrimination (CERD)

Jerald Joseph, Human Rights Commissioner, Suhakam, Malaysian Human Rights Commission

Questions and Answers

Closing statements by the Moderators

III. ISSUES IDENTIFIED

6. The speakers agreed that the global number of stateless people is likely to be significantly higher than the 4.2 million reported by UNHCR on the basis of information available from 94 countries.⁵ This is because there are *unknown* and *unknowable* numbers of people who are stateless and unable to access the services they need.⁶
7. Diverse causes of statelessness have been identified, including state succession, forced displacement, conflict, discriminatory laws, policies and practices to access nationality, gaps in and between nationality laws, as well as onerous or burdensome administrative requirements. Panelists insisted on the importance of identifying the root causes of statelessness, including discriminatory nationality laws, policies and practices, in order to develop targeted solutions to resolve statelessness.

(a) Types of discrimination in nationality laws, policies and practices causing statelessness

8. Speakers at the roundtable reported that the nationality laws of more than 80 countries around the world include provisions which are discriminatory, or which give rise to discrimination.⁷ While States set the rules for acquisition, change and withdrawal of nationality, speakers recalled that this discretion is limited by obligations under international treaties to which States are party and general principles of international law. Rules and practices concerning nationality that are racially discriminatory⁸ or that discriminate in practice or effect on grounds such as religion or belief, age, gender identity or gender expression, disability, language, sex, sex characteristics or sexual orientation, violate international human rights standards,⁹ especially the rights to equality and non-discrimination.¹⁰
9. Speakers raised the issue of gender discrimination in nationality laws. Approximately 50 countries have laws that deny women the equal right to confer nationality on their spouse, and 25 countries have nationality laws that deny women the same right as men to pass citizenship to their children.¹¹ Speakers noted that nationality laws frequently reflect patriarchal norms and observed that stereotypical representations of women as dependent on their husbands have long been used to justify discriminatory laws preventing women from acquiring, retaining or transmitting their nationality irrespective of the nationality status of the husband. It was noted that gender discrimination in nationality laws is a root cause of childhood statelessness in various countries. For instance, in The

5. UN High Commissioner for Refugees (UNHCR), "Global Trends: Forced Displacement in 2020," June 2021, p. 4, available at: <https://www.unhcr.org/60b638e37/unhcr-global-trends-2020>.

6. According to the World Bank, 1.1 billion people lack an officially-recognized form of identification or documentation on their status, with 78% of them living in Sub-Saharan Africa and Asia and 40% being children under the age of 18 (World Bank, Global ID4D Dataset, 2017, available at: <https://datacatalog.worldbank.org/search/dataset/0040787>). While not all of these people would be stateless, many could be.

7. See, also, UN High Commissioner for Refugees (UNHCR), Background Note on Discrimination in Nationality Laws and Statelessness, 20 October 2021, available at: <https://www.refworld.org/docid/616fda104.html>. See, also, Background Non-paper, Annex I, paras. 9-13.

8. To be understood as any of the grounds covered under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. See, supra note 4.

9. See, e.g., Report of the Special Rapporteur on freedom of religion or belief, Elimination of all forms of religious intolerance, UN Doc. A/63/161, 22 July 2008, para. 39, available at: <https://undocs.org/A/63/161>.

10. See, e.g., UN Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html>. The principle of non-discrimination is enshrined in various international human rights instruments, including Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 30 of the Convention on the Rights of the Child, Article 2(1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and Article 2(1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

11. See, e.g., reports shared by the participants during the Virtual Roundtable: <https://equalnationalityrights.org/the-issue/the-problem>; <https://www.equalnationalityrights.org/news/76-gender-violence-discrimination-nationality-laws>. See, also, UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2021, 5 March 2021, available at: <https://www.refworld.org/docid/604257d34.html>.

Bahamas, only children born abroad to Bahamian fathers, not mothers, acquire the Bahamian nationality. Similarly, under the nationality law of Barbados, Barbadian mothers cannot confer nationality on their children born abroad, whereas Barbadian fathers can.¹² In September 2021, Malaysia's High Court confirmed Malaysian mothers' equal right to automatically confer citizenship to their overseas-born children. It ruled that women's inability to confer nationality on children on an equal basis with men violated the Malaysian Constitution's ban on sex-based discrimination.¹³ It was also reported that, since the reform of the Nationality Code by the State of Madagascar, Malagasy women can automatically transmit their nationality to their children, independently of whether they are born in or out of wedlock.

- 10.** Speakers highlighted that national, ethnic, religious and linguistic minorities also face disproportionate discrimination and compounded obstacles in accessing their right to a nationality.¹⁴ In 2018, the UN Special Rapporteur on Minority Issues stressed that minorities make up most of the world's stateless population,¹⁵ with more than 75% of stateless individuals belonging to national, ethnic, religious, and linguistic minorities.¹⁶ Despite progress made in some areas, the number of stateless individuals has increased over the last years, especially due to discriminatory laws which intentionally affect certain minorities, including *inter alia* the Rohingya in Myanmar; Muslim and Bengali-descent minorities in India; Roma, Ashkali, Egyptian and Russian-speaking minorities in Europe; Haitian-descent minorities in the Dominican Republic, among other minority groups.¹⁷ The escalation of anti-Gypsyism, xenophobia, and hate speech throughout Europe – in particular during the COVID-19 pandemic – could further lead to increased risks of statelessness.¹⁸

(b) Practical obstacles to and indirect discrimination in accessing nationality

- 11.** Speakers reported that individuals belonging to minorities often face practical obstacles in accessing nationality due to unduly burdensome administrative requirements which constitute barriers to the right to nationality.¹⁹ Among the various examples raised, it was noted that the prevalence of statelessness among Roma and Egyptian communities, in particular in Southeastern Europe, is fueled by the existence of administrative burdens, including the onerous costs involved in obtaining civil documentation, the lack of State responsiveness to the needs of stateless individuals, and the invisibility and stigmatization of stateless minorities.²⁰
- 12.** Overall, the discriminatory obstacles to access nationality that were identified by participants of the roundtable confirmed the findings of the stocktaking exercise conducted by OHCHR and UNHCR. It

12. See, also, UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2021, *ibid.*
13. The government has appealed this decision. For more information, see: <https://www.trtworld.com/asia/malaysia-court-rules-in-favour-of-mothers-fight-ing-citizenship-case-49827> and <https://equalnationalityrights.org/news/110-malaysian-court-upholds-women-s-equal-nationality-rights-gcen-statement>.

14. Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities refers to minorities as based on national or ethnic, cultural, religious and linguistic identities, and provides that States should protect their existence. See, generally, UN Office of the High Commissioner for Human Rights, "Minority Rights: International Standards and Guidance for Interpretation," UN Doc. HR/PUB/10/3, available at: https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.

15. Report of the Special Rapporteur on Minorities Issues, "Priorities and vision of the mandate," UN Doc. A/HRC/37/66, 16 January 2018, paras. 36-40, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/66.

16. UNHCR, "This is our home": Stateless minorities and their search for citizenship," 3 November 2017, p. 1, available at: https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf.

17. See, e.g., Updates of the Thematic report on statelessness as a minority issue and the level of awareness-raising and visibility of minorities and their human rights, UN Doc. A/HRC/40/64, 9 January 2019, paras. 85-87, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/64.

18. See, e.g., UN Special Rapporteur on Freedom of Religion or Belief, Report on Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief, UN Doc. A/HRC/46/30, 25 February 2021, para. 63, available at: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/HatredAndDiscrimination.aspx>.

19. See, also, Report of the Special Rapporteur on Contemporary Forms of Racism, "Racial discrimination in the context of laws, policies and practices concerning citizenship, nationality and immigration," UN Doc. A/HRC/38/52, 25 April 2018, para. 10, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/52.

20. For more information, see <https://www.statelessness.eu/issues/stateless-minorities>; see, also, <https://www.statelessness.eu/updates/interviews/interview-nevenka-kapicic-roma-youth-organisation-walk-us>.

was found that, in many countries, birth registration or nationality acquisition procedures are extremely difficult to complete for marginalized communities, especially when they include arduous documentary evidence requirements or when minority individuals are subject to discriminatory attitudes by registry officials. Furthermore, a lack of free legal aid can be problematic, especially when individuals do not speak the country's language, are illiterate, or are unable to comprehend administrative procedures. The survey results also indicate that the absence of civil registries in remote areas constitutes an additional barrier to accessing citizenship.

