



**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES**  
**POLICY DEPARTMENT**



**ADDRESSING  
THE HUMAN RIGHTS  
IMPACT OF  
STATELESSNESS  
IN THE EU'S EXTERNAL  
ACTION**

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

**DIRECTORATE B**

POLICY DEPARTMENT

**STUDY**

**ADDRESSING THE HUMAN RIGHTS IMPACT OF  
STATELESSNESS IN THE EU'S EXTERNAL ACTION**

**Abstract**

Statelessness is a significant human rights challenge: it is often a product of human rights problems, such as gender or racial discrimination, while it also has a serious and lasting impact on the enjoyment of other human rights. This study explores how the European Union can play a greater role in the fight against statelessness around the world as part of its external action on human rights issues. It demonstrates the nexus between statelessness and the EU's current human rights priorities and identifies the ways in which the EU has already contributed to addressing statelessness in its external action. The study then discusses the ways in which the EU can strengthen its contribution to the fights against statelessness through multilateral action, bilateral action and improved institutional arrangements. Finally, the paper identifies a set of three thematic and five country priorities for EU engagement on statelessness, providing recommendations for action in each case.

This study was requested by the European Parliament's Subcommittee on Human Rights.

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## ACRONYMS

AU	African Union
AMIF	EU Asylum, Migration and Integration Fund
ASEAN	Association of South East Asian Nations
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DCI	Development Cooperation Instrument
DG EXPO	EU Directorate-General for External Policies of the Union
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EEAS	European Union External Action Service
EIDHR	European Instrument for Democracy and Human Rights
ENPI	European Neighbourhood and Partnership Instrument
FRA	Fundamental Rights Agency
GAMM	EU Global Approach to Migration and Mobility
IPU	Inter-Parliamentary Union
LAS	League of Arab States
OAS	Organisation of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of the Islamic Conference
UNECA	United Nations Economic Commission for Africa
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review

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## EXECUTIVE SUMMARY

Human rights law guarantees the right of everyone to a nationality, yet there are millions of stateless persons around the world – persons who are not considered as a national by any state under the operation of its law. The very existence of statelessness evidences a human rights problem *per se*, but statelessness is commonly also both a product and a cause of other human rights problems. Gender or racial discrimination, neglect for children's rights issues, marginalisation of minority groups or a breakdown in the rule of law can all contribute to the incidence of statelessness. Where a person is left stateless, this can then cause or be a catalyst for a wide range of other human rights violations, including lack of access to socio-economic rights, infringements of the enjoyment of family life, restrictions on free movement, arbitrary detention and even persecution. Statelessness is therefore a significant human rights challenge. It is also one that is gaining increasing attention. In September 2014, building on momentum from recent years which has placed the issue higher on the international human rights and humanitarian agendas, UNHCR will launch an ambitious campaign to end statelessness within a decade. This and other emerging initiatives are expected to galvanise further action on statelessness in the years to come, affirming the need for the EU to review its own performance on the issue to date and consider how to strengthen its engagement. This exercise is also timely because it coincides with an express commitment made by the EU to develop, over the course of 2014, a framework for raising issues statelessness with third countries.

This study focuses on the EU's contribution to the fight against statelessness in its external human rights action and how this can be further developed and strengthened in the future. Nevertheless, given the importance placed on coherence and consistency between the EU's external and international human rights policy and the finding that statelessness is also a pressing issue within the borders of the EU, it is also of interest to consider how EU internal action on statelessness has taken shape. On the face of it, EU law does not provide much in the way of normative guidance on addressing statelessness within the EU – there is, for instance, no right to a nationality in the EU Charter on Fundamental Rights. The regulation of nationality is a competence of EU member states, however these must give due regard to community law when laying down the conditions for acquisition and loss of nationality. Where EU member states' nationality policy is producing, prolonging or perpetuating statelessness, this may be subject to scrutiny under EU law and on the basis of EU principles. Where the protection of stateless persons present a challenge to EU asylum, migration and integration policy, there is scope for the further development of a common policy response – a call which has already been made in the context of developments relating to the area of Freedom, Security and Justice and which will become increasingly pertinent as the EU reaches universal accession to the 1954 UN Convention relating to the Status of Stateless Persons. The overall picture with regard to EU internal action on statelessness is one of clearly emerging interest, but this has yet to crystallise into a concerted, comprehensive and coordinated vision or response.

With regards to the EU's external human rights action, the EU has identified statelessness as an area of engagement in some of its main strategic documents, including the Action Plan on Human Rights and Democracy and the Global Approach on Migration and Mobility. The EU has already engaged directly on statelessness in a number of ways. These include: promoting research and dialogue on statelessness (especially at the regional and sub-regional level), speaking out on situations of statelessness that manifest as an immediate and urgent human rights problem, supporting UNHCR's mandate activities (which include statelessness) and raising issues of statelessness within multilateral fora. Critically, the strong nexus between statelessness and other human rights issues is such that many of the EU's current, explicit human rights priorities are highly relevant to the fight against statelessness and to efforts to mitigate its severe human rights impact. This means that, in fact, the EU has also undertaken a

variety of activities which can be seen to contribute to the fight against statelessness, even though these have not always been developed or labelled with this end in mind – examples of which are outlined in this paper. For instance, children’s rights programmes which include stateless beneficiaries help to lessen the harsh impact of statelessness, supporting birth registration helps to prevent statelessness by providing evidence of the facts of birth, promoting gender equality helps to lower the risk of statelessness where nationality rights are included among the issues addressed and monitoring the situation of minority groups helps to draw attention to the effects of statelessness where denial or deprivation of nationality is one of the factors in their treatment.

There is scope for the EU to expand and strengthen its role in the fight against statelessness in both its multilateral and bilateral external engagement. Key avenues of interest for multilateral engagement on statelessness include tabling relevant resolutions at the UN Human Rights Council and supporting relevant work by UN special procedures, increasing collaboration with UN agencies (including, in particular, UNHCR) and civil society organisations specifically on statelessness-related activities and using dialogues with other regional organisations as an avenue for information exchange and collaboration on initiatives geared towards addressing statelessness or promoting the right to a nationality. The forthcoming First Global Forum on Statelessness to be held in the Hague in September 2014 is one immediate opportunity for the EU to explore further partnerships on statelessness with both civil society and UN actors, as well as academia and with third country governments. The EU can also use the array of political and financial tools at its disposal for raising human rights issues in its bilateral relations with third countries to focus attention and achieve results on statelessness. To do so effectively requires tailoring the EU’s engagement on a country-by-country basis, for which standardised tools can be developed to help provide a basic snapshot of the situation of statelessness and determine what response is required (an example of a country ‘Quickscan’ tool is provided in the study). The EU can then use its formal Human Rights Dialogues (where these are in place), as well as other bilateral political dialogues and financial instruments such as the Development Cooperation Instrument, European Neighbourhood and Partnership Instrument, European Development Fund and European Instrument for Democracy and Human Rights, to lobby and programme to address the issues of statelessness identified. The European Parliament is in a position to play a distinct role in strengthening the EU’s role in addressing statelessness around the world, by drawing attention to particular situations of concern through resolutions, statements and debates, by convening hearings or conducting country visits to get a fuller understanding of specific statelessness issues or populations and by promoting the active involvement of other regional as well as national parliaments in taking action (such as passing legislative reform) to prevent or reduce statelessness and protect stateless persons.

To pave the way for more effective engagement of the EU in the fight against statelessness and allow progress made to be tracked and evaluated, three areas of further development or investment are proposed: tools, training and reporting. Where the EU has sought to establish the basic principles and objectives for EU engagement in other areas, it has for example adopted dedicated human rights guidelines and this could be one tool to pursue in effectuating its role on statelessness. To further build technical capacity, the EU can introduce training elements on statelessness into its regular human rights training initiatives. It should furthermore consider the development of dedicated training programmes for key staff at the EEAS and Commission, together with the human rights focal points of EU delegations in those countries which have been identified as priorities for EU engagement on statelessness – as well as explore opportunities for broader country-level training with other stakeholders in those countries. In order to increase the transparency and accountability of the EU’s contribution to addressing statelessness as its role is strengthened in the future, institutional monitoring arrangements should also be reviewed to identify areas in which reporting and evaluation on statelessness can be improved.

The report concludes by identifying three thematic and five country priorities for EU external action on statelessness at this time. The thematic priorities, selected based on developments in the field of statelessness and the EU's own, broader, human rights priorities, are: supporting the campaign to end statelessness by 2024 (spearheaded by UNHCR and launching in September 2014); combatting gender discrimination in nationality laws (supporting an international campaign on this issue led by a coalition of UN agencies and civil society organisations); and promoting children's right to a nationality (including through the continuation and expansion of the EU's existing commitment to civil registration). In light of the thematic priorities identified and emerging developments around the world, the five countries selected as the suggested priority focus as the EU steps up its engagement on statelessness are: Côte d'Ivoire and Thailand (where there are large, protracted stateless populations but where legal reform has now laid the groundwork for significant progress to be made in resolving these situations if effective follow-up measures are taken); Dominican Republic (where statelessness is currently emerging on a massive scale due to arbitrary deprivation of nationality and where urgent action is needed to provide appropriate remedies); Myanmar (where statelessness presents a severe humanitarian crisis which is deepening even as the country transitions towards a more open society); and Syria and the countries affected by the Syrian crisis (where an existing situation of statelessness in Syria, pre-crisis, coupled with the context of displacement, discriminatory nationality laws and severely deficient civil registration is creating an acute risk of further statelessness unless effective preventive measures are taken). For each thematic and country priority, a number of concrete recommendations for EU action at the level of multilateral and bilateral engagement are offered.



## 1. INTRODUCTION

Statelessness has a serious and lasting impact on the enjoyment of human rights. Without a nationality, those rights which are reserved to citizens, such as voting rights, are out of reach. But statelessness also obstructs access to other fundamental rights, including the right to education, health, work, family life and free movement. Moreover, statelessness can leave people feeling alienated and excluded, impacting on their sense of belonging, identity and self-worth. Being stateless is “like being caged or put in a box [...] it feels like you are nobody”, explains Elvira Oranzur, a stateless woman in Turkmenistan<sup>1</sup>.

This study was commissioned by the EU Directorate-General for External Policies of the Union (DG EXPO) to explore how the European Union can play a greater role in the fight against statelessness around the world as part of its external action on human rights issues. This means identifying further ways in which the EU can help to improve the enjoyment of human rights by the approximately 10 million people worldwide who currently do not hold any nationality. Importantly, since statelessness is a preventable and indeed solvable phenomenon – it is within the power of states to remedy it – this paper will also assess how the EU can increase its efforts to promote access to a nationality for individuals who are stateless and strengthen frameworks for the avoidance of new cases of statelessness.

The timing of the request by DG EXPO for a study on this topic is very fitting: the year 2014 marks the 60<sup>th</sup> anniversary of the adoption of the first United Nations treaty to deal specifically with the fundamental rights of stateless persons, the 1954 Convention relating to the Status of Stateless Persons. A number of significant initiatives have developed to coincide with or take advantage of this commemoration. Within Europe, a region-wide civil society campaign is currently underway, aimed at raising greater awareness of the problem of statelessness and calling specifically on European leaders to take measures to strengthen the protection of the human rights of stateless persons in Europe. This campaign will culminate in a civil society day of action against statelessness across Europe on 14 October 2014<sup>2</sup>. At the global level, two campaigns are currently in preparation. The first, officially launching on 18 June 2014 with an event at the UN Human Rights Council in Geneva, is the *International Campaign to End Gender Discrimination in Nationality Laws*. Conceived by a coalition of six UN and civil society organisations<sup>3</sup>, the objective is to achieve the reform of nationality law in those countries where women do not enjoy equal rights with men to acquire, retain or transmit nationality. Such reform is vital to reduce the incidence of statelessness where it is currently caused, perpetuated or prolonged by gender discriminatory nationality laws<sup>4</sup>. The second and broader global initiative is the *Campaign to End Statelessness by 2024*, which is being spearheaded by the Office of the United Nations High Commissioner for Refugees (UNHCR) – the UN agency mandated by the General Assembly to help states to address statelessness. This campaign will be formally launched on 15 September 2014, on the occasion of the kick-off of the *First Global Forum on Statelessness*, which is being convened at the Peace

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<sup>1</sup> UNHCR, *Statelessness: More than 3,000 stateless people given Turkmen nationality*, 7 December 2011, via <http://www.unhcr.org/4edf81ce6.html>.

<sup>2</sup> The campaign is led by the European Network on Statelessness, a civil society alliance with 53 member organisations in over 30 countries within the Council of Europe. See for details <http://www.statelessness.eu/act-now-on-statelessness>.

<sup>3</sup> These are UNHCR, UN Women, Equality Now, the Equal Rights Trust, the Women’s Refugee Commission and Tilburg University Statelessness Programme.

<sup>4</sup> See for further details <http://www.equalnationalityrights.org>; as well as the article by Z. Albarazi and L. van Waas, “Towards the abolition of gender discrimination in nationality laws” in *Forced Migration Review*, Issue 46, May 2014, available at: <http://www.fmreview.org/en/afghanistan/albarazi-vanwaas.pdf>.

Palace in the Hague<sup>5</sup>. It will encompass a wide range of activities aimed towards the prevention, reduction and ultimately eradication of statelessness<sup>6</sup>.

In view of these emerging and ambitious developments, the time is indeed ripe for the EU to give further consideration to what role it can play in the fight against statelessness – both within its borders, but also around the world. This study explores these questions, with a particular focus on EU external action. It starts by taking a closer look at the phenomenon of statelessness and exposing the nexus between statelessness and wider human rights issues, including demonstrating the link to numerous EU's human rights priorities. Next, the paper discusses what the EU has done to address statelessness to date, briefly considering what measures have been taken internally within the EU and its member states, before exploring how the EU has helped to address statelessness in its external action so far. Finally, the study identifies different avenues through which the EU could expand its engagement on the issue of statelessness in its external human rights action, closing with a series of recommendations with regards to thematic and country priorities, and suggestions for concrete action.

## **2. WHAT IS STATELESSNESS?**

### **2.1 The definition of a stateless person**

The world around us is divided into a patchwork of sovereign countries, or states. Individuals are linked to these states through the legal bond of nationality<sup>7</sup>. It is a legal bond which results in mutual rights and duties. For instance, a national has the right to enter and reside in his or her state of nationality – and the state a duty to admit its nationals. The legal bond of nationality also provides the basis for the state to exercise protection on behalf of its nationals, for example diplomatic or consular protection when the national is abroad. Although it is the norm for a person to hold a nationality – so much so that most people take this for granted – there are also anomalies. Some individuals enjoy dual or even multiple nationality, having met the conditions for acquisition of nationality in more than one state. Others find themselves with no nationality at all. “Statelessness” is the term used to describe this absence of nationality. International law defines a stateless person someone “who is not considered as a national by any state under the operation of its law”<sup>8</sup>.

As the agency mandated by the UN General Assembly to identify, prevent and reduce statelessness and to protect stateless persons<sup>9</sup>, the Office of the United Nations High Commissioner for Refugees (UNHCR) has issued guidelines on the interpretation of the definition of a stateless person<sup>10</sup>. It is important to note that whether a person is stateless is a distinct question from whether they are a refugee. Most stateless people have never left the place where they were born and grew up, have not crossed an international border and are not necessarily under threat of persecution. Under international law, the protection offered to people affected by statelessness is based on the recognition of a distinct legal

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<sup>5</sup> See for details of the Global Forum <http://www.tilburguniversity.edu/statelessness2014>.

<sup>6</sup> See for further details <http://www.unhcr.org/pages/53174c306.html>.

<sup>7</sup> Note that in this paper, as in international law and the majority of publications on statelessness, the terms ‘nationality’ and ‘citizenship’ are used interchangeably and have the same meaning.

<sup>8</sup> Article 1 of the 1954 Convention relating to the Status of Stateless Persons. Note that the International Law Commission considers that the 1954 Convention definition ‘can no doubt be considered as having acquired a customary nature’. ILC, ‘Draft Articles on Diplomatic Protection with commentaries’ (2006) 2 *Yearbook of the International Law Commission*, 49.

<sup>9</sup> See, among others, UN General Assembly Resolution 3274 (XXIV) of 10 December 1974; and UN General Assembly Resolution 61/137 of 25 January 2007.

<sup>10</sup> UNHCR, ‘Guidelines on Statelessness No. 1: The definition of ‘Stateless Person’ in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons’, HRC/GS/12/01, 20 February 2012, available at <http://www.unhcr.org/refworld/docid/4f4371b82.html>.

status of “stateless persons”. Nevertheless, some stateless individuals and groups have been forced to flee their country of origin and do qualify as refugees<sup>11</sup>. Similarly, some refugees find that the circumstances of their displacement have caused them or members of their families to lose or be denied nationality. In fact, a number of the world’s most significant refugee situations involve *stateless* refugees<sup>12</sup>. Where a person is both stateless and a refugee, he or she will be treated as a refugee first: the protection offered by the 1951 refugee convention has priority and that the person is included in UNHCR’s refugee – and not statelessness – statistics.