(c) Consequences of statelessness for the enjoyment of other human rights and the disproportionate impact of statelessness on minorities, and persons faced with compounded forms of discrimination

- 13.** Speakers noted the severe and long-lasting consequences of statelessness for individuals as it prevents them from accessing a broad range of human rights.²¹ It was observed that stateless people suffer daily battles to meet their most basic needs, including to access clean drinking water, food or healthcare. Speakers stated that when individuals do not have a nationality or documentation to prove nationality, they remain invisible and on the margins of society, often without access to public services, legal employment, housing, schooling and education, health care and social safety net.
- 14.** Speakers reported that, in addition to minorities, groups particularly impacted by statelessness include children and youth, older people, nomadic communities or those living in border areas, persons with disabilities, lesbian, gay, bisexual, trans and/or intersex (LGBTI) people, former citizens of predecessor States and forcibly displaced persons, including refugees, internally displaced persons, and asylum seekers.²² For instance, the stocktaking exercise conducted by OHCHR and UNHCR found that some countries explicitly exclude LGBTI individuals from naturalization procedures as a "prohibited class".²³ The survey also highlighted that people with disabilities often face disproportionate challenges in accessing permanent residence or citizenship, especially when States have admissibility criteria based on health grounds.²⁴
- 15.** Panelists further highlighted that minorities and other vulnerable groups and individuals often face intersectional forms of discrimination, that is, they face compound discrimination on the basis of more than one ground, or as a result of the interplay of multiple grounds. For instance, in addition to possible racial discrimination or discrimination on grounds of language, religion or belief, members of minorities may also face discrimination related to their health status, migratory status, socio-economic status, age, or sexual orientation, gender identity, gender expression or sex characteristics, among others.²⁵

21. See, e.g., Report of the Secretary-General, "Impact the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless", UN Doc. A/HRC/31/29, 16 December 2015, paras. 44-46, available at <https://undocs.org/A/HRC/31/29>, Report of the Special Rapporteur on Minority Rights, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development," UN Doc. A/HRC/7/23, 28 February 2008, p. 1, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F7%2F23&Language=E&DeviceType=Desktop>.

22. See, Annex I, paras. 14-23.

23. See, *ibid.*, para. 23.

24. *Ibid.*

25. UN Treaty Bodies cover the following discrimination grounds under international human rights law: age; albinism; birth; civil, family or carer status; colour; descent; disability; economic status; ethnicity; gender expression; gender identity; genetic or other predisposition towards illness; health status; indigenous origin; language; marital status; maternity or paternity status; migrant status; minority status; national origin; nationality; place of residence; political or other opinion; pregnancy; property; race; refugee or asylum status; religion or belief; sex; sex characteristics; sexual orientation; social origin; social situation (see, e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 20 [E/C.12/GC/20]; Human Rights Committee General Comment 18; Committee on the Rights of Persons with Disabilities, General Comment No. 6 [CRPD/C/GC/6]).

- 16.** Speakers reported that while discrimination is often at the root of statelessness, stateless people also face discrimination and are deprived of many rights as a result of their lack of nationality. Statelessness is also frequently inherited, thereby leading to intergenerational statelessness and deprivation of rights.
- 17.** Speakers further drew attention to the disproportionate impacts of the COVID-19 pandemic on stateless populations,²⁶ as also shown by recent reports from UNHCR²⁷ and the European Network on Statelessness.²⁸ OHCHR reported that some minority groups have suffered death rates several times higher than other groups during the pandemic, revealing substantial and structural inequalities in most countries.²⁹ For instance, the Committee on the Elimination of Racial Discrimination (“CERD Committee”) raised concerns about the impacts of COVID-19 on the economic, social and cultural rights of stateless persons during its most recent state review processes.³⁰
- 18.** With the 2030 Sustainable Development Agenda being the globally accepted blueprint for a healthier planet and a more just and equitable world, its global goals and central promise to leave no one behind and to reach the most marginalised in society first is the framework within which the UN delivers on its mandate. The UN is currently involved in system-wide responses to the COVID-19 pandemic, including to its human rights impacts.³¹ The UN Secretary General’s 2020 Call to Action on Human Rights obliges the UN system to work to rectify all forms of discrimination and inequality, including related to “age, gender, or diversity, because of what they look like, where they live, or how they worship, because of their sexual orientation or gender identity” and “understand and pay special attention to the specific needs and experiences of children and young people, people living with disabilities, minorities, indigenous communities, refugees, migrants and other groups facing specific challenges.”³² With a view to ensuring full implementation of the 2030 Agenda, its Sustainable Development Goals, and the pledge to leave no one behind, the Secretary General’s call envisions UN work to be human rights-based, empower people and create avenues for civil society participation. UN actors are further expected to apply human rights-sensitive, non-discriminatory approaches to data collection, monitoring and reporting; make full use of human rights mechanisms, including the Universal Periodic Review, the human rights Treaty Bodies and the Special Procedures, as well as national human rights institutions to contribute to implementation of the 2030 Agenda, particularly at the national and local levels; and continue efforts to help design policies that support the most vulnerable and/or excluded groups, recognizing and responding to multiple and intersecting deprivations and “sources of discrimination that limit opportunities and make it harder to escape poverty, live with dignity and enjoy human rights on a healthy planet”.³³

26. See, also, Situation assessment report on the nexus between statelessness, discrimination and access to health rights in Europe: <https://www.statelessness.eu/updates/publications/situation-assessment-statelessness-health-and-covid-19-europe>.

27. See, e.g., UNHCR, “The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices”, May 2020, available at: <https://www.refworld.org/docid/5eb2a72f4.html>; UNHCR, “‘Invisible’ stateless people could miss out on COVID-19 jabs, UNHCR warns,” 22 June 2021, available at: <https://news.un.org/en/story/2021/06/1094492>.

28. European Network on Statelessness, “Situation Assessment of Statelessness, Health, and COVID-19 in Europe,” April 2021, available at: <https://www.statelessness.eu/updates/publications/situation-assessment-statelessness-health-and-covid-19-europe>.

29. UN OHCHR, “Covid-19 and Minority Rights: Overview and Promising Practices,” 4 June 2020, p. 1, available at: https://www.ohchr.org/Documents/Issues/Minorities/OHCHRGuidance_COVID19_MinoritiesRights.pdf.

30. See, e.g., UN CERD, Concluding observations on the combined twentieth to twenty-second periodic reports of Belgium, UN Doc. CERD/C/BEL/CO/20-22, 21 May 2021, paras. 26-27, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=C-ERD%2fC%2fBEL%2fCO%2f20-22&lang=en.

31. See United Nations, “UN Response to COVID-19”, available at: <https://www.un.org/en/coronavirus/un-response>; United Nations, “COVID-19 and human rights: we are all in this together,” April 2020, available at: https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf ; United Nations, “A UN framework for the immediate socio-economic response to COVID-19”, April 2020, available at: https://www.un.org/sites/un2.un.org/files/un_framework_report_on_covid-19.pdf.

32. *Supra* note 1.

33. In his recent “Our Common Agenda”, UN Secretary-General António Guterres stated, “to ensure that everyone is seen and recognized, measures to prove legal identity (target 16.9 of the Sustainable Development Goals) and end statelessness, including by closing legal loopholes, and disaggregating data by age, gender and diversity are urged” (para. 39). *Ibid.*

IV. GOOD PRACTICES

- 19.** During the roundtable, speakers highlighted and shared good practices of States, UN human rights mechanisms and UN Agencies, as well as CSOs to eliminate discrimination from nationality laws, policies, and practices. These best practices promote a human rights-based approach to statelessness and align with the goal of UNHCR's #IBelong Campaign to end statelessness by 2024.³⁴

(a) Promoting a human rights-based approach to statelessness

- 20.** Speakers stressed the importance of adopting a human rights-based approach to the issue of statelessness, as the right to a nationality is enshrined in various international instruments. These include, *inter alia*, Article 15 of the Universal Declaration of Human Rights,³⁵ Article 24 of the International Covenant on Civil and Political Rights,³⁶ Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women,³⁷ and Article 7 of the Convention on the Rights of the Child.³⁸ Panelists also emphasized that statelessness and the associated rights deprivation violate the core provision of Article 1 of the Universal Declaration of Human Rights under which all human beings are born free and equal in dignity and rights. Overall, speakers noted that adopting a human rights-based approach enables a shift from asking *who* is stateless to asking *why*, with the aim of addressing the root causes of this pervasive and multi-faceted issue.
- 21.** Speakers highlighted in particular the rights to equality and non-discrimination. In General Comment No. 17, the Human Rights Committee recalled that the obligation of non-discrimination is enshrined in Articles 2 and 24 of the ICCPR, which also operates in relation to nationality acquisition.³⁹ The Human Rights Committee further noted that, "no discrimination with regard to the acquisition of nationality should be admissible under international law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents."⁴⁰ Likewise, in General Recommendation No. 30 on discrimination against non-citizens, the CERD Committee stated that concerning nationality, citizenship or naturalization, States must not discriminate against any particular nationality.⁴¹
- 22.** The 1961 Convention on the Reduction of Statelessness requires States to prevent statelessness by granting a nationality to children who would otherwise be stateless if they are born in the territory or

34. Launched in 2014, the #IBELONG Campaign aims to end statelessness within ten years, by resolving existing situations and preventing the emergence of new cases of statelessness. See, <https://www.unhcr.org/ibelong/>.

35. Article 15 of UDHR states that, "1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

36. Article 24(2), (3) of ICCPR states that, "2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality."

37. Article 9 of CEDAW states that, "1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children."

38. Article 7 of CRC states that, "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

39. UN Human Rights Committee, General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, available at: <https://www.refworld.org/pdfid/45139b464.pdf>.

40. *Ibid.*, para. 8.

41. CERD Committee, General Recommendation No. 30 on the Discrimination of Non-Citizens, October 2002, paras. 1, 13-17, available at: <https://www.refworld.org/docid/45139e084.html>.

are born abroad to a national (Articles 1 and 4). The convention also contains safeguards to prevent statelessness later in life (Articles 5 to 8). Article 9 of the same Convention specifically provides that States “may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”⁴²

- 23.** Speakers observed that in practice, nationality is often a prerequisite for accessing many other rights, including the right to vote, the right to education, the right to health, the right to social security, and the right to work. However, as a general rule under international law, human rights guaranteed by a convention are not limited to citizens of States Parties but must be available to all individuals, regardless of their nationality status, who may find themselves in the territory or subject to the jurisdiction of the State Party.⁴³ For instance, the Human Rights Committee, in its General Comment No. 15, recalled that human rights should apply to everyone, irrespective of reciprocity and irrespective of [a person’s] nationality or statelessness.⁴⁴ In General Comment No. 31, the Human Rights Committee confirmed that “States Parties are required by Article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction.”⁴⁵
- 24.** Concerning the situation of minorities in nationality matters, the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities constitutes core normative commitments.⁴⁶ Reflecting a broad consensus on the relationship between the definition of minorities and citizenship, the UN Working Group on Minorities⁴⁷ and the UN Human Rights Committee⁴⁸ have both stated that the Declaration’s application extends to minorities regardless of citizenship. The UN Special Rapporteur on Minority Issues has also advanced a working definition of minorities, under which “[a] person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.”⁴⁹ It was noted that 2022 will be the 30th anniversary of the 1992 Minorities Declaration and as such constitutes an important occasion on which to redouble efforts to end minority statelessness.

(b) Enhanced cooperation among UN Agencies and Entities

- 25.** Recalling the objective of UNHCR’s #IBelong Campaign, speakers highlighted the importance of enhanced cooperation among UN Agencies to develop and implement solutions that have the potential to end statelessness. As such, panelists commended OHCHR and UNHCR for the joint efforts they have undertaken since the High-Level Segment on Statelessness in 2019,⁵⁰ while stressing the need to continue such collaboration in the future.

42. Convention on the Reduction of Statelessness, 989 UNTS 175 (1961 Convention), art. 9.

43. UN Human Rights Committee, General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, paras. 1-2, available at: <https://www.refworld.org/docid/45139a9c.html>.

44. The Human Rights Committee noted that “the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.” *Ibid.*

45. UN Human Rights Committee, General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add.13, para. 10, available at: <https://www.refworld.org/docid/478b26ae2.html>.

46. Although there is no international agreed definition as to which groups constitute minorities, it is often stressed that the existence of a minority is a question of factual elements and that any definition must include both objective factors (e.g., existence of a shared ethnicity, language or religion) and subjective factors, including self-identification by individuals as members of a minority. See, UN Office of the High Commissioner for Human Rights, “Minority Rights: International Standards and Guidance for Interpretation,” *supra* note 14.

47. Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/AC.5/2005/2, 4 April 2005, available at: <https://digitallibrary.un.org/record/547650?ln=fr>.

48. See, UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), UN Doc. CCPR/C/21/Rev.1/Add.5, 26 April 1994, available at: <https://www.refworld.org/docid/453883fc0.html>.

49. Report of the UN Special Rapporteur on Minority Issues, UN Doc. A/74/160, 15 July 2019, para. 59; OHCHR, “Faith4Rights Toolkit”, 2021, p. 38, available at: <https://www.ohchr.org/Documents/Press/faiith4rights-toolkit.pdf>.

50. For an overview of the results and highlights of the High-Level Segment, see UN High Commissioner for Refugees (UNHCR), High-Level Segment on Statelessness: Results and Highlights, May 2020, available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

- 26.** Among the good practices observed at the UN level, speakers reported successful examples of cooperation among UN Agencies and human rights mechanisms. For instance, in 2014, the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) benefitted from support provided by OHCHR and UNHCR to develop General Recommendation No. 32 about the Gender-Related Dimensions of Refugee Status, Asylum and Statelessness.⁵¹ In an effort to clarify the content of Article 9, the CEDAW Committee recalled that “women enjoy the rights to acquire, change or retain their nationality and to confer their nationality on their children on an equal basis with men.”⁵² Such recommendations are of utmost importance to curtail statelessness and discriminatory laws, policies, and practices because they clarify the scope of State Parties’ obligations in nationality matters and include specific guidance for implementing these standards with gender sensitivity at the country level. For instance, in General Recommendation No. 32, the CEDAW Committee called for enhanced cooperation between States and UNHCR, in relation to its work on the identification, reduction and prevention of statelessness and protection of stateless persons, in particular stateless women.⁵³
- 27.** Furthermore, it was noted that UN human rights bodies have regularly monitored issues of statelessness, especially through State party reviews and individual complaints. During its most recent session, the CERD Committee paid specific attention to the existence of discriminatory laws, policies and practices in nationality matters.⁵⁴ For instance, the CERD Committee called for the Netherlands to ensure that its policy of stripping dual nationality is only applied with regard to grave criminal offences and does not lead to statelessness; to provide support to stateless Roma, Sinti and Travelers in the Netherlands who are eligible to obtain nationality but who encounter difficulties in the naturalization procedure; and to take legislative and administrative measures to ensure that the public, including stateless persons, know their rights, including all legal remedies in the area of racial discrimination.⁵⁵ With regard to Cambodia, the CERD Committee had expressed concern about the lack of sufficient protections to ensure that children born in the State party, who would otherwise be stateless, can acquire nationality and have access to identity documents.⁵⁶ In the same review, it also called for the State to address the specific challenges faced by minorities in accessing identification documentation, including Khmer Krom who are still not able to record their true name and place of birth in their identification documents.⁵⁷
- 28.** Speakers also referred to a recent case in which the Human Rights Committee recognized the centrality of the right to a nationality and the concrete protection it entails for individuals, especially children.⁵⁸ The Committee found a violation of Article 24(3) of the ICCPR because a child’s

51. UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, UN Doc. CEDAW/C/GC/32, available at: <https://www.refworld.org/docid/54620fb54.html>.

52. *Ibid.*, para. 62.

53. *Ibid.*, para. 63.

54. See, e.g., CERD Committee, 104 Session (09 August 2021 - 25 August 2021), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2483&Lang=en; CERD Committee, 103 Session (19 April 2021 - 30 April 2021), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2481&Lang=en.

55. CERD Committee, Concluding observations on the combined twenty-second to twenty-fourth reports of the Kingdom of the Netherlands, UN Doc. CERD/C/NLD/CO/22-24, 25 August 2021, para. 26(2), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FNLD%2FCO%2F22-24&Lang=en.

56. CERD Committee, Concluding observations on the combined fourteenth to seventeenth reports of Cambodia, UN Doc. CERD/C/KHM/CO/14-17, 30 January 2020, para. 33, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FKHM%2FCO%2F14-17&Lang=en.

57. *Ibid.*, paras. 25-26.

58. See, UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2918/2016, UN Doc. CCPR/C/130/D/2918/2016, 20 January 2021, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F130%2FD%2F2918%2F2016&Lang=en.

nationality was registered as “unknown” in his civil records, which prevented his access to international protection as a stateless child and left him with no possibility of acquiring the nationality of the country in which the child lived.⁵⁹

(c) Good practices of States and other actors

- 29.** During the roundtable, panelists highlighted the crucial role played by States in ending statelessness, and acknowledged the efforts of some governments to remove discrimination from their nationality laws, policies and practices. For instance, in 2017, the government of Madagascar promulgated a new nationality law which guarantees the equal right of citizens, regardless of their gender, to transmit their nationality to their children.⁶⁰ The retroactive scope of this new law has been fundamental to enable stateless individuals to access nationality. Speakers commended the efforts of the government of Madagascar to reform its Nationality Code in line with international human rights standards, while also calling for further reforms to ensure that all discriminatory provisions are removed from its nationality laws.
- 30.** Among the good practices identified by the panelists, Uganda was commended for the commitments it undertook at the regional and international levels relating to the right to nationality. The government delivered six pledges at the High-Level Segment on Statelessness in October 2019, including a commitment to recognize stateless communities as Ugandan citizens by 2024.⁶¹ As a result, the nationality laws of the country are currently being reviewed to comply with the international standards on non-discrimination and to provide access to citizenship. By the end of 2019, Uganda finalized its National Action Plan that now serves as the national strategy to eradicate statelessness in the country by 2024.
- 31.** Speakers emphasized the crucial role of NHRIs in promoting and monitoring the effective implementation of the right to a nationality, especially for individuals belonging to minorities. It was noted that, for instance, the Malaysian Human Rights Commission, Suhakam, has addressed numerous complaints from stateless individuals which, for the most part, concern issues of registration and access to official identification documents. Furthermore, the increased cooperation among NHRIs was presented as an effective solution to better protect the rights of stateless individuals. For instance, in 2018, the NHRIs of Indonesia, Malaysia and the Philippines signed a Memorandum of Understanding to ensure cooperation in addressing the situation of individuals who are stateless as a result of the conflicts that occurred in the region during the second half of the 20th century

59. In her individual concurring opinion, Committee member Hélène Trigoudja further argued that “[the victim’s] situation of statelessness does not only constitute a violation of his right to a nationality (art. 24 (3) of the Covenant). It should also have been analysed by the majority as a violation of the right to be recognized by the law as a legal person (art. 16) and the right to be treated with humanity and dignity (art. 7).” *Ibid.*, Annex II.