## 2.2 The causes of statelessness

It is, in principle, for each state to regulate the acquisition and loss of its nationality<sup>13</sup>. Sometimes, different states’ approaches come into conflict: “some lucky babies are entitled to a clutch of passports: one born in America to a Lebanese father and Japanese mother, for example, can have three. Others—one born in Norway to a Lebanese mother and unknown father, say—are entitled to none at all”<sup>14</sup>. Conflicts of or gaps within nationality laws can lead to statelessness in the everyday operation of these rules, if not addressed. Too often, statelessness is also transmitted from one generation to the next, causing many children to start out life without a nationality.

The incidence of conflicts of laws which result in statelessness is greatly increased where regulations are discriminatory, set manifold conditions or are very exclusive. For example, in 27 countries worldwide, women are not entitled to transmit nationality to their children on equal terms as men. This gender discrimination can leave children stateless where their father is stateless, unknown or unable to transmit his nationality<sup>15</sup>. Often, even where (partial) safeguards are in place to prevent statelessness in this context, these are not implemented in practice. In many cases of state succession, newly formed or independent states set considerable conditions or defined their initial body of citizens quite narrowly, such that large numbers of people were left stateless. Even if the laws were well drafted, it is often the case that the transfer of jurisdiction has given the opportunity to exclude people perceived to be of “doubtful” attachment to the new state from recognition as nationals. This has been the case historically, where the wave of decolonisation in Africa and Asia left statelessness in its wake, but also more recently, in the context of the dissolution of the Soviet Union and Yugoslavia and now potentially in the secession of South Sudan.

Where statelessness affects whole communities, it has sometimes resulted from the deliberate exclusion of particular groups. Nationality laws have been crafted such that they deny minority populations access to nationality – such as the case of the Rohingya, who were left out of the list of 135 “national races” of Myanmar and thereby left without nationality. In some instances, distinct decrees

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<sup>11</sup> A refugee is a person who meets the definition elaborated in article 1 of the 1951 Convention relating to the Status of Refugees. This may be a person who does or does not hold a nationality – the crux of the refugee definition is a well-founded fear of persecution on the basis of one of several enumerated grounds.

<sup>12</sup> For instance, Rohingya refugees from Myanmar in Bangladesh and other host countries are stateless; many of the Kurdish refugees displaced from Syria by the crisis were stateless prior to their flight and remain without nationality in exile; the Faili Kurds expelled from Iraq in the early 1980s, the Black Mauritians purged from the country in 1989 and the ethnic Nepalese forced out of Bhutan in the early 1990s all became stateless refugee populations for whom various solutions are now being pursued.

<sup>13</sup> Although international law does formulate some limits to the freedom of states to set the conditions for acquisition and loss of nationality, it cannot intervene and directly confer nationality. That states are, in principle, sovereign in matters of nationality is also recognized within international treaties, including in article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws and article 3 of the 1997 European Convention on Nationality.

<sup>14</sup> “Statelessness. Nowhere to call home”, *The Economist*, May 2014, available at:

<http://www.economist.com/news/international/21602251-changing-face-worlds-non-citizens-nowhere-call-home>.

<sup>15</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness*, 8 March 2014, available at: [www.refworld.org/docid/532075964.html](http://www.refworld.org/docid/532075964.html).

have been adopted to strip communities of the nationality they once held. Infamous and extreme examples of this can be found in early 20<sup>th</sup> century Europe, for instance, in the denationalisation of Jews by the Nazi regime at the time of the Second World War. However, practices of arbitrary deprivation of nationality continued throughout the 20<sup>th</sup> and even into the 21<sup>st</sup> century. The most recent case which is currently receiving much attention is the decision by the Dominican Republic to retroactively revoke nationality from persons of foreign descent, born in the country since 1929, in such a way as to target people on the basis of race. Statelessness can also result from administrative and bureaucratic hurdles that block access to nationality for people who would otherwise qualify. Equally where there is an absence of birth registration – or other forms of civil documentation – this can leave people at risk of statelessness if they are unable to satisfy the state that they have acquired or meet the requirements to acquire nationality.

As described above, statelessness arises in a number of different circumstances – occasionally as an unintended by-product of the workings of nationality laws but more often as a result of poor, discriminatory or even malignant nationality policy. Statelessness, like nationality, is a man-made creation and can be solved. This is why understanding and tackling its causes is key. Nevertheless, it should also be acknowledged that there may be a host of social, historic, political or even economic considerations underlying the act of law or policy which leaves people stateless. Exploring this broader context can also be critical to effectively fighting statelessness.

### **2.3 Stateless populations around the world**

A total of over 10 million people are believed to be affected by statelessness worldwide<sup>16</sup>. As noted above, this estimate – provided by UNHCR – does not consider also those who are stateless refugees<sup>17</sup>; nor, for reasons of burden-sharing between UN agencies, does this number include those Palestinians who are stateless<sup>18</sup>. Thus, the actual number of people who do not currently enjoy the legal bond of nationality with any state is even higher and any policy of EU external human rights action on statelessness should also be mindful of the situation of stateless refugees and stateless Palestinians.

It is also important to realise that the statistical coverage and reporting on stateless populations worldwide is incomplete. The issue remains “hidden” in many countries, such that there is no reliable figure for the number of people affected. In some contexts, the line between those with a recognised nationality and those without may not be at all clear; especially where state documentation systems are weak. Data on statelessness is steadily improving, but significant gaps remain, even in a number of states where it is clear that statelessness is a major challenge. For instance, large numbers of people are affected by statelessness in Zimbabwe, Nepal, India, Madagascar, Bhutan, the Democratic Republic of Congo and Lebanon, but no figure is currently reported for these countries. More comprehensively mapping statelessness and deficiencies in nationality laws and policies in these and other countries in order to generate better baseline data on the issue remains a critical goal of the international community and one that the EU could further support.

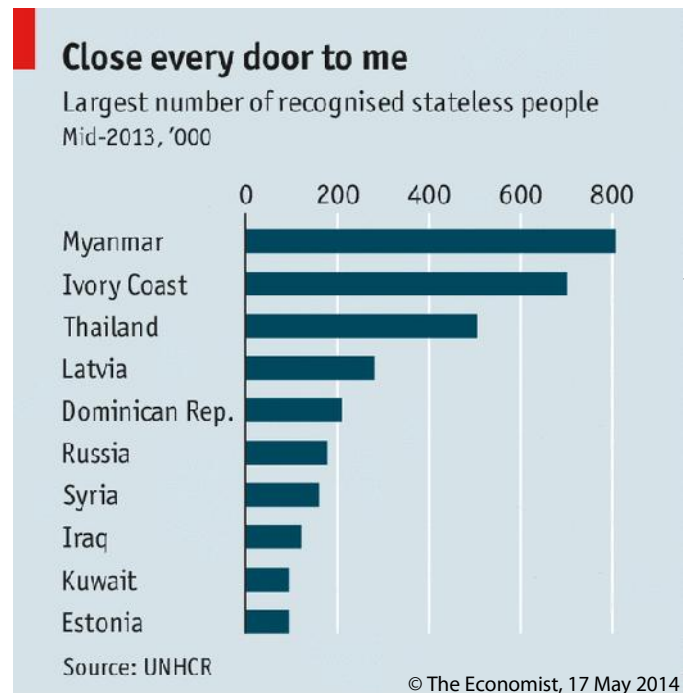
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<sup>16</sup> The latest UNHCR Statistics (Mid-year trends 2013), which include the figures for stateless persons, can be downloaded here: <http://www.unhcr.org/statistics/mid2013stats.zip>.

<sup>17</sup> For instance, UNHCR reports a total of over 230,000 refugees and people in refugee-like situations in Bangladesh. These are almost exclusively stateless Rohingya refugees from Myanmar. See <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487546#>.

<sup>18</sup> UNRWA has estimated the 5.2 million Palestinians who fall within their areas of operation are stateless. See <http://www.unrwa.org/userfiles/20121119101833.pdf>. Other sources have reported the total number of stateless Palestinians – i.e. persons of Palestinian origin who have not acquired a nationality elsewhere, whether within or outside UNRWA areas of operation – to be approximately 7.5 million. See BADIL Resource Centre for Palestinian Residency and Refugee Rights statement issued on World Refugee Day 2007, available at <http://www.badil.org/en/press-releases/60-press-releases-2007/1668-press-447-07>.

Notwithstanding the comments made above with regards to UNHCR's statistical reporting on statelessness, it is of interest to review the list of countries for which the largest figures are reported. Currently, there are 19 countries which report a stateless population of over 10,000 persons: Brunei Darussalam, Côte d'Ivoire, Dominican Republic, Estonia, Germany, Iraq, Kenya, Kuwait, Kyrgyzstan, Latvia, Malaysia, Myanmar, Poland, Russia, Saudi Arabia, Syria, Thailand, United Arab Emirates, Viet Nam (see also the graphic taken from a recent article of *The Economist*, right). What can immediately be inferred from this list is that statelessness is a significant issue in every region of the world – it is a truly global problem. Two of the countries in the list of top-ten largest stateless populations are EU member states: Latvia and Estonia. A further two countries are EU partners in the European Neighbourhood Policy: Russia and Syria. All of the others, with the exception of Kuwait, are countries which are covered by either the Development Cooperation Instrument (DCI) or the European Development Fund (EDF). This demonstrates the immediate connection between statelessness and the EU's external action interests.



## 2.4 International legal instruments addressing statelessness

The international community has long sought to address statelessness by concluding international agreements. An early example is the 1930 Hague Convention on Certain Questions Relating to Certain Conflicts of Nationality Laws, which included a number of provisions that – if introduced within states' nationality laws – would help to prevent cases of statelessness. The most important international norms relating to statelessness emerged, however, following the Second World War. With the adoption of the 1948 Universal Declaration on Human Rights, the right to a nationality was recognised for the first time as a fundamental right, for everyone to enjoy<sup>19</sup>. Every major UN human rights instrument that has since been adopted includes some expression of the right to a nationality<sup>20</sup>.

At the regional level, there is also a multitude of human rights instruments that reaffirm the right to a nationality<sup>21</sup>. In Europe, the right to a nationality and avoidance of statelessness are dealt with in a dedicated instrument on nationality: the 1997 European Convention on Nationality<sup>22</sup>. There is also a

<sup>19</sup> Article 15 of the Universal Declaration on Human Rights proclaims that “everyone has the right to a nationality” and “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.

<sup>20</sup> Among the most important of these norms are article 7 of the Convention on the Rights of the Child (recognising the child's right to acquire a nationality); article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women (guaranteeing equal nationality rights for women); article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (providing for the right to nationality without discrimination as to race); and article 18 of the Convention on the Rights of Persons with Disabilities (protecting the equal nationality rights of persons with disabilities)

<sup>21</sup> These include: the African Charter on the Rights and Welfare of the Child, the American Convention on Human Rights, the Covenant on the Rights of the Child in Islam, the Arab Charter on Human Rights and – most recently – the ASEAN Human Rights Declaration.

<sup>22</sup> The status of ratification of this instrument can be found here:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=7&DF=&CL=ENG>.

further convention which specifically addresses these issues in the state succession context: the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession<sup>23</sup>. The European Convention on Human Rights does not explicitly protect the right to a nationality. However, in its case law, the Court has interpreted nationality as part of a person's social identity, protected as part of private life (article 8)<sup>24</sup>. Within the EU context, the right to a nationality has also been addressed indirectly in recent jurisprudence: the European Court of Justice was called upon to rule on a case in which the state was seeking to deprive a person of their nationality, which would leave him stateless. Recalling that loss of EU member state nationality – and subsequent statelessness – would result in the concomitant loss of the status of EU citizen, the Court determined that such decisions could be subject to judicial review under EU law<sup>25</sup>. This further demonstrates the EU's evident interest in the problem of statelessness, including as an internal EU concern.

In addition to playing a part in the avoidance of statelessness through norms relating to the right to a nationality, as outlined above, human rights law is also of critical importance in protecting the rights of stateless persons. The vast majority of human rights norms are directed towards everyone, regardless of nationality or statelessness. As such, stateless persons can invoke human rights instruments in respect of their right to education, freedom of religion, protection from arbitrary detention and much more. Only a very few rights can be reserved, under international law, to a state's citizens<sup>26</sup>. All other rights are to be enjoyed by nationals, non-nationals and stateless persons alike, without discrimination<sup>27</sup>.

Complementing and supplementing the norms concerning statelessness that can be found within the broad body of international human rights law are two dedicated UN instruments on statelessness. The first is the 1954 Convention relating to the Status of Stateless Persons, which provides the definition of a "stateless person" and establishes this as a status under international law. The instrument seeks to improve the enjoyment of fundamental rights by stateless persons by guaranteeing various rights and special measures for those who enjoy this status. Significantly, it provides for the issuance of identity and travel documents to stateless persons – a question that is not clearly dealt with under general human rights law – which can make a real practical difference for them in their day-to-day interactions with government and private institutions and facilitate the enjoyment of many other rights<sup>28</sup>. The second UN statelessness convention is the 1961 Convention on the Reduction of Statelessness. This provides a set of concrete safeguards for states to incorporate within their nationality law, in order to help avoid statelessness and realise everyone's right to a nationality. For instance, it obliges the state where a person is born to grant nationality if he or she would otherwise be stateless (i.e. does not acquire any other nationality, for instance by descent)<sup>29</sup>.

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<sup>23</sup> The status of ratification of this instrument can be found here:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=200&CM=1&DF=&CL=ENG>. Note that at the level of the UN, a set of standards has also been codified relating to the regulation of nationality and avoidance of statelessness following state succession: the International Law Commission's Articles on the Nationality of Natural Persons in Relation to Succession of States, available at <http://www.refworld.org/docid/4512b6dd4.html>.

<sup>24</sup> European Court of Human Rights, *Genovese v. Malta*, Application 53124/09, 11 October 2011.

<sup>25</sup> European Court of Justice, *Janko Rottmann v Freistaat Bayern*, Case C-135/08, 2 March 2010.

<sup>26</sup> These are mainly rights relating to participation in government, such as article 25 of the International Covenant on Civil and Political Rights.

<sup>27</sup> An explanation of how human rights law deals with differences in treatment between citizens and non-citizens can be found in Office of the United Nations High Commissioner for Human Rights, *The Rights of Non-Citizens*, 2006, available at <http://www.ohchr.org/Documents/Publications/noncitizensen.pdf>. See also, for instance, the case of the European Court of Human Rights, *Andrejeva v. Latvia*, Application 55707/00, 18 February 2009.

<sup>28</sup> See further <http://www.refworld.org/docid/4cad88292.html>.

<sup>29</sup> See further <http://www.refworld.org/docid/4cad866e2.html>.

Until recently, the two UN statelessness conventions did not receive a great deal of attention and the level of ratification was low. In 2011, on the occasion of the 50<sup>th</sup> anniversary of the 1961 Convention on the Reduction of Statelessness, UNHCR launched a campaign to promote further accessions to the two statelessness instruments. The impact of this campaign has been significant and continues today. Since the campaign was launched, there have been a total of 33 accessions to these instruments and more are expected<sup>30</sup>. On 1 July 2014, UNHCR will host a special treaty event for accessions to the statelessness conventions at which a number of states are expected to become state parties. The growing interest in and accessions to the statelessness conventions is evidence both of the increased interest in addressing statelessness, as well as the enduring relevance of these international norms to that purpose. Promoting additional accessions is another area in which the EU could contribute its further support. Furthermore, in December 2012, the EU pledged the following on behalf of its member states:

“The EU Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 Convention relating to the Status of Stateless Persons and by considering ratification of the 1961 Convention on the Reduction of Statelessness”<sup>31</sup>.

The EU “is focused on the idea that the universality of human rights starts at home, with the vigilant monitoring of Europe’s own human rights challenges”<sup>32</sup>. It is therefore vital for the EU to follow-up with its member states on the fulfilment of this pledge. This is especially urgent against the background of EU interest in stepping up its external action on statelessness and given the importance that the EU places on cohesion between the internal and external dimensions of its human rights work.

### **3. WHAT IS THE LINK BETWEEN STATELESSNESS AND HUMAN RIGHTS?**

#### **3.1 Statelessness as a human rights problem per se**

Article 15 of the Universal Declaration of Human Rights proclaims that “everyone has the right to a nationality”. As outlined above, the right to a nationality has been reaffirmed in virtually all major universal and regional human rights treaties adopted since 1948. Statelessness, as the absence of any nationality, signals that this human right is unfulfilled. This means that any case of statelessness has the potential to be regarded as a human rights problem per se. Over the past decade, several rulings by regional courts and committees have confirmed that the right to a nationality is a fundamental human right and that states’ nationality regulations and decisions may therefore be subject to scrutiny<sup>33</sup>. This case law has emphasised that states have a particular duty to avoid statelessness.

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<sup>30</sup> This has raised the number of state parties to the 1954 Convention from 65 to 80; and for the 1961 Convention from 37 to 55. Note that with regard to the 1961 Convention, it has attracted more new state parties in the last three years than in the first three *decades* after the instrument was first adopted.

<sup>31</sup> Pledge made by the Delegation of the European Union at the *High-level meeting on the rule of law at the national and international levels*, New York, 19 September 2012, available at <http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>.

<sup>32</sup> EU Annual Report on Human Rights and Democracy in the World in 2012, 9431/13, 13 May 2013.

<sup>33</sup> In addition to the aforementioned case of *Genovese v. Malta* (and, to a degree, also *Rottmann v. Freistaat Bayern*), these cases include: Inter-American Court of Human Rights, *Yean and Bosico v. Dominican Republic*, Series C, Case 130, 8 September 2005; African Committee of Experts on the Rights and Welfare of the Child, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya v. The Government of Kenya* (*Nubian Children case*), Communication No. Com/002/2009, 22 March 2011.

### 3.2 Statelessness as a product of human rights problems

Statelessness is often a product of other human rights problems. A clear example of this is where it results from discrimination. For instance, where an individual or group is excluded from nationality on the grounds of their race, ethnicity, language or religion, this is in itself a human rights problem – but it may also leave the person(s) concerned stateless. Many of the world's stateless people belong to minority groups. Some concrete cases of where statelessness intersects with such forms of discrimination have already been identified above, including the Rohingya in Myanmar, Kurds in Syria, Kinyarwanda-speaking persons in the Democratic Republic of Congo and persons of Haitian descent in the Dominican Republic. Similarly, gender discrimination has also been mentioned as a cause of statelessness. In such cases too, the fact that the nationality law treats men and women differently is contrary to international human rights standards and this can, in some circumstances, then also produce statelessness. Political opinion can also be a ground for the denial or deprivation of nationality. In the context of democratisation, nationality becomes increasingly important and there is greater potential for it to be contested. Statelessness itself, can become a political tool – as has been demonstrated in a number of cases in the Middle East in the context of the Arab Spring<sup>34</sup>. Withholding or withdrawing nationality on discriminatory grounds is, furthermore, a violation of the prohibition of arbitrary deprivation of nationality – a distinct international human rights norm<sup>35</sup> – which may, again, be compounded by statelessness.

Another context in which broader human rights problems can contribute to the creation, or prolongation, of statelessness is where the rule of law is at issue. The successful avoidance of statelessness relies not only on a conducive legal framework being in place, but also on the ability of states to apply that framework effectively and without bias. An interesting case which illustrates how things can go wrong – and subsequently be rectified – is that of the Urdu-speaking community of Bangladesh (also known as the “Bihari” or “stranded Pakistanis”). Following the independence of Bangladesh in 1971, this community was not recognised as nationals of the new state, nor did they hold any other nationality. According to the terms of the Bangladeshi nationality law, the Urdu-speakers did qualify for nationality, but this was not acknowledged by the competent authorities. They remained stateless for over thirty years. The situation changed in 2008 when the Bangladeshi High Court ruled that they were to be considered citizens, thereby “correcting” the way in which the law was applied in practice and transforming the population from stateless to nationals overnight<sup>36</sup>. In many other countries, the law continues to be applied erroneously, to the exclusion of certain individuals or groups, who are then sometimes left stateless. Typically, the regulation of nationality is also an area in which authorities are given – or demand – a significant margin of discretion. This can create a space in which bureaucracy, discrimination, corruption or abuse of power can obstruct access to nationality. It can also mean that decisions relating to nationality are not subject to the same due process safeguards as other areas of law that affect people's status or rights. In many countries, there is no effective remedy in place where a person has been denied or deprived of nationality – again problematic from a broader human rights perspective as well as a contributing factor in the incidence of statelessness.

Lack of respect for certain children's rights issues may also contribute to the incidence of statelessness. In particular, the failure to ensure every child's right to birth registration (protected, for instance, in article 7 of the Convention on the Rights of the Child), may be problematic. As UNHCR's Executive

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<sup>34</sup> See, for instance, Z. Albarazi and J. Tucker, *Citizenship as a political tool: the recent turmoil in the MENA and the creation and resolution of statelessness*, 2014, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2376426](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2376426).

<sup>35</sup> See, for instance, article 15(2) of the Universal Declaration of Human Rights.

<sup>36</sup> See for further background on this case K. Hussain, “The end of Bihari statelessness” in *Forced Migration Review*, Issue 32, 2009, available at: <http://www.fmreview.org/FMRpdfs/FMR32/30-31.pdf>.



Committee has noted: “the lack of civil registration and related documentation makes persons vulnerable to statelessness and associated protection risks”<sup>37</sup>. This is because the act of birth registration creates an official record of a child’s place and date of birth, and parentage – key facts in the determination of the nationality of the child. In situations where lack of registration affects, for instance, children born in the migration context, in border regions, to nomadic or minority groups or in a region which is later subject to state succession, the lack of proof of the facts of birth can mean that a person is not recognised as a national by his or her state<sup>38</sup>. Promoting the right to birth registration – and access to other forms of civil documentation, such as marriage and death registration – can therefore also contribute to ensuring the enjoyment of the right to nationality.

### 3.3 Statelessness as a cause and catalyst of other human rights problems

Many stateless people started out life without a nationality and have never known its protection. The human rights impact of statelessness is therefore often first felt in terms of its effect on children’s rights – from lack of access to birth registration, to exclusion from child health programmes (including vital childhood immunisations), to difficulties with admission to a state’s school system. These problems are in evidence among stateless communities around the world<sup>39</sup>. A recent report on the impact of statelessness on children in the Dominican Republic highlights in particular the effect it has on access to education and on children’s experiences within school if they are able to pursue their studies: “it feels bad, I am young and want to study for the future – and I can’t”, said one of the stateless children interviewed<sup>40</sup>. The report describes problems at all levels of the school system and concludes that statelessness has caused a multi-generational education gap in a state that has otherwise made good progress towards improving its public education in accordance with the Millennium Development Goals. Elsewhere, survey findings and individual testimony from stateless people also attest to the severe impact of statelessness on educational prospects. In some cases there are formal barriers that cannot be overcome (e.g. access to public schools is refused to those without citizenship papers), while in others it is the broader impact of statelessness on a person’s future potential which gets in the way. One girl who grew up stateless in Thailand explained: “I knew that even if I graduated from high school, I would not get a diploma because I was stateless. Also, I was told I could only work for a farm, factory or restaurant [...] My mother asked me ‘is it worth it?’<sup>41</sup>”. In many cases, stateless children are reliant on private schools or those established by NGOs in order to achieve an education. Given the strong interest of the EU in the promotion of children’s rights, the impact of statelessness on children is a significant concern.

Statelessness can mean a lifetime of hardship, so long as it remains unresolved. Without a nationality, a stateless person may need to get permission to work – something which will not necessarily be given – and will often be excluded from a variety of professions which are either reserved to nationals or for which particular qualifications are needed that it can be impossible for a stateless person to get. “I

<sup>37</sup> UNHCR, ExCom Conclusion no. 111 (LXIV) of 17 October 2013.

<sup>38</sup> This is evidenced, for instance, by problems of statelessness affecting Roma communities in the countries of the former Yugoslavia. See e.g. UNHCR, *Persons at risk of statelessness in Serbia*, June 2011, available at <http://www.refworld.org/docid/4fd1bb408.html>.

<sup>39</sup> In some countries where birth registration rates are low, children whose nationality is not in doubt may face similar problems; but in their cases establishing the relevant documentation will eventually be possible. It may even be at the moment of trying (and failing) to do so that some children (or their parents) first realise that they are not considered to be nationals.

<sup>40</sup> Georgetown Law Human Rights Institute Fact-Finding Project, *Left Behind. How statelessness in the Dominican Republic limits children’s access to education*, 2014, available at [http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/Left-Behind\\_HRI\\_Report-2014\\_English\\_Final.pdf](http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/Left-Behind_HRI_Report-2014_English_Final.pdf).

<sup>41</sup> Srinuan Soakhamnuan, “A personal story about statelessness” in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014.

would like to have the freedom to choose the field I would like to work in and apply for jobs where Dutch nationality is required", said a young stateless woman who grew up in the Netherlands when reflecting on the career opportunities waiting for her when she completes her law degree<sup>42</sup>. Even those who have nationality documents and thought that their status was not in doubt, may find at the moment of applying for a government position that they are "discovered" not to be nationals. After the successful completion of magistrates' training, an Ivorian lawyer was denied the right to an appointment: "in September 2001, at the time that we were being assigned to our different jurisdictions, my nationality was in doubt, because my name was considered to sound foreign"<sup>43</sup>. Where stateless persons lack identity documents of any kind, which is a common problem, it is difficult for them to sign any form of contract, including a basic employment contract – as this testimony demonstrates:

"Once, I went to apply for a job at a cosmetics and perfume company. My experience fit the job profile, in fact it was the perfect fit because I had worked for two years in this same field. My interview went well, I was offered the job, I signed the contract and everything was perfect. After I signed the contract, as I was about to leave, she said 'I need your ID card'. Without asking or trying to understand, as soon as she heard that I didn't have Lebanese papers, she tore up the contract and threw it in the bin. I couldn't say anything and I just came home sobbing because I couldn't do anything else"<sup>44</sup>.

As a result of these constraints, many stateless people end up working informally and for low pay (lower than citizens in the same work). Their job situation is often insecure and unpredictable and they can be at risk of exploitation. Moreover, most stateless people lack access to any form of social security that would operate as a safety net to keep them out of poverty. They are excluded from pension entitlements, disability allowance and other such state support. Property ownership, business registration and financial services such as bank loans are all commonly out of reach for stateless persons as well – further frustrating their opportunity to achieve an adequate standard of living.

Family life can also be severely impacted by statelessness. Where even one member lacks a nationality, this can cause problems for everyone else in the family and for the maintenance of family relationships. Stateless persons have difficulty not just contracting a marriage – due, often, to their lack of documents – but sometimes in finding a partner, or even in finding the desire to start a family. "I don't think about getting married and settling down because of my lack of citizenship"<sup>45</sup>, is a common experience among many stateless persons<sup>46</sup>. The threat of detention or deportation which stateless people sometimes face will also impact on their enjoyment of family life, leading to physical separation for instance of a parent from their children. "I worried my sons would get deported... I worried my sons would get arrested... They can legally live nowhere," explained a woman in Egypt whose children are stateless<sup>47</sup>.

Many studies have highlighted how stateless people are at heightened risk of arbitrary detention<sup>48</sup>. In Bangladesh, some stateless Rohingya from Myanmar were stuck in detention for years: after completing their original criminal or immigration sentence, they were still held because they could not be returned them to their country. This group of detainees acquired its own name, *released prisoners*, as one

<sup>42</sup> S. Jaghai, "Statelessness at home: the story of a stateless student at Tilburg Law School" in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014

<sup>43</sup> Abdou Houabou Bah, testimony to the African Commission on Human and Peoples' Rights, March 2011.

<sup>44</sup> UNHCR Storytelling, *Zeinab and Menal* (transcribed from video <http://unhcr.org/v-4f587d216>)

<sup>45</sup> UNHCR Storytelling, *Zeinab and Menal*, available at <http://unhcr.org/v-4f587d216>.

<sup>46</sup> See also Women's Refugee Commission and Tilburg University Statelessness Programme, *Our Motherland, Our Country: Gender discrimination and statelessness in the Middle East and North Africa*, June 2013.

<sup>47</sup> Cited in Z. Albarazi, "No Legal Bond, No Family Life" in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014.

<sup>48</sup> See, for instance, Equal Rights Trust, *Unraveling Anomaly*, July 2010.

stateless detainee in Bangladesh explained: “In jail every prisoner feels sympathy for the ‘released prisoners’ because they are the worst victims of the system. A prisoner usually has a country and, whenever he gets bail or completes his sentence, he can return to his family but ‘released prisoners’ cannot return home although their sentence has been served long ago”<sup>49</sup>. Indeed, arrest due to lack of ID cards, prolonged detention due to lack of prospects for release, regularisation or removal and general harassment due to their status are all problems that stateless people may be exposed to.

It is of interest to note that stateless people are often acutely aware of their own vulnerability, as one testimony demonstrates: “citizenship means having rights. I know I am not safe [...] I know that if I talk too much I will have problems because I don’t have papers, so even when things happen to me which I know are not right, I’m quiet”<sup>50</sup>. Not only can access to basic rights and services be a struggle, but speaking out or taking action when faced with a situation of abuse can also become problematic. In extreme cases, stateless people may find themselves susceptible to exploitative practices – such as human trafficking – or even to persecution. This, in turn, may cause stateless people to migrate or flee in search of better treatment or of asylum elsewhere.

<b>Linking statelessness to EU human rights priorities</b>	
✓	<b>Children’s rights:</b> It is estimated that half of the world’s stateless persons are children, many of whom are stateless from birth and are unable to resolve this during their childhood – or even their lifetime. This stands at odds with international norms which explicitly provide for the child’s right to acquire a nationality. Statelessness has an extremely harsh impact on children, obstructing the enjoyment of many other fundamental rights, such as the right to education and health.
✓	<b>Gender equality:</b> Thirty-five years after the adoption of CEDAW which provides for equal nationality rights for women (article 9), gender discrimination in nationality laws is still a real problem. 27 countries do not grant women equal rights to pass nationality to their children under their law, while in others there may be problems in practice, leaving children stateless in various circumstances (e.g. where the father is stateless or unable to pass on his nationality). Laws which prevent women from passing nationality to their spouse also obstruct one path to the resolution of statelessness in many countries.
✓	<b>Human rights defenders:</b> Although formally disenfranchised because nationality is the key to political rights, stateless people are sometimes able to find empowerment. From within stateless communities, strong voices have emerged as both individuals and community organisations seek to bring their concerns to the attention of the state and claim redress. In some cases, these people have fallen victim to oppressive policies as governments have imposed restrictions on freedom of speech and assembly, or even been subjected to harassment, arrest and detention.
✓	<b>Freedom of religion:</b> Nationality policy is sometimes used by governments as a way to enforce a particular perspective on the country’s national identity. Religion may be part of that (purported) identity. This means that religious minorities can be more vulnerable to denial or even deprivation of nationality, jeopardising the enjoyment of the freedom of religion. Examples of situations in which the suppression of a certain religion has been a contributing factor in creating statelessness include the Rohingya in Myanmar, the Kurds in Syria and previously also the Faili Kurds in Iraq. Elsewhere, confessional demographics or the non-recognition of a particular religious minority also causes problems for access to nationality.
✓	<b>Economic, social and cultural rights:</b> Statelessness has a detrimental and sometimes devastating impact on the enjoyment of economic, social and cultural rights. Stateless persons can face difficulties accessing education, housing, work, social security and financial services (such as bank loans). Statelessness can trap people in poverty and contribute to the intergenerational destruction of human capital.

<sup>49</sup> The Equal Rights Trust, *Unravelling Anomaly. Detention, discrimination and the protection needs of stateless persons*, 2010.

<sup>50</sup> Testimony of a stateless man in Lawyers for Human Rights, *Statelessness and Nationality in South Africa*, written by J. George, 2013, available at <http://www.refworld.org/docid/519df3594.html>.

- ✓ **Rights of minorities and indigenous people:** Religious, but also racial, ethnic or religious minorities may be side-lined in a state's nationality policy or targeted for deliberate denationalisation. The UN Independent Expert on Minority Issues has pointed out that most stateless people today are members of minorities. Indigenous people can also be affected by statelessness, especially where the state did not acknowledge or sufficiently document their presence in the state at the time its nationality law was first implemented – such as in Thailand.
- ✓ **Democracy:** The spread of multiparty democracy puts increasing pressure on the regulation of nationality, because nationality is the gateway to political rights. Without it, a person cannot vote or stand for election. The temptation to use nationality policy as a means to influence the political environment has already led to concrete cases in which nationality is disputed, denied or withdrawn. Addressing such practices and resolving statelessness is an important way in which to strengthen democracy, especially in post-conflict and state-building contexts.
- ✓ **Migration (including trafficking and detention):** Stateless persons are vulnerable to forced displacement and can also be found in other migratory flows. Apart from a small number of 'in country' stateless populations, EU member states are most often confronted with statelessness in the migration context. The circumstances in which some stateless persons live – poverty, low education, few job opportunities – can make them vulnerable to human trafficking. Statelessness can also make people prone to prolonged or indefinite detention due to lack of documents and poor prospects of removal.