60. See, Global Campaign for Equal Nationality Rights, “Madagascar Reforms Its Nationality Law, Guaranteeing Mothers’ Independent Right to Confer Nationality on Children”, January 2017, available at: <https://equalnationalityrights.org/news/78-madagascar-reforms-its-nationality-law-guaranteeing-mothers-independent-right-to-confer-nationality-on-children>.

61. Uganda pledged to “ensure [by 2024] that the Maragoli, Benet, Ugandan-Asian and other unrecognized communities present in Uganda since before 1926 are recognised as citizens of Uganda.”

V. RECOMMENDATIONS

32. Both panels demonstrated that the nature of statelessness and its intersection with issues faced by minorities and other groups at risk of being left behind require tailored efforts that aim at encouraging States to adopt good practices to eliminate all discriminatory laws, policies and practices, while furthering work among UN human rights mechanisms and Agencies. As an outcome of the virtual roundtable and of the survey conducted by OHCHR and UNHCR, these recommendations can boost efforts to address the plight of people who are stateless due to discriminatory nationality laws, policies and practices.

33. The following recommendations align with UNHCR's Global Action Plan to End Statelessness. This plan establishes a guiding framework of 10 Actions to be undertaken by States to end statelessness: (1) resolve existing major situations of statelessness; (2) ensure that no child is born stateless; (3) remove gender discrimination from nationality laws; (4) prevent denial, loss or deprivation of nationality on discriminatory grounds; (5) prevent statelessness in cases of State succession; (6) grant protection status to stateless migrants and facilitate their naturalization; (7) ensure birth registration for the prevention of statelessness; (8) issue nationality documentation to those with entitlement to it; (9) accede to the UN Statelessness Conventions; and; (10) improve quantitative and qualitative data on stateless populations.⁶²

34. Recommendations for States include:

- a. Address all gaps in legislation, policies, and practices that cause the denial, loss, or deprivation of nationality on discriminatory grounds, in line with the core principles of equality and non-discrimination.⁶³
- b. Facilitate the naturalization of stateless people, including individuals belonging to minorities and other vulnerable groups, especially by waiving requirements such as those relating to income, language and residence status, by removing barriers such as fees, and by lifting certain documentary evidence requirements.⁶⁴
- c. Adopt an intersectional approach to address discriminatory laws, policies and practices in nationality matters, with the aim of accounting for the compounding and differential effects of age, gender identity or gender expression, disability, language, minority status, religion or belief, sex, sex characteristics or sexual orientation, among others.⁶⁵ Good practices could include, *inter alia*:
 - i. Collection of disaggregated data about statelessness by ethnicity, age, gender identity or gender expression, disability, language, minority status, religion or belief, sex, sex characteristics or sexual orientation, among others.
 - ii. Development of national policies and implementation of action plans that are tailored to the specific needs and vulnerabilities of certain groups, including women and girls, children and youth, minorities and indigenous people, people of African descent,

⁶² UNHCR, "Global Action Plan to End Statelessness," 4 November 2014, available at: <https://www.refworld.org/docid/545b47d64.html>.

⁶³ The CERD Committee, in General Recommendation No. 30, has called upon State Parties to ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization; to address barriers to naturalization for long-term residents; to reduce statelessness; to regularize the status of former citizens of predecessor States. CERD Committee, *supra* note 41, paras. 13-17.

⁶⁴ UNHCR, "Good Practice Paper: Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons," 2016, p. 8, available at: <https://www.refworld.org/docid/57836cff4.html>.

⁶⁵ Report of the Special Rapporteur on Contemporary Forms of Racism, *supra* note 19, para. 12.

older people, nomadic communities or those living in border areas, people with disabilities, LGBTI people, former citizens of predecessor States, and forcibly displaced people, including refugees, internally displaced persons and asylum seekers.

- d. Strengthen cooperation and consultation with minority representatives, community and religious leaders⁶⁶ and stateless people to better understand the obstacles in accessing civil registration and citizenship, and to develop tailored solutions to resolve statelessness among minorities and other vulnerable groups.
- e. Simplify registration procedures to guarantee access by all individuals and ensure that these procedures are available, accessible, culturally relevant, and affordable, especially for stateless minorities and other vulnerable groups.
- f. Implement procedures for late birth registration, extend existing deadlines, establish registries in remote areas, and suspend penalties and fees.⁶⁷ Considering that various countries used the pandemic as an opportunity to expand numeric access to public services, national authorities could also digitize civil registration services as long as this transition does not disadvantage those without access to internet.⁶⁸
- g. Ensure that stateless individuals, including those belonging to minorities, are not deprived of human rights, including economic or social rights such as the right to water, food, education, health, social security, and work.
- h. Implement urgent measures and policies to mitigate the disproportionate effects of the pandemic on stateless individuals and to ensure universal access to vaccination, in line with UNHCR's recommendations of May 2020 and June 2021 regarding COVID-19.⁶⁹
- i. Prevent and address xenophobic, exclusionary and racist discourses, as they may be used to justify discriminatory laws, policies and practices specifically targeting minorities and other vulnerable groups, and to deprive them of their right to a nationality and other human rights.
- j. Take measures to implement relevant recommendations on statelessness issued by the Universal Periodic Review, UN Treaty Bodies and UN Special Procedures, including the evaluation, review, development and/or monitoring of legislation, public policies, plans and programs.⁷⁰

35. Recommendations for UN Agencies and Entities include:

- a. Advance inter-agency cooperation in the area of statelessness and continue joint efforts to address the plight of stateless minorities and other communities, groups or individuals. In line with

66. "Faith for Rights" framework, available at: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx>.

67. UNHCR, "The Impact of COVID-19 on Stateless Populations: Policy recommendations and good practices on vaccine access and civil registration," 3 June 2021, p. 10, available at: <https://www.refworld.org/docid/60b8d6d84.html>.

68. *Ibid.* The digitalization of many public services, including birth registration services, was accelerated during the COVID-19 pandemic. However, digitalization may exacerbate barriers to access public services if the socio-economic exclusion of stateless people is not addressed. There are also risks that digitalization is used to further disadvantage and exclude people, such as through the misuse of data, the denial of registration, and increased surveillance. Furthermore, lack of connectivity or access to technology could also lead to increased risk of statelessness, if access to documentation or public services is made contingent on registration or digital identity. See, e.g., Institute Statelessness and Inclusion (ISI), 2020 Report on the World's Stateless, 2020, p. 12, 40, available at: https://files.institutesi.org/WORLD'S_STATELESS_2020.pdf.

69. UNHCR, "The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices," 11 May 2020, available at: <https://www.refworld.org/docid/5eb2a72f4.html>.

70. See, e.g., OHCHR, "The National Recommendations Tracking Database: A tool to support implementation of human rights recommendations by States," available at: <https://www.ohchr.org/Documents/HRBodies/UPR/NRTD.pdf>.

OHCHR's pledge during the High-Level Segment on Statelessness in 2019 to work jointly with UNHCR, continue cooperation between OHCHR and UNHCR in areas where their respective mandates add value, such as on questions of the comprehensive ban on all forms of discrimination, as well as on minority rights matters.

- b. Engage and work with relevant UN human rights mechanisms – especially UN Treaty Bodies, Universal Periodic Review, Special Procedures, including the UN Special Rapporteur on Minority Issues – to raise awareness and advance focused solutions that address discriminatory laws, policies and practices that could lead to statelessness. Where appropriate, contribute to periodic and state review processes and intervene in individual complaints and other communications procedures.
- c. Promote awareness-raising about the root causes and consequences of statelessness for individuals, including those belonging to minorities, within UN Agencies and adopt a human rights-based approach to solving these issues.
- d. Adopt a consistent intersectional approach in standard-setting, monitoring, and programming that relate to statelessness, in order to develop and implement solutions that are tailored to the specific needs and vulnerabilities of certain groups, including women and girls, children and youth, minorities and indigenous people, people of African descent, older people, nomadic communities or those living in border areas, people with disabilities, LGBTI people, former citizens of predecessor States, and forcibly displaced people, including refugees, internally displaced persons and asylum seekers. This requires the collection of disaggregated data about stateless individuals and groups (e.g., by ethnicity, age, gender identity or gender expression, disability, language, minority status, religion or belief, sex, sex characteristics or sexual orientation, among others).
- e. Continue the identification of good practices at the national level in the area of addressing statelessness, including efforts undertaken by States to eliminate discrimination from their nationality laws, policies, and practices. UN human rights mechanisms could, for instance, pursue efforts to monitor the issue of statelessness and the existence of discriminatory laws, policies and practices in nationality matters, through State party reviews and individual complaint mechanisms.
- f. Consider implementing an International Day on Statelessness to raise awareness and increase visibility about the plight of stateless individuals throughout the world, in a context where they suffer continued marginalization and invisibility.
- g. Continue to advance cooperation with governments, civil society organizations, NHRIs, community and religious leaders, and stateless people to develop and implement human rights-based solutions that have the potential to curtail and end statelessness. Ensure that stateless individuals, including those belonging to national, ethnic, religious or linguistic minorities and other vulnerable groups, are directly included and consulted in UN efforts to address statelessness.