## 4. WHAT HAS THE EU DONE TO ADDRESS STATELESSNESS?

### 4.1 Internal action

While this paper focuses on the question of addressing statelessness through EU external action, it is of interest to briefly consider what the position of the EU is towards statelessness within its borders. Indeed, statelessness is a significant problem inside the EU. Two member states, Latvia and Estonia, are home to stateless populations that are among the largest in the world – a problem which has yet to be fully resolved, even for the next generation, almost 25 years after independence. In a number of other EU countries, statelessness is also a sizeable issue or one that has presented serious challenges in terms of an appropriate policy response. In Germany, Poland and Sweden, for example, stateless people are reported to number close to or more than 10,000<sup>51</sup>. In Slovenia, the government's 'erasure' from its registers of a group of residents – including many stateless people – who did not acquire Slovenian nationality following independence raised serious questions and led to the finding of a human rights violation by the European Court of Human Rights<sup>52</sup>. Mapping studies in the Netherlands and the UK, for instance, have identified serious problems in the enjoyment of even the most fundamental rights by stateless persons, who may experience lengthy or repeated detention and even destitution<sup>53</sup>. And across the EU, there are examples of enduring gaps in nationality regulations that may leave a person stateless<sup>54</sup> and of other deficiencies in the legal framework such as with regard to the identification and

<sup>51</sup> See UNHCR mid-year 2013 statistics, available for download here <http://www.unhcr.org/statistics/mid2013stats.zip>.

<sup>52</sup> European Court of Human Rights, *Kuric and others v. Slovenia*, Application No. 26828/06, 26 June 2012.

<sup>53</sup> UNHCR, *Mapping statelessness in the Netherlands*, November 2011, available at: <http://refworld.org/docid/4eef65da2.html>; UNHCR, *Mapping statelessness in the UK*, November 2011, available at: <http://refworld.org/docid/4ecb6a192.html>. Please note that since the UK mapping study was published, the government has introduced a Statelessness Determination Procedure (in April 2013), which aims to identify stateless persons in the migration context and provide them a pathway out of limbo.

<sup>54</sup> See, for instance, EUDO-Citizenship, *Database on Protection Against Statelessness*, available at: <http://eudo-citizenship.eu/databases/protection-against-statelessness>; and European Network on Statelessness, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, April 2014. For EU Member States, the latter report points out, for example, that Romania and Cyprus have no safeguard for otherwise stateless children born in their territory, while Lithuania, Slovenia, Croatia, Hungary, Estonia, Latvia, Sweden and the Netherlands have incomplete safeguards.

protection of stateless persons in the migration context<sup>55</sup>. Statelessness thereby presents a challenge to Member States – and, by extension, to the EU as a whole – in the realisation of the Union’s aspirations as regards human rights.

The EU Action Plan on Human Rights and Democracy indicates “achieving greater policy coherence” as one of its objectives, including by addressing “issues of coherence and consistency between the EU’s external and internal human rights policy”<sup>56</sup>. Outside commentators have pointed out specifically that “in order for EU member states to credibly intervene in such developments they must themselves have in place robust nationality laws and policies towards stateless persons that fully comply with their obligations under international law”<sup>57</sup>. On the face of it, EU law does not provide much in the way of normative guidance on addressing statelessness within the EU. There is, for instance, no right to a nationality nor even to birth registration, included within the EU Charter on Fundamental Rights. The regulation of nationality is a competence which rests with EU member states<sup>58</sup>. Yet, the European Court of Justice has made it clear EU member states should have “due regard to community law [when laying down] the conditions for acquisition and loss of nationality”<sup>59</sup>. This case law “opens the way for further potential incursions in the sphere of nationality sovereignty, as aspects of nationality law are held up for scrutiny against the standards inherent in EU law”<sup>60</sup>. Where EU member states’ nationality policy is serving to produce, prolong or perpetuate statelessness, this may be a matter for such scrutiny on the basis of relevant EU legal principles, such as non-discrimination and proportionality. At the same time, EU law acknowledges – to a degree at least – the need to address the situation of stateless persons. The Lisbon Treaty stipulates that in respect of EU policy on Freedom, Security and Justice, “stateless persons shall be treated as third-country nationals”<sup>61</sup>, recognising that stateless persons must be given a place within the EU legal order. A few secondary instruments and resolutions also make some provision for the stateless, including for instance a 2009 European Parliament resolution which points out some specific statelessness challenges in Europe in a paragraph under the heading of “minorities”<sup>62</sup>. The EU has yet to develop substantive rules regarding the treatment of stateless persons or prevention of statelessness within its borders, but there is now growing scrutiny of the role of the EU in tackling issues of statelessness within Europe and increasing call for the EU to strengthen its response, at least within

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<sup>55</sup> See, for instance, K. Bianchini, “On the protection of stateless persons in Germany” in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014.

<sup>56</sup> EU Action Plan on Human Rights and Democracy, outcome 8, 2012. See also EU Annual Report on Human Rights and Democracy in the World in 2012, 9431/13, 13 May 2013 at page 53.

<sup>57</sup> European Network on Statelessness, *Submission to the European Commission consultation on the future of Home Affairs policies: An open and safe Europe – what next?* January 2014, available at [http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20EC%20Submission\\_Jan2014\\_0.pdf](http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20EC%20Submission_Jan2014_0.pdf). See also K. Swider, “Call for EU legislation on the identification and protection of stateless persons” in the proceedings of the ENS/UNHCR Conference *Stateless but not rightless*, Strasbourg, 8 April 2014 (forthcoming).

<sup>58</sup> See, for instance, Final Act of the Treaty on the European Union, Maastricht, 7 February 1992. Declaration No. 2 on Nationality of a Member State.

<sup>59</sup> Court of Justice of the European Union, *Rottmann v Freistaat Bayern*, Case C-135/08, 2 March 2010 at para. 39. The court also refers to its previous case law in *Micheletti*, Case C-369/90, 7 July 1992; *Mesbah*, Case C-179/98, 11 November 1999; and *Chen*, Case C-200/02, 19 October 2004

<sup>60</sup> J. Shaw, “Setting the Scene: the *Rottmann* case introduced”, in J. Shaw (Ed.), *Has the European Court of Justice challenged member state sovereignty in nationality law?* EUI Working Papers, RSCAS 2011/62, European University Institute, 2011. See also L. van Waas, “Fighting statelessness and discriminatory nationality laws in Europe” in *European Journal of Migration and Law*, Vol. 14, 2012.

<sup>61</sup> Article 67(2).

<sup>62</sup> European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008, 2007/2145(INI). See for further examples of secondary EU law relating to statelessness T. Molnar “Stateless Persons under International Law and EU Law: a Comparative Analysis Concerning their Legal Status, with Particular Attention to the Added Value of the EU Legal Order” in *Acta Juridica Hongarica*, 2010/4; and G. Gyulai, “Statelessness in the EU Framework for International Protection” in *European Journal of Migration and Law*, Vol. 14, 2012.

its migration policy where there is a clear EU competence. In particular, the European Council is urged to include statelessness concerns in its forthcoming Strategic Guidelines for future development of the area of freedom, security and justice, where there is a clear competence for the EU to address statelessness as part of its common asylum and immigration policy<sup>63</sup>. There is already scope to follow up in this area now that stateless persons and persons with undefined nationality have been brought within the scope of beneficiaries of the new EU Asylum, Migration and Integration Fund (AMIF)<sup>64</sup>. Moreover, the Fundamental Rights Agency (FRA) has dedicated attention to statelessness in its work – for instance, with a section reporting on the situation of stateless persons in Europe and relevant developments in its 2012 Annual Report<sup>65</sup>. The FRA should continue and strengthen its role in the fight against statelessness, as a significant human rights challenge.

The EU Delegation's 2012 pledge that all member states will accede to the 1954 Convention relating to the Status of Stateless Persons is highly significant in this regard, because it demonstrates a clear commitment towards strengthening the enjoyment of fundamental rights by stateless persons inside Europe<sup>66</sup>. Once universal accession to this instrument is achieved by the EU, for which just four member states must still complete the accession process, this will lay a firm foundation for further debate on a common EU approach to the identification and protection of stateless persons in the migration context – one of the biggest challenges EU countries face on this issue<sup>67</sup>. The establishment, meanwhile, of national "statelessness determination procedures"<sup>68</sup> in a growing number of EU member states<sup>69</sup>, as a mechanism for ensuring such protection, shows that governments are already grappling with this and confirms that some form of coordination may be necessary in future<sup>70</sup>. Certain EU member states have taken other action on statelessness. Hungary and Sweden, for instance, both made a pledge during UNHCR's 2011 Ministerial Meeting to address statelessness through their foreign policy<sup>71</sup>. Overall, the picture is one of *emerging interest* in the issue among member states, but policy developments to date

<sup>63</sup> UNHCR, *Asylum and international protection in the EU: the next five years?* 2014, available at:

<http://www.unhcr.org/5384a2cb9.html>; European Network on Statelessness, *Submission to the European Commission consultation on the future of Home Affairs policies: An open and safe Europe – what next?* January 2014; T. Molnar, *What role for the EU in protecting stateless people and avoiding statelessness?* Stocktaking of current EU migration law and new tendencies, November 2013; K. Swider, *Time to put statelessness on the EU agenda!* 16 December 2013.

<sup>64</sup> See also UNHCR, *EU Funding for asylum and migration policies – UNHCR Statement on the adoption of the Asylum, Migration and Integration Fund*, May 2014, available at

[http://www.emnbelgium.be/sites/default/files/attachments/unhcr\\_statement\\_on\\_amif\\_may\\_2014.pdf](http://www.emnbelgium.be/sites/default/files/attachments/unhcr_statement_on_amif_may_2014.pdf).

<sup>65</sup> See section 1.2 in Fundamental Rights Agency, *Annual Report 2012. Fundamental rights: challenges and achievements in 2012*, available at [http://fra.europa.eu/sites/default/files/annual-report-2012\\_en.pdf](http://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf).

<sup>66</sup> See above, in section 2.4. As noted earlier, at the same High-Level Rule of Law Meeting, the pledge was also made for all EU member states to consider accession to the 1961 Convention on the Reduction of Statelessness. Note that numerous individual member states also made separate pledges relating to accession to the statelessness conventions at UNHCR's 2011 Ministerial Meeting in Geneva. See page 36 of the pledge overview, available here:

<http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf>.

<sup>67</sup> Consider, for instance, action 8b of the EU Action Plan on Human Rights and Democracy which is to "organise periodic exchanges of views among Member States on best practice in implementing human rights treaties".

<sup>68</sup> Akin to Refugee Status Determination Procedures which provide for recognition as a refugee and attribution of legal status as such.

<sup>69</sup> Belgium pledged to introduce a procedure at the 2011 UNHCR Ministerial Meeting; the United Kingdom established a procedure in April 2013; other EU member states which have a procedure include Italy, France, Spain, Latvia and Hungary.

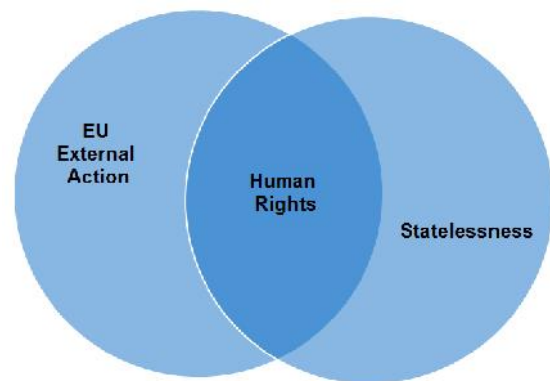
<sup>70</sup> A description of the modalities of existing Statelessness Determination Procedures and considerations for the adoption of such frameworks by countries which have yet to do so can be found in European Network on Statelessness, *Good Practice Guide on Statelessness Determination and the Protection Status of Stateless Persons*, December 2013, available at <http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Statelessness%20determination%20and%20the%20protection%20status%20of%20stateless%20persons%20ENG.pdf>.

<sup>71</sup> With regard to Hungary there has been considerable follow-up on this. See T. Molnar, "Moving statelessness forward on the international agenda: the example of Hungary" in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014.

have been largely ad hoc and there is a need for a more concerted, comprehensive and coordinated response to addressing statelessness within the EU. This is important to keep in mind when considering how the EU can further engage on statelessness in its external action, so as to ensure that the push to do more is also reflected inwards, to improve the situation within the EU.

#### 4.2 External action

Statelessness is not an explicit priority area of EU external action on human rights. This makes it a considerable challenge to identify how the EU has contributed to the fight against statelessness around the world. A simple online search of EU policy and reporting documents which relies only on the keyword “stateless” or “statelessness” yields very few results as compared to other human rights issues<sup>72</sup>. Yet, statelessness is identified as an area of specific concern in certain key strategic documents. The current EU Action Plan on Human Rights and Democracy includes among its actions the development of “a joint framework between Commission and EEAS for raising issues of statelessness [...] with third countries”<sup>73</sup>. This is in accordance with a pledge made in December 2012, at the same UN High-Level Rule of Law Meeting at which the EU made pledges with respect to member states’ accessions to the statelessness conventions,<sup>74</sup> to “develop a framework for raising issues of statelessness with third countries by 2014”<sup>75</sup>. The EU Global Approach on Migration and Mobility (GAMM) also indicates statelessness as an area for action, stating that “the EU should also encourage non-EU countries to address the issue of stateless persons, who are a particularly vulnerable group, by taking measures to reduce statelessness”<sup>76</sup>.



<sup>72</sup> For example, a search within the EU External Action Service website for documents relating to “stateless” yields 103 and “statelessness” just 26 results whereas a search for “human rights defenders” (an EU priority area) yields 2,200 results.

<sup>73</sup> EU Action Plan on Human Rights and Democracy, action 14d.

<sup>74</sup> See previous section of this report.

<sup>75</sup> This is in paragraph 11 of the pledge document, under the heading “birth registration and civic records”. Pledge made by the Delegation of the European Union at the *High-level meeting on the rule of law at the national and international levels*, New York, 19 September 2012, available at <http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>.

<sup>76</sup> See, at page 17, [http://ec.europa.eu/dgs/home-affairs/news/intro/docs/1\\_en\\_act\\_part1\\_v9.pdf](http://ec.europa.eu/dgs/home-affairs/news/intro/docs/1_en_act_part1_v9.pdf).

Moreover, as noted above, the EU actively pursues numerous human rights priorities which can intersect with statelessness. As such, the scarcity of information on the EU's statelessness work should not necessarily be read as a dearth of EU engagement on the issue. Armed with an understanding of the causes and consequences of statelessness, as well as some of the main populations known to be affected, it is possible to get a better picture of how the EU has contributed to tackle the phenomenon – directly as well as indirectly.

The following are examples of ways in which the EU has engaged, directly or indirectly, on the issue of statelessness in recent years<sup>77</sup>:

- *Children's rights programmes with stateless beneficiaries*: A major impact of statelessness on children is that it affects their educational opportunities. The EU has provided financial support to local organisations to provide primary schooling to stateless and other marginalised children in Sabah, Malaysia, who were excluded from state education system<sup>78</sup>.
- *Awareness-raising for the avoidance of statelessness*: Depending on how the nationality laws are formulated, women can find themselves at risk of statelessness in the context of marriage or divorce, if they have a non-national spouse. This was a significant problem in Viet Nam, where many women emigrated to marry foreign men, gave up their original nationality but failed to acquire their husband's. The EU supported an awareness raising project to warn women of the dangers of giving up their Vietnamese nationality and to provide information about processes to re-acquire that nationality, helping to prevent and reduce statelessness<sup>79</sup>.
- *Promoting birth registration*: Birth registration provides evidence of where and when a child is born, as well as who the parents are – key facts for ascertaining or proving nationality. The EU has actively promoted birth registration in its external action, providing significant financial support to UNICEF for projects in 8 countries<sup>80</sup>. Achieving greater birth registration coverage can help to prevent statelessness, especially in the context of migration, state-building, or among minority groups whose link to the state may be denied. Moreover, in the context of accession discussions, improving civil registration – in particular for vulnerable groups such as the Roma where the risk of statelessness is particularly acute – has also been a focus of EU attention through the work undertaken by DG Enlargement<sup>81</sup>.
- *Supporting the work of UNHCR*: The EU has long been a staunch supporter of the work of UNHCR, including financially<sup>82</sup>. Statelessness is a core mandate area of work for UNHCR and the agency undertakes a wide range of activities to identify, prevent and reduce statelessness and to protect stateless persons<sup>83</sup>.

<sup>77</sup> For the reasons presented above with regard to the difficulty in identifying EU action of statelessness, this list is not exhaustive. Since the purpose of this paper is to understand how the EU has engaged on statelessness, per se, this overview focuses on EU action in respect of non-refugee stateless populations and does not consider engagement on refugee rights issues, which may also benefit *stateless* refugees (as in the case, for example, for EU support to refugee protection in Bangladesh, which benefits the stateless Rohingya displaced from Myanmar). It should be noted, in particular, that the EU provides significant support for stateless refugees of Palestinian origin (see, for instance [http://eeas.europa.eu/statements/docs/2014/140604\\_02\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140604_02_en.pdf)), but such engagement is not covered in this paper.