Background Readings on Statelessness and Human Rights

REPORTS FROM THE HUMAN RIGHTS COUNCIL'S SPECIAL PROCEDURES MANDATE HOLDERS

- Interim Report of the Special Rapporteur on Freedom of Religion or Belief, *Elimination of All Forms of Religious Intolerance*, paras. 26-29, UN Doc. A/75/385, 12 October 2020.
- Report of the Special Rapporteur on Minority Issues, *Update on the Special Rapporteur's First Thematic Report on Statelessness as a Minority Issue*, paras. 85-87, UN Doc. A/HRC/40/64, 9 January 2019.
- Report of the Special Rapporteur on Minority Issues, *Statelessness: a Minority Issue*, UN Doc. A/73/205, 20 July 2018.
- Report of the Special Rapporteur on Minority Issues, *Priorities and Vision for the Mandate*, paras. 36-40, UN Doc. A/HRC/37/66, 16 January 2018.
- Report of the Special Rapporteur on Contemporary Forms of Racism, *Racial Discrimination, Xenophobia and Related Intolerance, Racial Discrimination in the Context of Citizenship, Nationality and Immigration Status*, paras. 6-15, UN Doc. A/HRC/38/52, 25 April 2018.

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- UN High Commissioner for Refugees (UNHCR), *Background Note on Discrimination in Nationality Laws and Statelessness*, 20 October 2021.
- UN High Commissioner for Refugees (UNHCR), *The Impact of COVID-19 on Stateless Populations: Policy recommendations and good practices on vaccine access and civil registration*, 3 June 2021.
- UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2021*, 5 March 2021.
- UN High Commissioner for Refugees (UNHCR), *Guidance on UNHCR's Engagement with National Human Rights Institutions*, 2020.
- UN High Commissioner for Refugees (UNHCR), *"This is Our Home" Stateless Minorities and their Search for Citizenship*, 3 November 2017.
- UN High Commissioner for Refugees (UNHCR), *I Am Here, I Belong: The Urgent Need to End Childhood Statelessness*, 3 November 2015.

- UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014.
- UN High Commissioner for Refugees (UNHCR), *Guidance on Racism and Xenophobia*.

OTHER UN PUBLICATIONS

- Expert Workshop on Best Practices to Promote Women’s Equal Nationality Rights in Law and in Practice, *Summary report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/36/30, 25 July 2017.
- Report of the United Nations Secretary-General on the Impact the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, UN Doc. A/HRC/31/29, December 2015.
- UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation No. 30 on Discrimination Against Non-Citizens*, 2005.

TOOLS AND LEARNING COURSES

- Office of the UN High Commissioner for Human Rights (OHCHR), *#Faith4Rights toolkit*, August 2021.
- UN High Commissioner for Refugees (UNHCR), *E-learning Course on Engaging with Human Rights Systems on Displacement and Statelessness* (3h45).
- UN High Commissioner for Refugees (UNHCR), *UN High Commissioner for Refugees (UNHCR) and Minority Rights Group International, ICERD Quick Reference Guide: Statelessness and Human Rights Treaties*, July 2017.
- UN High Commissioner for Refugees (UNHCR), *UN High Commissioner for Refugees (UNHCR) and Global Campaign for Equal Nationality Rights, CEDAW Quick Reference Guide: Statelessness and Human Rights Treaties*, April 2017.
- UN High Commissioner for Refugees (UNHCR), *UN High Commissioner for Refugees (UNHCR) and UNICEF, CRC Convention on the Rights of the Child: Quick Reference Guide - Statelessness and Human Rights Treaties*, January 2017.
- UN High Commissioner for Refugees (UNHCR), *ICCPR International Covenant on Civil and Political Rights: Quick Reference Guide - Statelessness and Human Rights Treaties*, October 2016.

OTHER PUBLICATIONS

- Institute on Statelessness and Inclusion (ISI), *The World's Stateless: Deprivation of Nationality*, 2020.
- CESF Consortium/ ISI, "Together we can. The Covid-19 Impact on Stateless People and a Roadmap for Change", 2021.

Annex I: Background Non-Paper on Equality and Non-discrimination in Nationality Matters to End Statelessness

PREPARED IN SUPPORT OF OHCHR/UNHCR VIRTUAL ROUNDTABLE ON EQUALITY AND NON-DISCRIMINATION IN NATIONALITY MATTERS TO END STATELESSNESS, 21 OCTOBER 2021

I. CONTEXT

- 1.** Although the exact number of stateless persons is unknown, some 4.2 million stateless people are reported by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 94 countries. The actual number is believed, however, to be substantially higher.⁷¹ In January 2018, in his first report to the Human Rights Council, the UN Special Rapporteur on Minority Issues, Dr. Fernand de Varennes, stressed that minorities are disproportionately affected by statelessness,⁷² since more than 75% of the world's stateless individuals belong to national or ethnic, religious and linguistic minorities.⁷³
- 2.** Statelessness exacerbates obstacles already faced by minorities and vulnerable groups, including women, older persons, migrants, displaced persons and refugees, persons with disabilities, children and youth, in every aspect of their life and infringes on the full enjoyment of a broad range of human rights.⁷⁴ During the High-Level Segment on Statelessness held on 7 October 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) pledged "[t]o work jointly with UNHCR to raise awareness on statelessness and its human rights implications and to promote solutions to it." As a result of this commitment, the UNHCR and the OHCHR have decided to organize a Virtual Roundtable on Equality and Non-Discrimination in Nationality⁷⁵ Matters to End Statelessness on 21 October 2021.

71. UN High Commissioner for Refugees (UNHCR), "Global Trends: Forced Displacement in 2020," June 2021, p. 4, available at: <https://www.unhcr.org/60b638e37/unhcr-global-trends-2020>.

72. Report of the Special Rapporteur on Minorities Issues, "Priorities and vision of the mandate," UN Doc. A/HRC/37/66, 16 January 2018, paras. 36-40, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/66.

73. UNHCR, "This is our home: Stateless minorities and their search for citizenship," 3 November 2017, p. 1, available at: https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf.

74. See, e.g., Report of the Special Rapporteur on Minorities Issues, *supra* note 2.

75. Citizenship and nationality refer to a legal bond between the individual and the State resulting in certain duties and responsibilities. The terms nationality and citizenship are used interchangeably in this document, as they generally are in international law.

3. In preparation for the Virtual Roundtable, **this background non-paper provides a summary of statelessness and deprivation of nationality issues resulting from racial discrimination⁷⁶ or other discrimination such as on the grounds of age, gender identity or gender expression, disability, language, minority status, religion or belief, sex, sex characteristics or sexual orientation, or as a result of the compounding or intersectional impact of more than one ground.**

II. METHODOLOGY

4. OHCHR and UNHCR have undertaken an examination of national laws, policies, and practices concerning nationality acquisition, conferral, change, retention and loss, with a focus on the situation of individuals who are stateless as a result of discriminatory laws and practices. In July 2021, they jointly issued a public survey as well as a survey distributed to States calling for inputs by relevant stakeholders, including States, National Human Rights Institutions, UN entities and civil society organizations (CSOs). This background non-paper builds on the results of this survey to provide an overview of the current global situation regarding non-discrimination and equality in matters of nationality for minorities, as well as national efforts and relevant initiatives to address it.⁷⁷
5. In addition to the survey results, this paper is informed by desk research relating to equality and non-discrimination in nationality matters, with a specific focus on minorities. It includes references to reports by the UN High Commissioner for Human Rights, the UN Special Rapporteur on Minority Issues, the UN Special Rapporteur on Contemporary Forms of Racism, and the UN Special Rapporteur on Freedom of Religion or Belief, as well as General Comments and State party reviews by UN Treaty Bodies. It also refers to documents issued by the UNHCR, including the 2015 report entitled "I am here, I belong: the urgent need to end childhood statelessness." Lastly, this paper is supported by relevant human rights standards and documents, including the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and General Recommendation No. 30 on the discrimination against non-citizens of the Committee on the Elimination of Racial Discrimination (CERD).

III. ISSUES IDENTIFIED CONCERNING STATELESSNESS AND MINORITIES

6. Although the regulation of citizenship is generally considered to be part of States' sovereign decision, rules and practices concerning nationality that are racially discriminatory⁷⁸ or that discriminate in practice or effect on grounds such as religion or belief, age, gender identity or gender expression, disability, language, sex, sex characteristics or sexual orientation violate international human rights standards,⁷⁹ especially the principles of equality and non-discrimination.⁸⁰

76. Under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the term "racial discrimination" refers to "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" (Article 1 § 1).

77. The survey questions are included at the end of this non-paper below.

78. To be understood as any of the grounds covered under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. See, *supra* note 6.

79. See, e.g., Report of the Special Rapporteur on freedom of religion or belief, Elimination of all forms of religious intolerance, UN Doc. A/63/161, 22 July 2008, para. 39, available at: <https://undocs.org/A/63/161>.

80. The Human Rights Committee [CCPR], in General Comment No. 18 on Non-discrimination, recalls that "[n]on-discrimination, together with equality

In General Recommendation No. 30, CERD stated that concerning nationality, citizenship or naturalization, States must not discriminate against any particular nationality.⁸¹ Besides, the right to a nationality is enshrined in various international documents, including Article 15 of the Universal Declaration of Human Rights, Article 24 of the International Covenant on Civil and Political Rights and Article 7 of the Convention on the Rights of the Child.

7. Furthermore, the 1961 Convention on the Reduction of Statelessness requires States to prevent statelessness by granting nationality to persons who would otherwise be stateless and are either born in their territory or abroad to one of their nationals (articles 1, 3 and 4), and upon loss or deprivation of nationality (articles 5 to 8). Article 9 of the same Convention provides that States “may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.” Yet, the survey results indicate the pervasiveness of discriminatory laws and practices regarding the acquisition, transmission, or deprivation of nationality in many States.

1. DISCRIMINATORY LAWS, POLICIES, PRACTICES: MULTIPLE AND COMPOUNDED CAUSES OF STATELESSNESS

8. Throughout the world, many minority communities still struggle to access nationality.⁸² The main causes of statelessness are diverse and include state succession, histories of forced displacement, lack of civil documentation, discriminatory laws, policies and practices to access citizenship, or gaps in and between the nationality laws of States.
9. In particular, the survey results show that the laws and policies of several countries limit access to nationality through **requirements that are either explicitly discriminatory against certain individuals or groups, or that have discriminatory impact or effect on particular groups**.⁸³ For instance, some national laws contain restrictive criteria (e.g., origins, language, clan, or tradition-based requirements) for granting citizenship, which places minorities at greater risk of statelessness. Furthermore, many of these criteria lack clarity and consistency, hence they may be used arbitrarily to exacerbate discriminations against certain groups. Likewise, numerous national laws provide age restrictions to apply for nationality or contain higher requirements for certain age groups, such as language tests or civics exams.

before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights” (para. 1). The CCPR notes that “Article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (para. 1). See, UN Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html>.

The principle of non-discrimination is enshrined in additional international human rights instruments, including Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 30 of the Convention on the Rights of the Child, Article 2(1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and Article 2(1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

81. CERD Committee, General Recommendation No. 30 on the Discrimination of Non-Citizens, October 2002, paras. 1, 13-17, available at: <https://www.refworld.org/docid/45139e084.html>.

82. See, e.g., Updates of the Thematic report on statelessness as a minority issue and the level of awareness-raising and visibility of minorities and their human rights, UN Doc. A/HRC/40/64, 9 January 2019, paras. 85-87, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/64.

83. Under international human rights law, the ban on discrimination covers all forms of discrimination, including direct and indirect discrimination. Direct discrimination occurs when a person is treated less favorably than another person is, has been, or would be treated in a comparable situation on the basis of one or more protected grounds; or when a person is subjected to a detriment on the basis of one or more grounds of discrimination. Indirect discrimination occurs when a provision, criterion or practice has or would have a disproportionate, negative impact on persons having a status or a characteristic associated with one or more grounds of discrimination. See, e.g., UN Committee on the Elimination of Racial Discrimination (CERD), General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. CERD/C/GC/32, 24 September 2009, paras. 7-9, available at: <https://www.refworld.org/docid/4adc30382.html>.

10. The survey results also indicate that even when nationality laws do not discriminate against particular individuals or groups, they often face practical **obstacles in accessing citizenship** due to insurmountable or unduly burdensome administrative requirements. As noted by the UN Special Rapporteur on Contemporary Forms of Racism in 2018, “[s]ometimes, States produce stateless populations or persons with irregular or inadequate status through administrative barriers that structurally exclude marginalized social or national groups.”⁸⁴ In many countries, birth registration or nationality acquisition procedures are extremely difficult to complete for marginalized communities, especially when they include arduous documentary evidence requirements or when minority individuals are subject to discriminatory attitudes by registry officials. In many countries, the lack of free legal aid available to the most vulnerable groups is also problematic, especially when individuals do not speak the country’s language, are illiterate, or are unable to comprehend administrative procedures. Furthermore, the absence of civil registries in isolated areas and the geographical remoteness of some communities from public administrative offices constitute an additional barrier to access citizenship.
11. In many countries, legislation and policies include **onerous requirements for naturalization**, which often results in the exclusion of minorities. In several States, individuals may be naturalized only if they can prove that they speak and/or write the national language(s) or if they pass a civics test. These requirements disproportionately affect individuals belonging to national, ethnic, religious, or linguistic minorities. The survey results also indicate that the language and civics tests may not always be administered objectively, especially when they involve in-person interviews or when the examination criteria lack clarity and objectivity. In addition, the costs associated with these tests often constitute an additional obstacle for stateless persons as they may already live in a situation of poverty.
12. Some national legislation and policies also include **specific requirements on self-reliance and socio-economic participation** of individuals as a condition to confer citizenship, which may adversely affect minorities considering that they often face poverty, exclusion from the formal job market, or social stigmatization. For instance, in some States, persons who have received social assistance in a certain period of time before or during the application to naturalization cannot access citizenship because they do not meet the conditions of economic participation and self-reliance, unless the social assistance received is fully reimbursed. Furthermore, access to naturalization often requires proof of continuous residence for an elevated number of years, which might be difficult to fulfill for people without travel documents, legal residence permits, or those living in precarious settlements.
13. The Special Rapporteur on Contemporary Forms of Racism reported that **“racist and xenophobic ideologies rooted in ethno-nationalism** regularly combine with national security fears and economic anxieties to violate the human rights of non-citizens, indigenous peoples and minorities on the basis of race, ethnicity, national origin and religion.”⁸⁵ In countries where naturalization is denied to categories of individuals who are considered a “threat” to public policy or national security, hate speech and racist or xenophobic ideologies can be used by political leaders and parties to exploit the discontent and national security anxieties of their populations, and to further restrict access to nationality or develop higher restrictions along racial, ethnic, religious

84. Report of the Special Rapporteur on Contemporary Forms of Racism, “Racial discrimination in the context of laws, policies and practices concerning citizenship, nationality and immigration,” UN Doc. A/HRC/38/52, 25 April 2018, para. 10, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/52.

85. Id., para. 63.

or linguistic lines. In that regard, the exponential rise of hate speech and ethno-religious hatred, such as antisemitism, Islamophobia, anti-Roma rhetoric, Afrophobia or anti-Asian hatred, is particularly concerning.⁸⁶

2. THE SPECIFIC VULNERABILITY OF CERTAIN GROUPS TO STATELESSNESS

14. In general, **national, ethnic, religious and linguistic minorities** face disproportionate discrimination and compounded obstacles in accessing their right to nationality. Since the adoption of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, international interpretation has generally proceeded from an expansive approach to interpret the term “minorities”.⁸⁷ Reflecting a broad consensus on the relationship between the definition of minorities and citizenship, the UN Working Group on Minorities has set out *inter alia* that the Declaration benefits from a scope as wide as that of article 27 of the International Covenant and Civil and Political rights, and its application extends to minorities regardless of citizenship.⁸⁸ The UN Human Rights Committee has set out an analogous interpretation.⁸⁹ The UN Special Rapporteur on Minority Rights, Dr. Fernand de Varennes, has also advanced a working definition on the concept of minority, according to which “[a] person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.”⁹⁰
15. Nevertheless, there are important **gaps between this approach to minority protection under international human rights law and national laws, rules and practices in that regard**, since in practice States generally continue to require citizenship, residence, official recognition, or any other official status as a prerequisite to ensure the protection of the specific rights of minorities. Hence, although States have the obligation to protect minorities’ existence and identity and to ensure their effective participation regardless of whether they are citizens or not,⁹¹ discriminatory practices, laws, and policies against minorities in matters of nationality are prevalent in many countries.

Particular minorities are especially affected by problems of statelessness. The following is a non-exhaustive summary of some minorities or communities where international human rights review has consistently identified statelessness issues, in many cases implicating multiple jurisdictions or States. Throughout Europe, many **Roma** still struggle to secure documents to assert their nationality. Although some countries have facilitated naturalization procedures for stateless persons, some Romani individuals or families are often identified by State authorities as having “unknown

86. See, e.g., UN Special Rapporteur on Freedom of Religion or Belief, Report on Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief, UN Doc A/HRC/46/30, 25 February 2021, available at: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/HatredAndDiscrimination.aspx>.

87. Article 1 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities refers to minorities as based on national or ethnic, cultural, religious and linguistic identities, and provides that States should protect their existence. Although there is no international agreed definition as to which groups constitute minorities, it is often stressed that the existence of a minority is a question of factual elements and that any definition must include both objective factors (e.g., existence of a shared ethnicity, language or religion) and subjective factors, including self-identification by individuals as members of a minority. See, UN Office of the High Commissioner for Human Rights, *Minority Rights: International Standards and Guidance for Interpretation*, UN Doc. HR/PUB/10/3, p. 2, available at: https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.

88. Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/AC.5/2005/2, 4 April 2005, available at: <https://digitallibrary.un.org/record/547650?ln=fr>.

89. UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), UN Doc. CCPR/C/21/Rev.1/Add.5, 26 April 1994, available at: <https://www.refworld.org/docid/453883fc0.html>. CCPR/C/21/Rev.1/Add.5.

90. Report of the UN Special Rapporteur on Minority Issues, UN Doc. A/74/160, 15 July 2019, para. 59; OHCHR, “Faith4Rights Toolkit”, 2021, p. 38, available at: <https://www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf>.