<sup>78</sup> See, for instance, [http://eeas.europa.eu/delegations/malaysia/projects/list\\_of\\_projects/245520\\_en.htm](http://eeas.europa.eu/delegations/malaysia/projects/list_of_projects/245520_en.htm).

<sup>79</sup> See [http://eeas.europa.eu/delegations/vietnam/projects/list\\_of\\_projects/248434\\_en.htm](http://eeas.europa.eu/delegations/vietnam/projects/list_of_projects/248434_en.htm).

<sup>80</sup> These countries are: Nigeria, Burkina Faso, Myanmar, Mozambique, Uganda, Kiribati, Vanuatu and the Solomon Islands. See [http://europa.eu/rapid/press-release\\_IP-12-743\\_en.htm](http://europa.eu/rapid/press-release_IP-12-743_en.htm). In March 2014, an agreement was reached to establish a similar project in Angola.

<sup>81</sup> See, for instance, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5285ee494&skip=0&query=civil%20registration>.

<sup>82</sup> See <http://www.unhcr.org/pages/4a2cff03221.html>.

<sup>83</sup> See <http://www.unhcr.org/pages/49c3646c16a.html>.



- *Including statelessness issues in bilateral discussions / action plans:* The EU has many avenues through which it can raise different human rights issues with states and questions around nationality policy and the treatment of stateless persons are sometimes raised. For instance, under the European Neighbourhood Policy, the EU/Lebanon Action plan explicitly touches on these issues. Under the heading of “promotion and protection of the rights of women and children” it identifies the *objective* of promoting gender equality in various fields “including review of legislation [...] on nationality”<sup>84</sup>. Lebanon does not currently allow women to transmit nationality to their children on the same terms as men, creating cases of statelessness.
- *Promoting research and dialogue on statelessness:* Over the past five years, numerous regional and sub-regional meetings have been convened with a view to sharing information on problems of statelessness, identifying common problems and discussing policy responses. In many cases, the meetings have also been preceded by a research process which has helped to raise awareness of how the countries concerned are affected by statelessness and improve the availability of information on statelessness in several parts of the world. The EU has supported such research processes and/or meetings, including those carried out by UNHCR in – for instance – Central Asia<sup>85</sup>, South East Asia<sup>86</sup> and the Middle East and North Africa<sup>87</sup>; and by the European Network on Statelessness and the WEBLAN in the Western Balkans (under the EU-funded Best Practices for Roma Integration project);<sup>88</sup> and by the EU’s Eastern Partnership Panel on Migration and Asylum for the countries of Eastern Europe and the Southern Caucasus<sup>89</sup>.
- *Speaking out on situations of statelessness that are of urgent concern:* The EU can call attention to situations concerning serious and urgent human rights problems through various channels. In February 2014, EU High Representative for Foreign Affairs Catherine Ashton issued a statement regarding the mass deprivation of nationality of persons of Haitian descent by the Dominican Republic, that has left over 200,000 people stateless. She called for the “rapid implementation of necessary measures” to protect the rights of persons of Haitian descent. Catherine Ashton has also issued several statements on the situation of the Rohingya in Myanmar, in response to the violence targeting this stateless population in 2012 and 2013. The European Parliament has adopted a number of resolutions that touch on statelessness, including on the United Arab Emirates in October 2012<sup>90</sup>, Bahrain in January 2013<sup>91</sup> and Myanmar in June 2013<sup>92</sup>.
- *Raising issues of statelessness within multilateral fora:* The EU has tabled a number of human rights resolutions – and supported many more – in which concern is expressed about issues of

<sup>84</sup> See [http://eeas.europa.eu/enp/pdf/pdf/lebanon\\_enp\\_ap\\_final\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/lebanon_enp_ap_final_en.pdf).

<sup>85</sup> See <http://refworld.org/docid/4ed32c9a2.html>.

<sup>86</sup> See <http://refworld.org/docid/4d6e0a792.html>.

<sup>87</sup> See <http://refworld.org/docid/4cea29762.html>.

<sup>88</sup> See <http://www.statelessness.eu/blog/addressing-statelessness-western-balkans-%E2%80%93-ens-and-weblan-joint-workshop>.

<sup>89</sup> See <http://www.enpi-info.eu/eastportal/news/latest/35759/Eastern-Partnership-Migration-and-Asylum-Panel-looks-at-ways-of-tackling-statelessness>.

<sup>90</sup> Resolution 2012/2842(RSP): “Whereas evidence indicates that national security is the pretext for a crackdown on peaceful activism designed to stifle calls for constitutional reform and reform on human rights issues *such as statelessness*” (emphasis added).

<sup>91</sup> Resolution 2013/2513(RSP): “Calls on the Bahraini authorities to ensure that the 31 Bahrainis whose citizenship was withdrawn can appeal the decision before a court, as it is clear that the revocation of the nationality of political opponents by the Bahraini authorities is contrary to international law”.

<sup>92</sup> Resolution 2013/2669(RSP): “Urges the Burmese authorities to pursue and implement durable solutions to the underlying causes of the tension that include addressing the status of the Rohingya; Calls on the government to amend the 1982 citizenship law to bring it into line with international standards, with a view to return citizens’ rights to the Rohingya and other minorities *which became stateless as a result of the law*” (emphasis added).

statelessness. The Human Rights Council resolutions on Myanmar tabled by the EU in 2012, 2013 and 2014 all call upon the government to take steps to resolve the situation of the stateless Rohingya minority<sup>93</sup>. Besides resolutions, statements issued in multilateral fora have sometimes also made mention of statelessness, such as the EU Statement to the United Nations under GA Third Committee Item 62: Report of the UNHCR, in November 2012. Then, the EU pointed out that “despite the best efforts of the international community and UNHCR the number of refugees, internally displaced and stateless persons remains alarmingly high” and “many stateless persons live in extreme poverty and are denied basic rights and services such as access to education and health care”<sup>94</sup>. EU member states have also been among those which have raised questions or put forward recommendations regarding statelessness issues to different countries within the context of the Universal Periodic Review (UPR) process<sup>95</sup>.

- *Hearings on statelessness issues within the European Parliament*: It can be important not just to call attention to a particular human rights issue in multilateral fora, but also to raise awareness within EU institutions to enable these to respond more effectively. The European Parliament, in particular, organises hearings and discussions on a wide range of human rights topics in order to inform its work. One such hearing, in November 2013, focused on the question of the human rights of stateless Rohingya and featured a photography exhibition by Greg Constantine<sup>96</sup> as well as presentations on the current situation by Rohingya representatives<sup>97</sup>.

This overview of activities through which the EU has supported the fight against statelessness in its external action demonstrates a number of important points which will help to direct how the EU can further contribute in future. Firstly, the EU has engaged on statelessness through both what could be broadly described as advocacy and awareness-raising initiatives (resolutions, hearings, etc) and through financial support to relevant projects (research, provision of services, etc). Secondly, EU interest in statelessness stretches from initiatives relating to the promotion and protection of the fundamental rights of persons who are currently stateless (e.g. supporting alternative education programmes or condemning severe human rights violations) to those that address the prevention and reduction of cases of statelessness (e.g. speaking out against arbitrary deprivation of nationality or promoting gender equality in nationality laws). The latter is of particular interest as it demonstrates the EU's willingness to engage in an area of law that is often considered to be politically sensitive and is traditionally closely guarded by states as a sovereign matter. Thirdly, the issues on which the EU has taken action in relation to situations of statelessness or the avoidance of statelessness reflect its overall stated human rights priorities. Thus, there is engagement in relation to the nexus between statelessness and children's rights (e.g. birth registration, education for stateless children), women / gender equality (e.g. in Lebanon and Viet Nam examples above) and the treatment of minorities or freedom of religion (e.g. Rohingya). Linking EU engagement on statelessness to its central human rights priorities is a natural, legitimate and likely efficient way in which to shape the EU's approach to this issue, which is a consideration to keep in mind when exploring how the EU can expand its role in the fight against statelessness. Finally, it can be noted that beyond this observation that the EU's statelessness work appears to be informed, in part at least, by the intersections with the EU's human rights priorities, there is little consistency in terms of how and when external action on statelessness has been pursued. For

<sup>93</sup> Resolutions A/HRC/19/L.30 of 20 March 2012; A/HRC/22/L.20 of 15 March 2013; and A/HRC/25/L.21 of 24 March 2014.

<sup>94</sup> See [http://www.eu-un.europa.eu/articles/en/article\\_12815\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_12815_en.htm).

<sup>95</sup> See <http://www.refworld.org/docid/51dfaf484.html>. Slovakia has been particularly consistent in raising the issue of statelessness at the UPR.

<sup>96</sup> International photographer known for his “Nowhere People” project, featuring photo essays of different stateless populations around the world. See <http://www.nowherepeople.org>.

<sup>97</sup> See <http://burmatimes.net/tag/european-parliament/>.

instance, although there has been some interest in the issue of gender discrimination in nationality laws – within the broader focus of the promotion of gender equality – there is no evidence that the EU has consistently addressed this in all countries where women do not enjoy equal nationality rights with men. EU external action on statelessness to date appears to be rather ad hoc and lacks a cohesive or comprehensive vision about how it should contribute to the fight against statelessness. This study and the pledge for the EU to develop a framework for raising statelessness with third countries is therefore both timely and necessary.

## **5. HOW CAN THE EU STRENGTHEN ITS ROLE IN THE FIGHT AGAINST STATELESSNESS?**

### **5.1 Multilateral engagement**

There is significant scope for the EU to strengthen its role in the fight against statelessness around the world by expanding its political action on this issue at the UN and through cooperation with UN bodies and other international organisations. Already, the EU has sponsored a number of resolutions at the UN Human Rights Council which touch on statelessness and closely related issues – and EU member states have sponsored many more. Statements and resolutions by the EU at the UN General Assembly can similarly be an avenue for drawing attention to statelessness, expressing concern at emerging or protracted situations, highlighting urgent protection needs for stateless persons and calling upon governments to act. While there are some inherent limitations to the EU's ability to engage in such fora<sup>98</sup>, greater effort should be made to identify and actively pursue appropriate opportunities to raise the issue of statelessness. As discussed in section 3 of this report, statelessness intersects with many other human rights concerns such that there is ample opportunity within existing thematic and country resolutions to integrate more of a focus on statelessness. It can also be recalled that statelessness is a major challenge in a considerable number of countries – many of which are already the subject of regular human rights resolutions – such that existing initiatives can again be explored more closely with a view to introducing or strengthening the focus on statelessness. In this respect, the opportunity afforded by the Universal Periodic Review to ask questions and make recommendations across the full spectrum of human rights with regard to the state under review should not be overlooked. Already there are more questions addressed to states on the right to nationality and the protection of stateless persons in the UPR process than a few years ago – also thanks to a number of EU member states – but much more could be made of this opportunity by paying consistent and closer attention to problems of statelessness around the world.

The EU can also strengthen its collaboration with UN agencies and other international organisations in the fight against statelessness. The EU already provides significant political and financial support to UNHCR<sup>99</sup>, which is the agency mandated by the UN General Assembly to work on statelessness. UNHCR now maintains a distinct budget line – Pillar 2 – for its statelessness activities, giving donors the chance to specifically allocate funding to this aspect of UNHCR's work (separately from its refugee work). Other institutional changes, including significant training initiatives and the creation of numerous new dedicated statelessness posts, have boosted UNHCR's capacity to implement its statelessness mandate,

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<sup>98</sup> See for a critical review of the EU's approach to promoting human rights through engagement at the UN Human Rights Council, for instance, Directorate-General for External Policies, *The European Union and the review of the Human Rights Council*, EXPO/B/DROI/2010/06, February 2011.

<sup>99</sup> The EU contributed over 213 million USD to UNHCR operations in 2013, accounting for approximately 7% of the total income of UNHCR. See <http://www.unhcr.org/539809dc0.html>.

but the available resources remain limited<sup>100</sup>. This presents a real challenge to the achievement of effective programming. With the launch of the Campaign to End Statelessness by 2024, UNHCR's own ambitions and others' expectations about what the agency can or should deliver will increase further. Additional budget, as well as strong political support in pursuit of the goals of the campaign, will be needed – and this is a clear avenue through which the EU can contribute to the fight against statelessness.

Numerous other UN agencies have mandates which are also relevant to addressing statelessness<sup>101</sup>. The EU has already forged a collaboration with UNICEF for promoting birth registration – which, in turn, helps to prevent new cases of statelessness. This partnership could also be further expanded as a tool in the fight against statelessness. This can be achieved both through the inclusion of further target countries where birth registration is of particular relevance to the enjoyment of nationality, as well as through an examination of the nexus between birth registration and the enjoyment of nationality in those countries where programmes are already in place, with a view to identifying vulnerable groups and tailoring specific projects – as needed – to ensure their access to the civil registration system<sup>102</sup>. With the emergence of the International Campaign to End Gender Discrimination in Nationality Law, UN Women is also positioning itself among the actors on statelessness: it is one of the six coalition members for the campaign, approaching the issue from its mandate to promote gender equality. This being a priority area of the EU's human rights action, the EU could also consider ways in which to support the campaign, for instance by helping to ensure a place for the issue on the agenda of the review of progress towards the implementation of the Beijing declaration and Platform of Action at the Commission on the Status of Women's 59<sup>th</sup> session in March 2015 (see further section 6.1 below). The Office of the United Nations High Commissioner for Human Rights has also contributed in various ways to the fight against statelessness<sup>103</sup>, as have the special procedures such as the Independent Expert on Minority Issues. In fact, several of the existing country mandates<sup>104</sup> and a great many of the thematic mandates are of relevance to statelessness and the EU could help to ensure that due attention is paid to the issue by the mandate holders. For instance, where the EU is able to input on the selection of thematic issues for annual reports or on the identification of priority countries for visits by mandate holders, statelessness and related issues / country situations could be indicated as priority focus areas.

The EU also engages in dialogue on human rights with other regional organisations, including the African Union (AU) and United Nations Economic Commission for Africa (UNECA), the League of Arab States (LAS), the Organisation of American States (OAS), the Organisation of the Islamic Conference (OIC) and the Association of South East Asian Nations (ASEAN). As outlined in section 2.1, all of these regional organisations have recognised the right to a nationality through instruments that they have adopted, such that statelessness is at least on the radar of their human rights agendas. A variety of activities are carried out in the context of EU collaboration with each of these bodies – from sharing of expertise and training materials, to following up on the implementation of human rights council

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<sup>100</sup> UNHCR's statelessness (Pillar 2) spending in 2013 amounted to 36 million USD or just over 1% of total UNHCR expenditure.

<sup>101</sup> A helpful overview of the intersection between statelessness and the mandates of different UN agencies is provided in the Guidance Note of the Secretary General on *The United Nations and Statelessness*, June 2011, available at <http://www.refworld.org/docid/4e11d5092.html>.

<sup>102</sup> For instance, one of the countries in which the EU and UNICEF programme has already been operating is Myanmar (see section 4.2), where Rohingya and certain other minority groups are known to experience statelessness. An assessment could be made of the extent to which these vulnerable communities are benefiting from the existing programme and whether further, tailored measures are needed in order to reach them.

<sup>103</sup> See, for instance, the OHCHR Report on Discrimination against women in nationality-related matters, including the impact on children, A/HRC/23/23, 15 March 2013, available at <http://www.refworld.org/docid/51a5bdf74.html>.

<sup>104</sup> Including, in particular, Côte d'Ivoire, Myanmar, Sudan and Syria.

resolutions, to the development of new human rights frameworks and mechanisms. In all of these areas, there is scope for including a focus on statelessness. Some of the issues faced in the EU with regards to statelessness are also closely shared by other regions. For instance, the Latin America – like the EU – is drawing closer to universal accession to the 1954 Convention relating to the Status of Stateless Persons and there is much interest currently in questions around the effective implementation of that instrument and the development of statelessness determination procedures in order to guarantee protection in the migration context. In ASEAN, with the further liberalisation of visa requirements on the horizon as part of the ambition to move towards the free flow of labour, it faces similar questions to the EU in terms of the growing significance of access to nationality of an ASEAN member state – and, with it, the growing significance of being stateless in these countries. The African Commission on Human and Peoples' Rights, meanwhile, has recently decided to draft a protocol on the Right to Nationality in Africa, which could provide interesting insights for the EU and for other regions<sup>105</sup>. It is evident that the exchange of information, experiences and know-how on statelessness with other regional organisations would be mutually beneficial and ultimately boost capacity for both parties in the fight against statelessness. Cooperation with regional organisations closer to home should also not be forgotten. On other, sometimes related issues, the EU has developed joint programmes and initiatives with the Council of Europe<sup>106</sup> and the Organisation for Security and Cooperation in Europe<sup>107</sup> – both of which, again, have already taken an active interest in statelessness.

Finally, with regards to multilateral engagement, it is important to acknowledge the role of civil society in implementing, shaping, supporting and complementing EU external action on human rights. The EU invests strongly in collaboration with civil society organisations, for instance through the annual EU-NGO Forum on Human Rights. Depending on the overall theme of the Forum, statelessness or a relevant sub-topic (such as children's right to nationality or achieving gender equality in nationality laws), could be included within the agenda of a forthcoming edition of this key event at which representatives of global civil society and EU institutions exchange views on the promotion and protection of human rights. More immediately, the First Global Forum on Statelessness which will take place at the Peace Palace in the Hague from 15-17 September 2014 presents an opportunity for dialogue with civil society and other stakeholders on statelessness. This event, the first of its kind, is expected to draw some 300 participants from around the world – a mix of academics, NGOs, governments, legal practitioners, journalists and stateless persons. Many of the topics which are on the programme for this event relate closely to the EU's human rights priorities, including panels looking at the enjoyment of economic, social and cultural rights by stateless persons, on the experiences of statelessness among children, on birth registration and statelessness, on protecting the stateless from arbitrary detention, on gender discrimination and statelessness and on addressing statelessness through foreign policy<sup>108</sup>. The EU should take advantage of the occasion of this event, on the doorstep of Brussels, to expand its network, share experiences to date and further develop ideas for its external action on statelessness.

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<sup>105</sup> See, for instance, <http://www.refworld.org/docid/51adbc24.html>. Note also that in April 2014, the African Committee of Experts on the Rights and Welfare of the Child adopted a General Comment on article 6 of the African Charter on the Rights and Welfare of the Child, addressing children's right to nationality and to birth registration.

<sup>106</sup> For instance, the joint Programme for Strengthening Democratic Reform in the Southern Neighbourhood, see <http://south-programme-eu.coe.int/>.

<sup>107</sup> For instance, joint activities and conferences on the situation of the Roma and Sinti in the EU.

<sup>108</sup> The provisional programme for the First Global Forum on Statelessness is available online here <https://www.tilburguniversity.edu/research/institutes-and-research-groups/statelessness/news/forum/program/>.

### The European Parliament and the fight against statelessness

- ✓ **Statements & press releases:** The European Parliament can call attention to particular challenges or developments in the fight against statelessness through the issuance of statements and/or press releases. For instance, the President of the European Parliament or the Spokesperson for the European Parliament on Human Rights could issue a statement in support of the launch (on 15 September 2014) of UNHCR's Campaign to End Statelessness by 2024, or on the occasion of other such important milestones.
- ✓ **Debates & resolutions:** The European Parliament regularly holds debates and passes resolutions on human rights issues. These may focus on the human rights situation in a certain country and raise issues of statelessness as relevant (see examples in section 4.2 of this paper for resolutions that have touched on statelessness to date) – a debate/resolution on the current problems of arbitrary deprivation of nationality in the Dominican Republic might, for instance, be warranted. Equally, the Parliament has adopted thematic resolutions on particular human rights topics (such as on ending Female Genital Mutilation in 2012). A resolution on statelessness could be a highly effective way to raise the profile of the issue and outline EU action.
- ✓ **Parliamentary questions:** Members of the European Parliament can address parliamentary questions to other EU institutions and bodies. This mechanism for scrutinising action or inaction by other parts of the EU system can also be used to raise issues regarding the EU's role in the fight against statelessness. For instance, questions might be addressed to the Commission on what has been achieved with regard to addressing statelessness in the context of Neighbourhood Policy in relevant countries such as Lebanon and Jordan.
- ✓ **Hearings, panels & other events:** Committees and individual members of the European Parliament are regularly involved in convening hearings, hosting panel discussions or sponsoring other events. These can help to improve MEPs' understanding of specific human rights situations, issues or developments, as well as to raise awareness more widely where these events are open to the public or attract the attention of the media. As with the debates and resolutions, such events could be country-specific (e.g. exploring problems of statelessness following state succession in Sudan / South Sudan) or thematic (e.g. drawing attention to the problem of and campaign against gender discrimination in nationality laws).
- ✓ **Country visits:** Members of the European Parliament participate in country visits (e.g. as a delegation from the Subcommittee on Human Rights) to explore and discuss human rights situations. Such visits can present an opportunity to raise questions regarding a country's response to statelessness – for instance, a 2013 visit by MEPs to a refugee camp for Syrian refugees in Jordan where could have been used to understand and highlight the severe problems with civil registration that may be putting children at risk of statelessness. In the selection and preparation of future country visits, issues of statelessness could be taken into account (see also 'Country QuickScan' tool).
- ✓ **International cooperation with parliamentarians:** Democracy is one of the core values, alongside human rights and the rule of law, which the EU seeks to promote through its external action, including through various forms of parliamentary diplomacy. The European Parliament has also established the Office for the Promotion of Parliamentary Democracy (OPPD), which works to strengthen parliamentary institutions and provide assistance to parliamentarians. Given the central role of a good legislative framework for the prevention and reduction of statelessness and the protection of stateless persons, the engagement of parliamentarians on this issue can be key. Tools could be established to enable the European Parliament and the OPPD to integrate issues of statelessness into activities, including inter-parliamentary meetings, study visits, training events and the exchange of good practice. Through its Associate Membership of the Inter-Parliamentary Union (IPU), the European Parliament can also use this forum to raise awareness of and share good practices on statelessness. The release of an updated edition of the joint UNHCR-IPU "Handbook for Parliamentarians" on statelessness later in 2014 could be an opportune time to explore how cooperation on this issue could be enhanced. There are possibilities of working with similar regional bodies, including the Pan-African Parliament, on awareness raising and advocacy.

## 5.2 Bilateral engagement

The EU has a wide variety of political and financial tools at its disposal for promoting human rights in its bilateral relations with third countries. Indeed, the EU has determined that it will “place human rights at the centre of its relations with all third countries”<sup>109</sup>. A key consideration in this work is that “while firmly based on universal norms, the EU’s policy on human rights will be carefully designed for the circumstances of each country”<sup>110</sup>. The establishment of a network of focal points on human rights and democracy in EU delegations around the world as part of efforts to strengthen the “culture of human rights and democracy” in EU external action is one important means through which human rights can be more closely monitored and the EU can more effectively shape its human rights policy to the individual country circumstances<sup>111</sup>. The development of individual country human rights strategies is the central tool in this regard. It is important for statelessness to be integrated within such country strategies, as relevant, depending on the analysis of the situation on the ground (as in the example of Lebanon in section 4.2 above). It is only through a more consistent and thorough assessment of the extent and manner in which statelessness is an issue in a particular country that appropriate political or programmatic action can be undertaken. To achieve this may require the development of some further tools and guidelines for EU Delegations, as well as some initial capacity building, as set out in the section on institutional arrangements below.

While the EU raises human rights issues “vigorously in all appropriate forms of bilateral political dialogue” there are special frameworks in place with a number of countries in the form of formalised EU Human Rights Dialogues<sup>112</sup>. These Dialogues involve meetings at the level of senior officials, to discuss a wide range of human rights issues. In May 2014, the Council of the European Union endorsed the establishment of such a Dialogue with Myanmar<sup>113</sup>. The agenda for this Human Rights Dialogue includes multiple issues of relevance to the phenomenon of statelessness in Myanmar (mainly affecting the Rohingya), including non-discrimination, rights of persons belong to minorities, freedom of religion or belief and several other areas such as economic, social and cultural rights.<sup>114</sup> This presents a useful avenue for discussing the denial of nationality and treatment of stateless persons in Myanmar. Statelessness is also known to be a significant issue in a number of the other countries with which the EU has established a formal Human Rights Dialogue, such as in Russia, Kyrgyzstan and Turkmenistan.

Three geographic instruments have been established to channel funds for human rights programmes:<sup>115</sup> the Development Cooperation Instrument (DCI)<sup>116</sup>, European Neighbourhood and Partnership Instrument (ENPI)<sup>117</sup> and the European Development Fund (EDF)<sup>118</sup>. Each of these instruments covers multiple countries in which statelessness is a widespread problem<sup>119</sup>. The three

<sup>109</sup> EU Strategic Framework and Action Plan on Human Rights and Democracy, 25 June 2012, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf).

<sup>110</sup> Ibid.

<sup>111</sup> This objective was set out in the EU Action Plan on Human Rights and Democracy (outcome 5b).

<sup>112</sup> See [http://eeas.europa.eu/human\\_rights/dialogues/index\\_en.htm](http://eeas.europa.eu/human_rights/dialogues/index_en.htm).

<sup>113</sup> See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142551.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142551.pdf).

<sup>114</sup> Ibid.

<sup>115</sup> Please note that the analysis here is based on the 2007-2013 programming period, as only this information was available at the time of writing.

<sup>116</sup> Covering 44 developing countries (and three regions) in Latin America, Asia and Central Asia, the Gulf Region as well as South Africa; see [http://ec.europa.eu/europeaid/how/finance/dci\\_en.htm](http://ec.europa.eu/europeaid/how/finance/dci_en.htm).

<sup>117</sup> Covering 17 countries which are close neighbours of the EU, to the East and South; see [http://ec.europa.eu/europeaid/how/finance/enpi\\_en.htm](http://ec.europa.eu/europeaid/how/finance/enpi_en.htm).

<sup>118</sup> Covering 80 countries in Africa, the Caribbean and the Pacific as well as overseas territories of EU Member States; see [http://ec.europa.eu/europeaid/how/finance/edf\\_en.htm](http://ec.europa.eu/europeaid/how/finance/edf_en.htm).

<sup>119</sup> See section 2.3 of this report.

countries for which UNHCR reports the highest figures for stateless persons in the world – Myanmar, Côte d'Ivoire and Thailand – are covered by the DCI<sup>120</sup> and EDF<sup>121</sup>. Again, the individual country strategies are critical here since these form the basis for programming. Given that the number of stateless persons in each of these countries is in the hundreds of thousands, it is remarkable to note that none of the respective country strategies mentions the word stateless, nationality or citizenship. The country strategy for Myanmar touches upon the treatment of minority groups, including explicitly referencing the situation of the Rohingya, but it does not mention the denial of nationality<sup>122</sup>. Whether this is an oversight on the part of the EU or a result of the process by which such country strategies are developed (i.e. in agreement with the state in question) is not clear. However, it does signal one of the challenges in terms of programmatic engagement on the issue. This is something that needs to be carefully reviewed. In the meantime, it is also worth considering the more pro-active use of the European Instrument for Democracy and Human Rights (EIDHR) for statelessness-related programming. This is an instrument through which the EU provides support for the promotion of human rights in third countries across a number of themes and through which aid can be granted without requiring the agreement of the governments concerned<sup>123</sup>.

### 5.3 Institutional arrangements

To pave the way for more effective engagement of the EU in the fight against statelessness, as outlined in broad strokes above and in concrete recommendations in section 6, it is important to consider in what ways institutional arrangements can be strengthened to support this ambition. There are three main areas in which further development or investment should be considered: tools, training and reporting.

Across the various human rights priorities of the EU, a wide range of tools have been developed. Among these, the EU human rights guidelines are of particular interest. Currently, there are 11 of these, each on a different thematic area, such as the death penalty or the promotion and protection of freedom of religion or belief. Although not legally binding, “because they have been adopted at ministerial level, they represent a strong political signal that they are priorities for the Union”<sup>124</sup>. They set out basic principles and objectives for EU engagement and are considered to be practical tools to help EU representations in third countries advance the EU's human rights policy. Moreover, the European Instrument for Democracy and Human Rights has as one of its stated objectives “supporting action in areas covered by EU guidelines”, such that these guidelines can directly inform human rights programming. There are, as yet, no EU guidelines on nationality or statelessness, so their development is one way in which the EU's interest in the fight against statelessness could be channelled to provide concrete direction on what this work should entail. If this is not achievable, a helpful step would nonetheless be the development of some form of publication, strategy document and/or toolkit which at least sets out the contours of what the EU considers to be its role in respect of helping third states to address statelessness. The 2006 – 2010 EU Roadmap for equality between men and women<sup>125</sup> or the 2010 LGBT Toolkit<sup>126</sup> are among the many existing documents on other human rights issues that could

<sup>120</sup> Myanmar and Thailand.

<sup>121</sup> Côte d'Ivoire.

<sup>122</sup> See [http://eeas.europa.eu/myanmar/csp/07\\_13\\_en.pdf](http://eeas.europa.eu/myanmar/csp/07_13_en.pdf).

<sup>123</sup> See [http://ec.europa.eu/europeaid/how/finance/eidhr\\_en.htm](http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm).

<sup>124</sup> See [http://eeas.europa.eu/human\\_rights/guidelines/index\\_en.htm](http://eeas.europa.eu/human_rights/guidelines/index_en.htm); also for the currently available EU human rights guidelines.

<sup>125</sup> Available at [http://eur-lex.europa.eu/legal-content/EN/ALL/ELX\\_SESSIONID=YH6qThBVYJcyYpv7kRvHhmf2KJzLyttpspBJmHYQnJRnyhGTyTXn!-746963562?uri=CELEX:52006DC0092](http://eur-lex.europa.eu/legal-content/EN/ALL/ELX_SESSIONID=YH6qThBVYJcyYpv7kRvHhmf2KJzLyttpspBJmHYQnJRnyhGTyTXn!-746963562?uri=CELEX:52006DC0092).

<sup>126</sup> Available at [http://eeas.europa.eu/human\\_rights/lgbt/docs/toolkit\\_en.pdf](http://eeas.europa.eu/human_rights/lgbt/docs/toolkit_en.pdf).



be used as models for such a tool. The tool should clearly demonstrate the linkages between statelessness and the EU's current human rights priorities<sup>127</sup>. Moreover, given the significant diversity of issues that are encapsulated in the overarching "fight against statelessness" and the importance placed by the EU on human rights policy that fits the circumstances of each country, a key consideration in any such tool will be how to help EU delegations in the field to effectively assess what needs to be done in their country of work. A draft example of the kind of simple tool that could be developed is offered in the Country 'QuickScan' below.

In the absence of operational tools for steering the EU's engagement on statelessness – or as part of the process of developing or rolling out such tools – there is also a fundamental need to build the capacity of relevant EU institutions and actors to understand, assess, programme and report on issues of statelessness. There are regular training initiatives on human rights and democracy for the European External Action Service, Commission, EU delegations, etc<sup>128</sup>. It is not evident that any of these have, to date, included statelessness – which, although intersecting with many other areas of human rights engagement, is an issue which requires specific knowledge and expertise. This could be achieved through the inclusion of a statelessness module within one of the regular human rights trainings offered or as an agenda item of a future meeting of Human Rights Focal Points<sup>129</sup>. However, it would be of interest to explore whether a dedicated training programme could be developed for key staff at the EEAS<sup>130</sup> and Commission, together with the human rights focal points of those EU delegations in countries where there is a significant problem of statelessness<sup>131</sup>. Country level trainings in such countries should also be considered, including with a view to engaging with and building capacity of civil society on this issue. New training modules could be developed in cooperation with relevant centres of expertise, NGOs or UNHCR. Any statelessness training module should include, at a minimum, an explanation of the relevant legal framework, the features of stateless in the EU and around the world, the links to the EU's human rights priorities, the potential partnerships that can be pursued in addressing statelessness and examples of relevant operational good practices. The facilitation of study trips between countries facing similar challenges could also be of interest, as well as between states where there has been key reform and states where similar reform has yet to be achieved<sup>132</sup>. Finally, it would be worthwhile exploring ways in which statelessness could be integrated as a component of the Regional Masters programmes offered by the European Inter-University Centre for Human Rights and Democratisation<sup>133</sup>.

Building capacity to engage on statelessness through the development of toolkits and implementation of training schemes will help to lay the groundwork for more extensive and effective engagement of the EU in the fight against statelessness. Yet, monitoring the EU's achievements in this area is a complex

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<sup>127</sup> See example of summary presented earlier in this report.

<sup>128</sup> See also action 5a of the EU Action Plan on Human Rights and Democracy.

<sup>129</sup> The first such meeting was held in Brussels in February 2013. See EU Annual Report on Human Rights and Democracy in the World in 2012, 9431/13, 13 May 2013.

<sup>130</sup> This could include the regional Managing Directors as well as a number of staff working on "Global and Multilateral Issues", such as the focal points for Human Rights Strategy and Policy Implementation, Human Rights and Multilateral Diplomacy and Development Cooperation Coordination. See [http://www.eeas.europa.eu/background/docs/organisation\\_en.pdf](http://www.eeas.europa.eu/background/docs/organisation_en.pdf).

<sup>131</sup> In March 2012, for example, the EEAS organised a special staff training on economic, social and cultural rights. See EU Annual Report on Human Rights and Democracy in the World in 2012, 9431/13, 13 May 2013.

<sup>132</sup> Note that in the context of promoting the protection of stateless persons, Hungary has for instance hosted delegations from numerous countries for study trips to explore the utility and operation of Hungary's statelessness status determination procedure, including from Montenegro, the Philippines and Moldova. See T. Molnar, "Moving statelessness forward on the international agenda: the example of Hungary" in *Tilburg Law Review*, Vol. 19, Issue 1-2, 2014

<sup>133</sup> See <http://www.eiuc.org/>.

task because the pertinent information is highly dispersed and various activities of relevance are carried out entirely under other/broader labels such that the link with statelessness is not explicit<sup>134</sup>. There is a need to consider how transparency can be increased with regards to the EU's statelessness work. This is where reporting and evaluation comes into play. For the purposes of more effectively tracking EU efforts on statelessness in the future, as well as to improve the visibility of and accountability for this dimension of the EU's external action, it would be advisable to explore ways in which the EU could improve its information management on statelessness as a distinct area of work. The framework that is currently being developed to raise issues of statelessness with third countries should also take into account this question of reporting on the EU's statelessness work. For instance, the EU Annual Report on Human Rights and Democracy in the World provides an important overview of the work of the EU on human rights. Its content is informed by the EU's principal human rights priorities, such that it does not contain a distinct paragraph on statelessness and the EU's engagement and achievements in this area do not come to light. It would be of interest to explore ways in which to highlight statelessness within this report in its present format, for example through the nexus between statelessness and EU priorities such as the rights of persons belong to minorities. Other reporting and evaluation instruments – including those for the evaluation of the EU's cooperation and development programmes<sup>135</sup> – should also be reviewed to determine ways in which to better capture data on the EU's engagement and impact on the fight against statelessness.

#### Country 'QuickScan' for statelessness issues

- ✓ **Statelessness Conventions:** Is the country a state party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness? Does it maintain reservations to these conventions or to relevant provisions of human rights instruments (e.g. CEDAW article 9)?
- ✓ **Existing stateless population:** Is statelessness known to affect a significant number of people in the country? Is a particular group, or groups, affected (e.g. a minority community denied nationality)?
- ✓ **Emerging risk of statelessness:** Are there signs of an emerging risk of large-scale statelessness, e.g. due to state succession/dissolution or due to a significant change in nationality policy which may lead to stripping of nationality?
- ✓ **Discriminatory nationality law:** Is there gender discrimination in the nationality law – in particular, do men and women enjoy equal rights with regard to the nationality of their children and the retention and transmission of nationality in the context of marriage, and in relation to children born out of wedlock? Are there other forms of discrimination in the nationality law – in particular, are people excluded from nationality based on race, ethnicity, religion, disability or political opinion?
- ✓ **Safeguards against childhood statelessness:** Is there a problem of inter-generational statelessness in the country? Can children born on the territory acquire nationality if they would otherwise be stateless? Can children born abroad, one of whose parents is a national, acquire nationality if they would otherwise be stateless?
- ✓ **Effective naturalisation procedures:** Do systems exist in law and in practice to enable adults to acquire nationality after a period of residence, and are these procedures accessible to those who are stateless or whose existing nationality is in doubt?

<sup>134</sup> With regard to priority issues such as human rights defenders, EU efforts are far easier to track. For instance, distinct tools have been developed, a separate website is maintained with relevant updates and resources ([http://eeas.europa.eu/human\\_rights/defenders/index\\_en.htm](http://eeas.europa.eu/human_rights/defenders/index_en.htm)), and a dedicated section of the EU Annual Report on Human Rights and Democracy in the World. No such framework exists for statelessness policy or reporting.

<sup>135</sup> This is the role of the Commission's Evaluation Unit, see [http://ec.europa.eu/europeaid/how/evaluation/introduction/introduction\\_en.htm](http://ec.europa.eu/europeaid/how/evaluation/introduction/introduction_en.htm).

- ✓ **Statelessness determination:** Does the country have a procedure or other mechanism for determining statelessness and granting a legal status to stateless persons (in the migration context)? Does this procedure and stateless status function effectively and provide adequate protection to stateless persons? Is arbitrary detention a problem in the country and, if so, are there mechanisms to identify and offer a status to stateless persons held in (lengthy) immigration detention and offer a solution where there
- ✓ **Civil registration:** Does the country have an effective civil registration system in place? Are there problems of access for particular groups to birth, marriage or death registration?
- ✓ **Baseline data:** Is there reliable statistical data on the problem of statelessness in the country? Is there adequate information available on the profile of stateless persons; the causes and consequences of statelessness; and the functioning of the legal framework in respect of the prevention and reduction of statelessness and protection of stateless persons?

## 6. WHAT SHOULD BE PRIORITY AREAS FOR EU EXTERNAL ACTION ON STATELESSNESS?

### 6.1 Thematic priorities

A helpful way to approach the setting of priorities for EU external action on statelessness is by theme. “The fight against statelessness” is a broad umbrella under which many different policy responses can be envisaged and are necessary for a fully comprehensive response. On the basis of information presented in this paper on the causes and impact of statelessness, the nexus with the EU’s human rights priorities and key developments in the response to statelessness globally, three priority areas for thematic intervention have been identified:

#### 1. Support the campaign to end statelessness by 2024

On 15 September 2014, UNHCR will officially launch its campaign to end statelessness in the next decade – the most ambitious project ever attempted in respect of statelessness. Upon the launch of the campaign, UNHCR will outline an action plan with concrete steps that are needed in working towards this goal, yet it is already evident that finding ways to resolve the numerous massive and often protracted cases of statelessness around the world will be key. Moreover, reacting in a timely and effective manner to new threats of mass statelessness will also be critical, otherwise one situation may be resolved only to find that another – perhaps even larger – problem has appeared elsewhere. In both of these areas, the EU can bring the combined force of its political influence and programme support to bear. To prevent or to resolve statelessness requires political will for change, as well as often adequate technical, capacity building, logistical and other support for implementation<sup>136</sup>. The EU should:

- Conduct a country-level review of EU strategy documents and programmes in those countries currently reporting stateless populations of over 10,000 persons<sup>137</sup> to ascertain the current impact of the EU in addressing statelessness and strengthening nationality administration, and consult with government, UN and civil society partners on ways in which the EU can strengthen its contribution on this issue<sup>138</sup>. Be mindful in this context of a changing legal, political and social environment that may present a new window of

<sup>136</sup> See, for instance, *Sri Lanka makes citizens out of stateless tea pickers*, 7 October 2004, available at: <http://www.unhcr.org/416564cd4.html>.

<sup>137</sup> See section 2.3 for an overview of the countries concerned.

<sup>138</sup> See also under thematic priority 3 below.

- opportunity for solving existing situations, such as relevant law reform or a change of government<sup>139</sup>;
- Support research and mapping initiatives by UNHCR, government, civil society and academia that aim to create more comprehensive and reliable baseline data – with a particular priority for those countries which are known to have large populations of people who are stateless or whose nationality is in doubt or dispute, but where there is no reliable statistical data<sup>140</sup>;
  - Monitor for situations in which action is needed to prevent large-scale statelessness<sup>141</sup> and assess, as a matter of urgency, ways in which the EU can support government, UN and/or civil society efforts to avoid statelessness. When offering political and technical support to countries in transition, include a focus on the prevention – and, where relevant, reduction – of statelessness<sup>142</sup>;
  - Raise its concerns about large-scale protracted or emerging statelessness, in relevant multilateral fora at the UN (including the Human Rights Council) and regional level;
  - Support and collaborate with UNHCR in the further development and execution of its role in the context of the campaign to end statelessness, including by issuing a public statement of support on the occasion of the campaign launch and by providing additional resources for UNHCR's statelessness (Pillar 2) budget throughout the campaign;
  - Support international standard-setting initiatives in relation to nationality laws and practices, including by regional bodies such as the African Union, Organisation of American States and others;
  - Support the inclusion and realisation of targets relevant to the eradication of statelessness in the framework of the UN Sustainable Development Goals.

## 2. Combat gender discrimination in nationality laws

The enduring presence of gender discrimination in some states' nationality laws is problematic from the point of view of avoiding statelessness, but also as an issue of gender equality, such that it is an area which falls squarely within one of the EU's human rights priorities. On 18 June 2014, a coalition of UN and civil society organisations launched an international campaign to end gender discrimination in nationality laws with a side event at the Human Rights Council in Geneva<sup>143</sup>. The EU is already invested in moving the women's rights agenda forwards in multilateral fora and promoting gender equality in its bilateral relations with third countries, making it a strong potential partner in this campaign. It is important that the EU finds ways, within its existing work, to pay greater attention to the distinct issue of unequal nationality rights. The EU should:

- Seek to include explicit reference to the reform of the nationality law in the country strategies of those countries where women and men do not enjoy equal nationality

<sup>139</sup> See section 6.2 for specific country recommendations relating to Thailand and Côte d'Ivoire.

<sup>140</sup> See section 2.3 for examples.

<sup>141</sup> Such as following state succession, in the context of mass displacement or in the event of a significant change in nationality policy.

<sup>142</sup> See section 6.2 for specific country recommendations relating to the Dominican Republic.

<sup>143</sup> See <http://www.equalnationalityrights.org>.

rights<sup>144</sup>, in particular the states that do not allow women to transmit nationality to their children on the same terms as men<sup>145</sup>;

- Support civil society capacity building and advocacy for nationality law reform, especially at country level, through the (continued) funding of relevant projects<sup>146</sup>;
- Promote the engagement of Parliamentarians on this issue, including by encouraging those in countries which have recently reformed their nationality law on this point to share best practices in multilateral fora and by facilitating bilateral study visits<sup>147</sup>;
- Continue to push for the withdrawal of CEDAW reservations, with a particular focus on reservations to article 9 (nationality rights), including in particular in the context of the Euromed partnership<sup>148</sup>;
- Help to draw attention to the objectives and importance of the International Campaign to End Gender Discrimination in Nationality Laws by raising it in bilateral and multilateral fora including in relevant Human Rights Council resolutions, within the UPR process and in the context of the review of progress made in the implementation of the Beijing Declaration and Platform of Action (so-called Beijing +20) in 2015.

### 3. Promote children's right to a nationality

Every year, tens of thousands of children are born into statelessness: their right to a nationality is not realised and this impacts their enjoyment of a wide range of other children's rights. Given the EU's special interest in the protection of children's rights in its external action and the fact that successfully addressing childhood statelessness would go a long way to contributing to ultimately eradicating statelessness, promoting children's right to a nationality can be put forward as another priority area for EU engagement. The EU should:

- Continue to collaborate with UNICEF for the promotion of birth registration, which helps to ensure that children are able to establish and provide proof of their nationality;
- Include a component within the evaluation of existing birth registration programmes supported by the EU – as well as in the design and development of new programmes – which looks at their impact on children's enjoyment of the right to nationality with a particular focus on vulnerable groups and identifies ways in which the prevention of statelessness can be strengthened through these programmes<sup>149</sup>;
- Support, as a matter of priority, government, UN and civil society initiatives in countries in which children's right to a nationality is severely under threat – for instance due to a break-down in civil registration – including by raising the issue in bilateral relations and through the (continued) funding of relevant projects<sup>150</sup>;

<sup>144</sup> As is currently the case in the Lebanon country strategy, see section 4.2 above.

<sup>145</sup> See for an overview of these countries UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness*, 8 March 2014, available at: [www.refworld.org/docid/532075964.html](http://www.refworld.org/docid/532075964.html)

<sup>146</sup> Including through the European Instrument for Democracy and Human Rights, which is not bound by the limitation of agreement of objectives with the relevant government.

<sup>147</sup> Countries which have reformed their nationality law in the last decade to remove gender discrimination include Morocco, Egypt, Indonesia, Bangladesh, Kenya and Senegal.

<sup>148</sup> One of the specific recommendations made within the Euromed partnership was that reservations to the CEDAW should be removed and out of the ten countries that are in the partnership, seven maintain reservations to article 9 of CEDAW. See European Commission, *Acting for Gender Equality*, 2006, available at [http://eeas.europa.eu/euromed/publications/gender\\_en.pdf](http://eeas.europa.eu/euromed/publications/gender_en.pdf).

<sup>149</sup> See section 6.2 for specific country recommendations relating to Myanmar.

<sup>150</sup> See section 6.2 for specific country recommendations relating to Syria and the countries affected by the Syrian crisis.

- Promote, in cooperation with UN and civil society partners, the reform of nationality policy in respect of children in those countries where statelessness is a widespread, protracted and intergenerational problem, including by calling greater attention to this problem in relevant multilateral fora (such as within the UPR process);
- Continue to support programmes aimed at the improved enjoyment of children's rights – such as education and health – by stateless children<sup>151</sup>, in particular in those countries where the EU delegation has assessed the immediate prospects of resolving their statelessness as poor<sup>152</sup>.

## 6.2 Country priorities

In following up on the thematic priorities presented above, there is room for the EU to reaffirm, strengthen and expand its external action on statelessness in numerous countries – including all those with significant stateless populations as well as those where there is gender discrimination in the nationality law. The country 'QuickScan' tool offers some further ideas about how the EU can identify priorities on statelessness in particular third countries. To nevertheless offer a more concrete picture of how the EU can engage on statelessness in the various contexts outlined, five priority countries have been selected for which specific recommendations are offered below.

### 1. Côte d'Ivoire

Since before independence in 1960, Côte d'Ivoire has drawn migrants from neighbouring countries; indeed, for a period the French colonial authorities had a policy of forcibly importing labour from the territory of what is now Burkina Faso. The transitional provisions adopted at independence provided for "foreigners" to be able to opt for Ivorian nationality, but it was unclear who exactly needed to make the option; and in the context of widespread illiteracy many potentially affected persons were unaware of the need to do so. The new nationality law initially provided for children born in the territory of foreign parents to have the right to opt for nationality at majority; but this right was removed in 1973, creating a nationality law based purely on descent. Nevertheless, the regime of President Félix Houphouët Boigny continued to encourage immigration and integrated historical migrants and their descendants, distributing to them national identity documents and granting them full rights of citizenship, including employment in public services and the right to vote. However, in the mid-1990s, after the death of Houphouët Boigny, Ivorian political leaders adopted a series of measures to deny nationality documents to all those who were perceived to be of foreign origin, including the descendants of historical migrants, who had been integrated into Ivorian society, held Ivorian nationality documents and always considered themselves as Ivorians. The discriminatory policies that followed and the stripping of the rights associated with nationality from many hundreds of thousands of people contributed to the civil war that broke out in 2002. Today, the Ivorian government estimates there are around 700,000 persons who are stateless or at risk of statelessness in Côte d'Ivoire. Yet, some positive recent developments have the potential to resolve some situations of statelessness and prevent further statelessness in Côte d'Ivoire. A new government is in place, though installed with difficulty following an election accompanied by significant violence in 2010. The deliberate political and physical attacks on alleged foreigners have ceased, and some steps have been taken to resolve the situation of those who were previously stripped of the right to nationality documents. Most importantly, in September 2013, Côte d'Ivoire adopted legislation on nationality that, as an exceptional and temporary measure, restores the right suppressed in 1973. Foreign-born residents living in Côte d'Ivoire since before independence and persons of foreign descent born in Côte d'Ivoire between 1961 and 1973, as well as the

<sup>151</sup> As with the example of education for stateless children in Malaysia in section 4.2 above.

<sup>152</sup> See section 6.2 for specific country recommendations relating to Myanmar.

descendants of these groups, can acquire nationality through a declaration procedure<sup>153</sup>. Another law removed gender discrimination in the right of a person to transmit nationality to his or her spouse<sup>154</sup>. Shortly after the adoption of the new nationality rules, Côte d'Ivoire also completed its accession to both the 1954 and 1961 UN statelessness conventions. However, these exceptional measures leave untouched the highly restrictive general provisions of the nationality code; in addition, the new law on acquisition by declaration is not well known, the period to make the declaration is short, and the declaration procedure is not an appropriate measure to restore Ivorian nationality to those whose Ivorian nationality had been stripped by prior governments. The European Union has been an important political actor in Côte d'Ivoire throughout the political and humanitarian crisis in the country. It took part in the peace talks, and was the only donor to maintain its support to mitigate the impact of the crisis on the population. Against this background, the EU should:

- Support the government in the implementation of the 2013 nationality law reforms, as part of its engagement with Côte d'Ivoire in respect of “addressing the root causes of conflict”, including through capacity building, technical assistance and resourcing, as needed<sup>155</sup>;
- Support further efforts to enable law reform to bring Côte d'Ivoire's nationality code into line with international standards, including the 1954 and 1961 statelessness conventions, as well as the African Union human rights treaties;
- Fund government, UN or civil society awareness raising, (mobile) documentation, legal counselling and assistance projects, as relevant, to facilitate the efficient and effective reduction of statelessness as a means of promoting good governance and social cohesion<sup>156</sup>;
- Discuss the implementation of Côte d'Ivoire's new treaty obligations under the 1954 and 1961 UN statelessness conventions with the government and identify areas in which support may be needed – including this in future country strategy documents as relevant;
- Promote, in collaboration with UNHCR, the sharing of best practices on the reduction of statelessness by Côte d'Ivoire, within the context of the campaign to end statelessness by 2024, including through facilitation of participation by relevant government and civil society actors in regional (ECOWAS, AU) and multilateral fora.