91. *Ibid.*

nationality”, which prevents their access to secure legal recognition of citizenship, or they are otherwise unable to surmount barriers to the effective recognition of nationality. Roma, Ashkali and Egyptian minorities in or from southeastern Europe may also face statelessness as a result of the recent history of state succession, displacement, gaps and conflicts in nationality and civil registration laws, structural discrimination and xenophobia. The survey results also indicate that issues facing Roma may be compounded by the rise of hate speech and xenophobia, as well as the lack of consultation with Roma communities to resolve linguistic, administrative, socio-economic and other obstacles in accessing birth registration or other status documents, as well as administrative procedures more generally. In the Baltic States, thousands of individuals among the **Russian-speaking populations** have remained stateless since the dissolution of the Soviet Union. Likewise, since the **Rohynga** have been denied Myanmar citizenship in 1982 and the brutal crackdown by the Myanmar army in 2017 that prompted hundreds of thousands of Rohingyas to flee the country,⁹² about one million of members of the Rohingya minority who are stateless have faced “horrific human tragedies”.⁹³

16. Furthermore, **children and youth** may be particularly affected by statelessness and the denial of the right to nationality. In various States, nationality laws based on *jus sanguinis* contain limitations that distinguish between children born in and out of wedlock, as well as between children who are born to a national mother as opposed to a national father. Likewise, access to nationality by descent also has discriminatory aspects in various States where women and men do not have equal rights when transmitting nationality to their children.
17. Because **birth certificates** provide proof of links to a State and are therefore often a pre-requisite for obtaining citizenship, children belonging to minority groups face heightened risks of statelessness when they cannot access civil registration. The survey results also indicate that the lack of recognition of same-sex partnerships or marriages by some countries can leave some children at risk of statelessness, especially when the national authorities of one country refuse to recognize birth certificates issued in another country because they include the names of both same-sex parents or when national legislation excludes the possibility to register the birth of a child with same-sex parents. Furthermore, some countries do not recognize the legal parentage between children and their non-biological parent(s) in situations other than adoption, and require proof of a biological link (e.g., DNA test) to register the birth or transcribe birth certificates issued by another State into domestic law, which puts children born under surrogacy arrangements or with same-sex parents at greater risk of statelessness.
18. **Older stateless individuals** may also face specific obstacles in accessing nationality. Due to various historical and socio-political factors (e.g., state succession, absence of civil registries), some have never registered their birth or received a birth certificate, thereby lacking the primary documentary evidence needed to apply for a nationality. These documents may also have been lost or destroyed. Furthermore, elderly individuals belonging to minorities may also face heavy burden to meet the language or income requirements in naturalization processes, since they tend to be disproportionately affected by illiteracy, poverty, and social exclusion.⁹⁴

92. See, e.g., UN High Commissioner for Human Rights, Report on the Situation of human rights of Rohingya Muslims and other minorities in Myanmar, UN Doc. A/HRC/32/18, 29 June 2016, paras. 2-14, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/18; UNHCR, “The Displaced and Stateless of Myanmar in the Asia-Pacific Region: An Overview of the Current Situation for Rohingya and Other Persons of Concern from Myanmar and UNHCR’s Response Across the Region,” January 2021, p. 2-4, available at: <https://reporting.unhcr.org/sites/default/files/The%20Displaced%20and%20Stateless%20of%20Myanmar%20in%20the%20Asia-Pacific%20Region%20-%20January%202021.pdf>.

93. Statement of the UN Special Rapporteur on Minority Issues, “Statelessness of millions of minority people must be addressed urgently,” 13 March 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24321&LangID=E>.

94. See, e.g., UN Department of Economic and Social Affairs, “Economic Inequalities in Old Age,” available at: <https://www.un.org/development/>

- 19.** For **nomadic communities or those living in transborder areas**, who often identify as minorities, effective access to birth registration and citizenship can be hampered when the precise location of their birth is unknown or when they are unable to prove that they were born in a specific country. Furthermore, in States where access to citizenship is contingent upon residence in the country for a specific number of years, nomadic or transborder communities may face difficulties to meet or prove this requirement.
- 20. Former citizens of predecessor States** continue to face obstacles to the regularization of their status, especially when their birth certificates were lost, destroyed, or never issued. Furthermore, the dissolution, separation, or collapse of certain States or federations can be used by the new states as an opportunity to adopt restrictive citizenship laws that would serve ethno-nationalistic projects and exclusionary political restructuring, which may disproportionately affect members of national, ethnic, religious, and linguistic minorities. For instance, following the dissolution of Czechoslovakia, Yugoslavia and the Soviet Union and the creation of a number of successor States from previously existing federations, a number of countries implemented restrictive citizenship laws to build an initial body of citizens by excluding certain ethnic, racial or religious groups, with Roma and Russians affected in particular.⁹⁵ In 2015, the UNHCR estimated that more than 722,000 stateless persons with no or unclear citizenship status lived in the Organization for Security and Cooperation in Europe (OSCE) area.⁹⁶
- 21. Stateless migrants, asylum-seekers and refugees** face disproportionate obstacles in accessing citizenship, especially when they have entered the country irregularly. Furthermore, the Special Rapporteur on Contemporary Forms of Discrimination has reported that, “non-white migrants are far more vulnerable to discrimination and intolerance than white migrants, irrespective of nationality.”⁹⁷ Likewise, the UN Committee on the Elimination of Racial Discrimination (CERD) has explicitly instructed State parties to ICERD to “take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin.”⁹⁸ Some national legislation explicitly defines categories of persons that are prohibited from applying to citizenship, such as irregular migrants, asylum-seekers or refugees, or children whose parents are considered “enemy aliens”. **Children of refugees, asylum-seekers and migrants** may also face obstacles in accessing birth registration, especially when the registration procedures include stringent requirements or when they are conditional on parents’ legal residency or documentation status.
- 22. Persons with disabilities** also face disproportionate challenges in accessing naturalization procedures. In some States, individuals who apply for permanent residence or citizenship may be found inadmissible on health grounds, especially when they suffer mental illness, stigmatized diseases like AIDS, or when government consider that they would be a “threat” to public health or place an “excessive” demand on welfare services. Although some countries include exemptions to naturalization requirements for persons with disabilities (e.g., fee waivers, absence of language tests),

desa/ageing/wp-content/uploads/sites/24/2016/08/BriefingPaper_EconomicInequalities_Final.pdf.

95. For example, the UNHCR reported that “[t]he statelessness of the Roma and other ethnic minorities is linked, in part, to the dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s.” UNHCR, “This is our home”: Stateless minorities and their search for citizenship, supra note 3, p. 22. Gay McDougall, Former UN Special Rapporteur on Minority Issues, also noted that “[t]he break-up of the Soviet Union, for example, fomented numerous nationality contests which left millions effectively stateless and living as minorities in new political contexts. In a similar way, the de-federation and division of Czechoslovakia left thousands of Roma in a precarious situation while their citizenship status was questioned by both successor States.” See, Report of the independent expert on minority issues, Gay McDougall, UN Doc. A/HRC/7/23, 28 February 2008, para. 25, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F7%2F23&Language=E&DeviceType=Desktop>.

96. OSCE and UNCHR, “Handbook on statelessness in the OSCE area: international standards and good practices,” 2017, p. 9, available at: www.osce.org/handbook/statelessness-in-the-OSCE-area.

97. Report of the Special Rapporteur on Contemporary Forms of Racism, supra note 15, para. 30.

98. UN CERD, General Recommendation No. 27 on Discrimination against Roma, UN Doc. 1/55/18, Annex V, 16 August 2000, Art. 1, para. 5, available at: <https://www.refworld.org/pdfid/45139d4f4.pdf>.

the survey results indicate that the decisions to grant exemption tend to be discretionary. Furthermore, administrative procedures for accessing nationality tend to be particularly burdensome for people with disabilities, especially when they do not have the ability to handle this process on their own, which is aggravated by the frequent lack of free legal aid in this area.

23. Minorities often face multiple or intersectional discrimination, that is, they face discrimination on the basis of more than one ground which often has a compounding effect, or as a result of the interplay of more than one ground.

In addition to possible racial discrimination or discrimination on grounds of language, religion or belief, they may also face discrimination related to their health status, migrant status, socio-economic status, age, or sexual orientation, gender identity, gender expression or sex characteristics, among others.⁹⁹ Furthermore, minority rights are intersectional from the outset, since in practice there are not firm boundaries between the four categories set out in the 1992 Declaration categories and, as noted by the Venice Commission “often, they may be in part cumulative.”¹⁰⁰ Overall, the ‘grounds’ of discrimination are extended in practice by the notion of ‘intersectionality,’ which has gained increased attention among the minority rights movement.¹⁰¹ For instance, the survey results indicate that **women belonging to minorities** often face compounding discrimination not only based on their gender identity, gender expression or sex characteristics, but also linked with other factors, such as their race, sexual orientation, ethnicity, religion or belief, health status, age, class, caste, among others. In various countries, women do not acquire, change, or retain their nationality on an equal basis with men.¹⁰² The nationality laws of 25 countries do not grant women equality with men in conferring nationality to their children.¹⁰³ Likewise, some countries explicitly discriminate against **lesbian, gay, bisexual, trans and/or intersex (LGBTI) individuals** who, for example, may be excluded as a “prohibited class” from naturalization procedures. Many States do not have a public policy related to sexual orientation, gender identity and/or expression, and sex characteristics (SOGIESC) that ensure their equal access to citizenship. Likewise, when the granting of citizenship is somewhat discretionary or involves a certain degree of subjectivity by public officials, an individual’s gender identity, gender expression, sexual orientation, or sex characteristics, could possibly be a barrier to citizenship. As mentioned earlier, LGBTI individuals may also be unable to transmit their nationality to their biological or non-biological children, which can lead to statelessness among children of same-sex partners.