## 2. Thailand

There are just over half a million stateless persons in Thailand. These are mostly members of the indigenous ‘hill tribe’ communities who are ethnic and linguistic minorities in the country. Many simply missed out on Thai nationality when the authorities first started to document its nationals from the 1950s, because they were not registered – either due to a lack of interest or understanding of the importance of documents on the part of the population or a lack of comprehensive outreach by the state. When, at a later date, the Thai government conducted more detailed surveys of the population in the outer reaches of the Kingdom, where most of the hill tribe people live, those found to be without documents were not recognised as nationals but deemed to be foreigners and given some kind of temporary permit to remain. This policy, combined with a restrictions in Thailand's nationality law on the enjoyment of nationality based on place of birth, served to create inter-generational problems of statelessness. In 2008, however, Thailand passed an amendment to its nationality act that – similarly to in Côte d'Ivoire – provides an important window of opportunity for resolving statelessness. Anyone

<sup>153</sup> *Loi n. 2013-653 Portant dispositions particulières en matière d'acquisition de la nationalité par déclaration*, 13 September 2013, available at <http://www.refworld.org/docid/524a86914.html>.

<sup>154</sup> Loi No.2013-654 du 13 Sep 2013 portant modification du Code de la nationalité ivoirienne.

<sup>155</sup> EEAS, *EU Relations with Côte d'Ivoire*, see [http://eeas.europa.eu/ivory\\_coast/index\\_en.htm](http://eeas.europa.eu/ivory_coast/index_en.htm).

<sup>156</sup> See the broad European Development Fund priorities for the Côte d'Ivoire, available at [http://ec.europa.eu/europeaid/where/acp/country-cooperation/cote-d-ivoire/cote-d-ivoire\\_en.htm](http://ec.europa.eu/europeaid/where/acp/country-cooperation/cote-d-ivoire/cote-d-ivoire_en.htm).

born on Thai territory before 1992 is now eligible to apply for nationality through a procedure – including those who had actually had their nationality revoked under a previous law which had been introduced in 1972<sup>157</sup>. Implementation of these new rules has, however, been disappointingly slow and ad hoc, due in large part to bureaucratic hold-ups in decision-making. The EU has a strong relationship with Thailand, in particular in the field of trade. Where human rights issues are concerned, it is important to point out that in the most recent country strategy paper, the EU-Thailand relationship is described as having changed since the EU “no longer sees its role as a donor of development assistance but rather as a facilitator of knowledge sharing and a partner for substantive policy dialogue on key sectoral issues”<sup>158</sup>. Human rights remains a key area of the cooperation. Against this background, the EU should:

- Support the government in the implementation of the 2008 nationality law reform, as part of its administrative reform agenda with Thailand which includes “the drastic reduction of bureaucratic red tape”<sup>159</sup>, including through capacity building, technical assistance and peer learning<sup>160</sup>, as needed;
- Fund government, UN or civil society awareness raising, (mobile) documentation, legal counselling and assistance projects, as relevant, to facilitate the efficient and effective reduction of statelessness as a means of promoting the rights of ethnic minority groups and reducing trafficking in persons in Thailand<sup>161</sup>;
- Promote, in collaboration with UNHCR, the sharing of best practices on the reduction of statelessness by Thailand, within the context of the campaign to end statelessness by 2024, including through facilitation of participation by relevant government and civil society actors in regional (ASEAN) and multilateral fora.

### 3. Dominican Republic

Until 2010, the Constitution of the Dominican Republic granted nationality automatically to any person born on Dominican soil, with only the limited exception of children whose parents were ‘in transit’ in the country at the time. In practice, this narrow exception has long been applied in such a way as to deny many children of (presumed)<sup>162</sup> Haitian descent access to Dominican nationality, often leaving them stateless – despite an Inter-American Court ruling which condemned these practices<sup>163</sup>. Over time, the country has amended various laws and regulations to try to legitimate this restrictive approach to the conferral of nationality at birth (including through a 2004 Migration Law which re-defined the concept of ‘in-transit’ to encompass anyone without a regular immigration status in the country). In 2010, the Dominican Constitution was reformed to explicitly exclude children of irregular migrants from birth-right citizenship. Then, in September 2013, the issue came to a head when the Constitutional Court of the Dominican Republic ruled that the new Constitution should be applied retroactively: anyone born on Dominican soil since 1929<sup>164</sup>, whose parents were not “legal residents”, should have their nationality status corrected – i.e. be stripped of Dominican nationality. This decision left more than 224,000 people stateless. Following intense international pressure, the government of the Dominican

<sup>157</sup> *Nationality Act No. 4 of BE 2551* (2008), available at:

<http://www.refworld.org/country/LEGAL,NATLEGBOD,,THA,4a54695f2,0.html>.

<sup>158</sup> See [http://eeas.europa.eu/thailand/csp/07\\_13\\_en.pdf](http://eeas.europa.eu/thailand/csp/07_13_en.pdf).

<sup>159</sup> *Ibid*, page 12.

<sup>160</sup> For instance through study visits to other countries with experience implementing significant citizenship campaigns, such as Sri Lanka where such a project was carried out in order to reduce statelessness in 2003.

<sup>161</sup> *Ibid*, page 4.

<sup>162</sup> Often determined arbitrarily or on the basis of racial criteria.

<sup>163</sup> Inter-American Court of Human Rights, *Yean and Bosico v. Dominican Republic*, Series C, Case 130, 8 September 2005.

<sup>164</sup> Date of adoption of the constitution.



Republic, subsequently adopted two measures to mitigate the situation: a “Regularisation Plan” that should operate as a kind of immigration amnesty for some of the irregular migrants present in the country; and subsequently a “Naturalisation Law” that will grant nationality to a small number of those who were stripped of nationality following the Constitutional Court ruling. It is important to note that only approximately 10% of people made stateless by the Court ruling will be eligible for nationality under the Naturalisation Law, which will still leave at least 200,000 people stateless. They, although previously Dominican nationals, will be treated as irregular migrants and required to get permission to stay in the country through the regularisation plan and then wait to naturalise. Many may, in fact, neglect to take the necessary steps or fail to qualify under this plan and be subject to deportation. The arbitrary stripping of nationality and lack of an adequate remedy in the Dominican Republic may now trigger a broader migration management problem for the region. The situation of Dominicans of Haitian descent and their enjoyment of human rights has not gone unnoticed in EU external action policy<sup>165</sup>. Although it does not mention the issue of statelessness, the country strategy paper for the Dominican Republic recognises that “there have been ongoing HR issues surrounding the treatment of Haitian migrant workers and their descendants living in the country”<sup>166</sup>. Moreover, areas of cooperation between the Dominican Republic and the EU that relate to statelessness include undocumented migration, human trafficking and birth registration. In the recent Universal Periodic Review session in which the Dominican Republic was under review, numerous EU member states also made recommendations specifically addressing the situation of arbitrary deprivation of nationality of persons of Haitian descent<sup>167</sup>. Against this background, the EU should:

- Continue to strongly condemn the arbitrary deprivation of nationality as a gross violation of international human rights law in all relevant bilateral and multilateral fora, recognising that the mitigating measures that have since been adopted do not provide a remedy for all persons concerned and are not in accordance with specific recommendations made to the Dominican Republic by the Inter-American Commission on Human Rights;
- Conduct a country visit, for instance by a delegation of the European Parliament Sub-Committee on Human Rights, to the Dominican Republic to closely assess the content and implementation of the mitigating measures which have been adopted to address the situation of those persons arbitrarily stripped of their nationality and identify further action required;
- Provide assistance to government, UN or civil society, as relevant, to ensure the fast, fair and non-discriminatory implementation of the Naturalisation Law allowing a certain group (estimated at 10%) of persons stripped of their nationality to immediately reacquire Dominican nationality;
- Put further pressure on the Dominican government to provide an appropriate remedy for the remaining (estimated at 90%) group of persons stripped of their nationality which provides a fast, fair and non-discriminatory pathway to citizenship;
- Take a firm stance against and raise awareness of the dangers of arbitrary deprivation of nationality – especially in light of Europe’s historic experiences with this issue – by drawing attention to the current situation in the Dominican Republic and discussing the human impact of such measures, including through the organisation of a hearing or other appropriate event.

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<sup>165</sup> See also section 4.2 above.

<sup>166</sup> See [http://ec.europa.eu/development/icenter/repository/scanned\\_do\\_csp10\\_en.pdf](http://ec.europa.eu/development/icenter/repository/scanned_do_csp10_en.pdf).

<sup>167</sup> See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/129/66/PDF/G1412966.pdf?OpenElement>.

#### 4. Myanmar

Statelessness is a severe human rights problem in Myanmar where the most significant group affected are a Muslim minority known as the Rohingya who are not recognised as one of the country's "national races" under the 1982 Citizenship Act. Over 800,000 Rohingya in Myanmar's Rakhine state are stateless and hundreds of thousands more have fled the country to seek refuge from communal violence and government persecution. In other parts of Myanmar, there are known to also be stateless Rohingya as well as other minority groups who are being denied nationality, but these populations have not been mapped. Stateless Rohingya in Rakhine state have faced grave human rights abuses for several decades, including through restrictions on free movement, marriage and a broad range of economic, social and cultural rights. Many Rohingya have also been subjected to forced labour and brutality at the hands of the authorities. The situation has further deteriorated since new violence flared in Rakhine state in June 2012 – around the same time that Myanmar started to take significant steps towards more democratic rule. To date, Rohingya continue to flee their homes, settling in makeshift IDP camps or taking the huge risk of trying to reach safety in another country by way of rickety boats at sea – often only to face new and severe protection risks in their country of destination. Earlier in 2014, the government imposed a ban on international humanitarian organisations offering medical assistance, evicting Doctors Without Borders from Rakhine state. This is causing extreme human misery and an increase in preventable deaths. Moreover, a deeply flawed national census exercise conducted in April 2014 further exacerbated inter-ethnic and inter-religious tensions and analysts warn that the release of census data in 2014 and 2015 may spark further violence<sup>168</sup>. In the past, when Myanmar's overall human rights record was considered to be more severe, the EU imposed sanctions and other restrictive measures toward the country in an effort to pressure for democratic reform. In 2013, these restrictive measures were lifted (apart from the arms embargo) and trade relations normalised, in response to the general trend towards a more open and equitable society in the country. Yet the situation of the Rohingya remains a significant black spot on the country's human rights record – and one of which the EU is aware<sup>169</sup>. Against this background, the EU should:

- Step up pressure on the government of Myanmar to address, as a matter of urgency, the gross human rights violations against the Rohingya in Rakhine state, including by continuing to draw attention to these concerns in relevant bilateral and multilateral fora, but also recalling the need to have a consistent human rights centric approach across the EU's foreign economic, humanitarian and diplomatic policy;
- Utilise the language of "Rule of Law" upon which Myanmar's transition process is pinned, to emphasise the need to uphold Myanmar's obligations under the CRC and CEDAW, including through implementing the 1982 citizenship law in compliance with such obligations and amending sections of the law which are incompatible with such standards;
- Conduct a thorough assessment of EU-supported development programmes in Rakhine state to ensure that these are not contributing to entrench segregation, disrupt land rights or engender permanent displacement of Rohingya populations and take mitigating action or adapt programming as required;
- Work with UNFPA and the government of Myanmar to ensure a thorough evaluation is conducted of the accuracy of the 2014 census data and a full risk assessment with respect to

<sup>168</sup> See International Crisis Group, *Counting the Costs: Myanmar's problematic census*, May 2014, available at: [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/b144-counting-the-costs-myanmar-s-problematic-census.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/b144-counting-the-costs-myanmar-s-problematic-census.pdf).

<sup>169</sup> The issue receives attention in the Comprehensive Framework for the European Union's policy and support to Myanmar/Burma, adopted in July 2013, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/138272.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/138272.pdf). See also section 4.2 for examples of EU engagement on statelessness issues in Myanmar.

- the release of census data (including contingency planning for security measures) to prevent violence in the lead-up to the 2015 elections<sup>170</sup>;
- Increase support to countries with large Rohingya refugee populations to ensure adequate protection space;
  - Continue collaboration with UNICEF for the promotion of birth registration in Myanmar, with a specific focus on improving access to registration for stateless children as a way to document their link to the country and provide at least basic proof of identity;
  - Fund UN and civil society programmes aimed at improving the enjoyment of children’s rights, as well as economic, social and cultural rights, by stateless persons in Myanmar;
  - Support government, UN or civil society organisations, as relevant, in the collection of further baseline data on statelessness in Myanmar – in particular with regards to Rohingya affected by statelessness outside Rakhine state and other members of minority groups who are not recognised as nationals.

## 5. Syria and countries affected by the Syria crisis (in particular Iraq, Jordan and Lebanon)

Before the outbreak of conflict in Syria, statelessness was one of the human rights issues that the country faced: a large number of Syria’s minority Kurdish population in Hasakah governorate were stripped of their nationality in a census exercise conducted in 1962 and had remained stateless since. Two different groups of stateless persons emerged: those categorised as ‘foreigners’ (*ajanib*) in the census and those who were overlooked entirely and became known as the ‘unregistered’ (*maktoumeen*). During the initial period of unrest in Syria, in 2011, President Assad passed a decree which allowed stateless persons in the *ajanib* category to apply for naturalisation and thereby resolve their statelessness. It is unclear exactly how many people were able to take advantage of this decree and important to recall that it made no provision for the *maktoumeen* category, but it is likely that several tens of thousands acquired nationality. With the current crisis, several million people have become displaced inside and beyond Syria, including many stateless and newly naturalised Kurds. They face much the same challenges in exile as other refugees, but when the conflict is settled there is the possibility that those without nationality may experience difficulties in trying to return. In the meantime, the massive displacement is creating new challenges for the avoidance of statelessness. In particular, birth registration rates among Syrian refugees are worryingly low: according to UNHCR, one survey taken among refugees in Lebanon found that 77% of new-borns were not registered while in Jordan, at least 1400 children born in exile between November 2012 and July 2013 lacked birth certificates<sup>171</sup>. Significant problems were also reported with regard to the storage of Syrian refugees identity documents, which led to worries that invaluable proof of identity would become lost<sup>172</sup>. Moreover, gender discrimination in the Syrian nationality law will lead to statelessness where the child’s father is unknown or has been killed or separated from the family. The EU cooperates closely with the main countries of refuge of Syrian refugees, out of which Iraq, Lebanon and Jordan pose the greatest challenges with respect to the prevention of statelessness. The EU has also contributed significant support to the humanitarian response to the Syrian crisis<sup>173</sup>. Against this background, the EU should:

- Support government, UN and civil society efforts to strengthen civil registration and documentation services in Iraq, Lebanon and Jordan, including by promoting an express

<sup>170</sup> See also page 19, [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/b144-counting-the-costs-myanmar-s-problematic-census.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/burma-myanmar/b144-counting-the-costs-myanmar-s-problematic-census.pdf).

<sup>171</sup> UNHCR, *The Future of Syria. Refugee Children in Crisis*, 2013, available at <http://unhcr.org/FutureOfSyria/born-in-exile.html#scope-of-the-problem>.

<sup>172</sup> UNHCR in massive sorting effort to return ID papers to Syrian refugees, October 2013, available at <http://www.unhcr.org/525fe1569.html>.

<sup>173</sup> See, for instance, <http://www.unhcr.org/51b09da56.html>.

commitment to *universal* birth registration in the law and the removal of any barriers to registration, as well as through providing capacity building, technical assistance and resourcing as needed;

- Support government, UN and civil society efforts in Iraq, Lebanon and Jordan to identify children at risk of statelessness – such as those with single mothers – and provide appropriate legal counselling and assistance;
- Support civil society capacity building and advocacy for nationality law reform, through the (continued) funding of relevant projects, in particular to remove gender discrimination in those Iraq, Lebanon and Jordan;
- Ensure that when voluntary repatriation to Syria becomes possible, post conflict, refugees who were stateless prior to their displacement are allowed to and treated equally upon return;
- Promote the reform of nationality policy in post-conflict Syria, including to remove gender discrimination and to ensure appropriate measures to address the situation of the stateless Kurdish population.

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