99. UN Treaty Bodies cover the following discrimination grounds under international human rights law: Age; Albinism; Birth; Civil, Family or career status; Colour; Descent; Disability; Economic status; Ethnicity; Gender expression; Gender identity; Genetic or other predisposition towards illness; Health status; Indigenous origin; Language; Marital status; Maternity or paternity status; Migrant status; Minority status; National origin; Nationality; Place of residence; Political or other opinion; Pregnancy; Property; Race; Refugee or asylum status; Religion or belief; Sex; Sex characteristics; Sexual orientation; Social origin; Social situation (see, e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 20 [E/C.12/GC/20]; Human Rights Committee General Comment 18; and Committee on the Rights of Persons with Disabilities, General Comment No. 6 [CRPD/C/GC/6]).

100. European Commission for Democracy through Law (Venice Commission), “Compilation of Venice Commission Opinions and Reports Concerning the Protection of National Minorities,” Strasbourg, 11 November 2017, Doc. CDL-PI(2018)002., p.4.

101. See, e.g., “Life at the Margins: The Challenges of Multiple Discrimination,” available at: <http://stories.minorityrights.org/life-atthemargins/>.

102. Equality Now, “The State We’re In: Ending sexism in nationality laws”, January 2016, available at: https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/301/attachments/original/1527597970/NationalityReport_EN.pdf?1527597970.

103. UNHCR, “Background Note on Gender Equality, Nationality Laws and Statelessness 2021”, March 2021, available at: <https://www.refworld.org/docid/604257d34.html>.

3. THE DENIAL OF HUMAN RIGHTS FACED BY STATELESS INDIVIDUALS

24. Statelessness is often associated with other human rights violations, in a context where “States have long used access to citizenship [...] as a **discriminatory tool to curtail the rights and benefits of marginalized groups.**”¹⁰⁴ As noted by former Independent Expert on Minority Issues in 2008, “[o]nce denied or deprived of citizenship, minorities are inevitably denied protection of their basic rights and freedoms, including minority rights as established in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.”¹⁰⁵
25. In particular, the discriminatory deprivation of citizenship faced by minorities can be used as an “effective method of compounding their vulnerability,” since **statelessness has long-lasting and extreme consequences for the enjoyment of other rights, including the right to vote, and prevents access to most services**, including healthcare, education, or welfare.¹⁰⁶ The UN Special Rapporteur on Minority Issues noted that “without citizenship, people who are stateless become humans without rights.”¹⁰⁷ In some cases, stateless individuals are also more vulnerable to expulsion, forced removal, violence, or mass displacement.¹⁰⁸
26. Furthermore, statelessness is often inherited, which leads to a phenomenon of **intergenerational transmission of rights deprivation** and to the **enduring marginalization of stateless individuals across generations**. Besides, for individuals belonging to minorities, this exclusion from other social, economic, political benefits and rights deprivation is even more pervasive, because they are often underrepresented in or excluded from political decision-making.
27. **The COVID-19 pandemic has disproportionately impacted stateless populations**, as shown by recent reports from UNHCR¹⁰⁹ and the European Network on Statelessness.¹¹⁰ In particular, stateless communities living in overcrowded settlements or apartments have faced difficulties in maintaining physical distancing. The social security schemes implemented by many States during the pandemic have often been restricted to citizens, thereby depriving stateless individuals of welfare support. Likewise, stateless individuals have faced barriers to access basic health services, medication, testing, or masks, especially when they lack identification documents or when they live in situations of poverty or social marginalization.
28. The impacts of the COVID-19 pandemic on minorities have been more severe in a number of ways. The UN OHCHR reported that Some minority groups have suffered death rates several times higher than other groups during the pandemic, revealing substantial and structural inequalities in most countries.¹¹¹ Since minorities have often been on the front lines with low-paid and essential jobs, such as cleaning or transportation, they have been particularly exposed to COVID-19.¹¹² Furthermore,

104. *Ibid.*, para. 11.

105. Report of the Special Rapporteur on Minority Rights, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development,” UN Doc. A/HRC/7/23, 28 February 2008, p. 1, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F7%2F23&Language=E&DeviceType=Desktop>.

106. Report of the Special Rapporteur on Minorities Issues, *supra* note 2, para. 37.

107. Statement of the UN Special Rapporteur on Minority Issues, “Statelessness of millions of minority people must be addressed urgently,” 13 March 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24321&LangID=E>.

108. Report of the Special Rapporteur on Minorities Issues, *supra* note 2, para. 38.

109. UNHCR, “The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices”, May 2020, available at: <https://www.refworld.org/docid/5eb2a72f4.html>.

110. European Network on Statelessness, “Situation Assessment of Statelessness, Health, and COVID-19 in Europe,” April 2021, available at: <https://www.statelessness.eu/updates/publications/situation-assessment-statelessness-health-and-covid-19-europe>.

111. UN OHCHR, Covid-19 and Minority Rights : Overview and Promising Practices, 4 June 2020, p. 1, available at: https://www.ohchr.org/Documents/Issues/Minorities/OHCHRGuidance_COVID19_MinoritiesRights.pdf.

112. *Ibid.*

minorities are also confronted with an increase in hate speech and intensified discrimination in many places, with minorities sometimes being cast as scapegoats for the COVID-19 virus.¹¹³

- 29.** Although some States have confirmed universal plans to vaccinate stateless individuals against COVID-19, **some vaccination campaigns have actively discriminated against non-citizens**, for instance by requiring identification documents to access vaccination. As a result, stateless people risk being excluded from national vaccination plans regardless of whether their age, medical conditions or health status, or role in society would otherwise place them among priority categories.

SURVEY ON NATIONALITY (CITIZENSHIP) FRAMEWORKS AND EQUALITY IN MATTERS OF NATIONALITY, UNDERTAKEN JULY-SEPTEMBER 2021

- 1.** Are the State's legal rules and regulations regarding the acquisition, conferral, change and retention of nationality (citizenship) the same for everyone, irrespective of one's real or perceived racial or ethnic origin, or do they restrict (in law or practice) certain groups from acquiring or conferring nationality, or from being protected from deprivation of nationality?
- Yes, the rules are the same and they do not restrict any specific groups protected by international ban on racial discrimination from equal access to nationality/citizenship.
 - No, please explain:
- 3.** Are the State's legal rules and regulations regarding the acquisition, conferral, change and retention of nationality the same for everyone, irrespective of one's religious affiliation, religious or spiritual beliefs, or do they restrict (in law or practice) members of certain religious or belief minorities from acquiring or conferring nationality or from being protected from deprivation of nationality?
- Yes, they are the same and do not restrict any minorities having specific religious or spiritual beliefs.
 - No, please explain:
- 3.** Do members of any minorities face particular burdens or obstacles as concerns the acquisition, conferral, change and retention of nationality (citizenship)?
- No.
 - Yes, please explain:
- 4.** Are the State's legal rules and regulations regarding the acquisition, conferral, change and retention of nationality the same for everyone, irrespective of one's sex (*i.e.*, are the rules identical for women and men), or do they restrict (in law or practice) women from acquiring or conferring nationality or from being protected from deprivation of nationality?
- Yes, they are the same and do not restrict either sex.
 - No, please explain:

¹¹³ *Ibid*, p. 2.

- 5.** Are the State's legal rules and regulations regarding the acquisition, conferral, change and retention of nationality the same for everyone, irrespective of one's sexual orientation, gender identity and/or expression, and sex characteristics (SOGIESC), or do they restrict (in law or practice) persons with diverse sexual orientations, gender identities or expressions, or sex characteristics from acquiring or conferring nationality, or from being protected from deprivation of nationality?
- Yes, they are the same and do not restrict persons with diverse SOGIESC.
 - No, please explain:
- 6.** Are the State's legal rules and regulations regarding the acquisition, conferral, change and retention of nationality the same for everyone, irrespective of one's age, or do they restrict (in law or practice) certain age groups from acquiring or conferring nationality, or from being protected from deprivation of nationality?
- Yes, they are the same and do not restrict any specific age group.
 - No, please explain:
- 7.** Are the State's legal rules and regulations regarding the acquisition, conferral, change and retention of nationality the same for everyone, irrespective of disability, or do they restrict (in law or practice) persons with physical, mental, psychosocial, intellectual or sensory impairments from acquiring or conferring nationality or from being protected from deprivation of nationality?
- Yes, they are the same and do not restrict persons with physical, mental, psychosocial, intellectual or sensory impairments.
 - No, please explain:
- 8.** Is the acquisition, conferral, change or non-retention of nationality contingent on the ability to be self-reliant (*i.e.* that the person can „contribute“ to society or not be a „burden“)?
- No.
 - Yes, please explain:
- 9.** Is the acquisition, conferral, change or non-retention of nationality contingent on the ability to read or speak a certain language (e.g. language requirements)?
- No.
 - Yes, please explain:
- 10.** Is the conferral of nationality to children of nationals contingent on the ability to prove a biological relationship to the child?
- No.
 - Yes, please explain:
- 11.** Are there any other ground-based limitations in nationality/citizenship law, rules, procedures, guidance, policy or practice?
- No.
 - Yes, please explain:

