

# Stateless

## IN A GLOBAL PANDEMIC





**For fear of being arrested and mistreated, the already marginalised stateless communities are now scared to go out to purchase their groceries, let alone access other basic emergency healthcare assistance. How far have we gone in allowing the bureaucracy to give or take away human rights?**

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# Introduction & Recommendations



**Joint statement by 84 civil society organisations (27 May 2020)<sup>1</sup>**

**Denied nationality and deprived basic rights and welfare, the stateless were already marginalised before the crisis. They now face even greater, life-threatening marginalisation, with potentially disastrous consequences.**

In 2011, **António Guterres**, – speaking then as the UN High Commissioner for Refugees – described statelessness as the world’s “*most forgotten human-rights problem*”.<sup>2</sup> To be stateless, to not have any nationality, means “*you’re not able to send children to school or go to a health centre, to be able to work legally or to have property*”, he explained. Problems compounded by the fact that “*stateless people are in legal limbo*”. Today, his successor, **Filippo Grandi**, warns that the stateless risk being left further behind in the response to COVID-19.<sup>3</sup>

**The right to a nationality is a fundamental human right and in this time of crisis it can mean the difference between life or death.**

**Filippo Grandi**

**UN High Commissioner for Refugees**

The ability of states and the international community to deal effectively with the global health threat posed by the COVID-19 pandemic and its wider fall-out for the economy, peace and security is bound up in the ability to include everyone, just as a successful humanitarian response relies on reaching everyone on the basis of need. Without urgent and sustained intervention, the stateless, those whose nationality is under threat and those denied equal nationality rights, will continue to not be factored in or reached. As the fault lines of racism, xenophobia, patriarchy and intolerance deepen during this time of global crisis, stateless minorities and migrants are also more likely to be blamed and scapegoated as the virus spreads.

By design and default, many stateless communities face devastating consequences in relation to health and wellbeing; survival and livelihoods; hate speech, racism and xenophobia; border closures and movement restrictions; insecurity and detention; and new risks of statelessness. There are also concerns about wider impacts on sustaining engagement on statelessness and the right to nationality, as the structural underpinnings of statelessness remain in place and in some instances have been further entrenched as COVID-19 continues to spread.

The Institute on Statelessness and Inclusion (ISI) has tailored existing programmes to meet some of these challenges, while establishing a dedicated COVID-19 response.<sup>4</sup> We have been monitoring the impact of the global pandemic on stateless persons and the right to a nationality through tracking online reporting on the issue; consulting with civil society partners at global, regional, national and grassroots levels and publishing an Appeal for Information in six languages.<sup>5</sup> We have maintained a spotlight on the COVID-19 impact on the stateless through op-eds,<sup>6</sup> our Monthly Bulletins,<sup>7</sup> and a Briefing Note,<sup>8</sup> have been coordinating and facilitating a joined-up civil society response at global level,<sup>9</sup> while simultaneously working directly with activists and NGOs at country-level. A central instrument of our response has been the establishment of a dedicated **COVID-19 Emergency Statelessness Fund (CESF)**.

This **Impact Report**, pulls together and synthesises the information we have collated to-date on the impact of COVID-19 on the stateless and those whose nationality is under threat around the world.

<sup>1</sup> Joint statement, ‘In solidarity with the stateless: An urgent call to states, donors and other stakeholders to promote and protect the rights of stateless persons in their COVID-19 responses’ (27 May 2020), available at [https://files.institutesi.org/Joint\\_Statement\\_in\\_Solidarity\\_with\\_the\\_Stateless.pdf](https://files.institutesi.org/Joint_Statement_in_Solidarity_with_the_Stateless.pdf).

<sup>2</sup> S. van Gilder Cooke, ‘Q&A: Antonio Guterres, UNHCR High Commissioner for Refugees’ Time (26 August 2011), available at <http://content.time.com/time/world/article/0,8599,2090561,00.html>.

<sup>3</sup> UNHCR, ‘UNHCR warns stateless people risk being left behind in coronavirus response’ (11 May 2020), available at <https://www.unhcr.org/news/press/2020/5/5eb952222ec/unhcr-warns-stateless-people-risk-behind-coronavirus-response.html>.

<sup>4</sup> See section on ‘ISI’s COVID-19 Response’ further on in this report.

<sup>5</sup> ISI, ‘Appeal for Information on COVID-19 and Statelessness’, available at <https://www.institutesi.org/news/appeal-for-information-covid-19-and-statelessness>.

<sup>6</sup> A. de Chickera, ‘As the world washes its hands of the stateless, they risk facing COVID-19 alone’ Open Democracy (27 April 2020), available at <https://www.opendemocracy.net/en/world-washes-its-hands-stateless-they-risk-facing-covid-19-alone/>.

<sup>7</sup> ISI, ‘Statelessness Monthly Bulletins’, available at <https://www.institutesi.org/core-activities/monthly-bulletin>.

<sup>8</sup> ISI, ‘Briefing note: Stateless in a Global Pandemic’ (May 2020), available at [https://files.institutesi.org/Stateless\\_in\\_a\\_pandemic\\_Briefing\\_Note.pdf](https://files.institutesi.org/Stateless_in_a_pandemic_Briefing_Note.pdf).

<sup>9</sup> Including by facilitating the publication of the ‘Joint Statement: In Solidarity with the Stateless’, with 83 other civil society organisations (available at: [https://files.institutesi.org/Joint\\_Statement\\_in\\_Solidarity\\_with\\_the\\_Stateless.pdf](https://files.institutesi.org/Joint_Statement_in_Solidarity_with_the_Stateless.pdf)) and co-convening a webinar with 18 other civil society groups on 28 May 2020 (see further: <https://www.institutesi.org/pages/webinar-stateless-in-a-pandemic>).



**Amal de Chickera, Co-Director of the Institute on Statelessness and Inclusion in Open Democracy<sup>10</sup>**

**Sadly, the stateless are used to not being seen, counted or included. They are also used to this somehow being articulated as their shortcoming: they are invisible (as opposed to we are blind), they live on the margins (as opposed to we've pushed them to the periphery) and they are illegal (as opposed to our law is unjust).**

The majority of the world's approximately 15 million stateless persons, as well as the tens of millions whose nationality is under threat, lead a severely marginalised existence. Nationality is a gateway through which people can access rights and services. Without it, the stateless face "widespread denial of human rights and [...] limits on access to identity documentation, education, health care, legal employment, property ownership, political participation and freedom of movement".<sup>11</sup>

The cost of statelessness has risen further as the world responds to the global pandemic, which has exacerbated existing inequalities and heightened existing vulnerabilities. **The now widely used medical term 'pre-existing condition' can also be applied to statelessness: a pre-existing condition which changes the way a person experiences the pandemic, as a result of long-standing structural discrimination.** Deep systemic bias also embeds state policy responses to COVID-19 (or any crisis) to put citizens first. Citizens are first to be targeted for public information messages; first to access healthcare services and PPE; first to benefit from emergency relief or economic support packages, to name just a few examples. As states place their own constituents at the centre, non-citizens are left on the side-lines. The stateless are citizens nowhere and non-citizens everywhere, including their own countries.

This is the time to hold onto, cherish and insist on the application of the values and principles embedded in the human rights, humanitarian, protection and development frameworks. Where instincts may be to afford more leeway to states in light of the challenges they are dealing with, or to focus on reaching as many people as possible (as opposed to the most vulnerable first) with humanitarian relief, it is important to check these instincts and robustly apply basic principles.

Statelessness is a notoriously hidden issue and so its impacts are often missed or misunderstood.<sup>12</sup> While this already presents a major challenge in 'normal' times, the problem is amplified and made urgent in the context of the COVID-19. This report helps to inform a statelessness-sensitive approach to the pandemic by documenting the impact of COVID-19 on stateless persons and the enjoyment of the right to a nationality.

**International human rights law is not premised on the nationality of the person but rather on the dignity that is equally inherent to all human beings.**

**UN Human Rights Council, 2015**

**Equality, dignity, non-discrimination, liberty, security of the person, free speech, socio-economic rights and identity.**

*Human rights treaties, UN Special Procedures*

**HUMAN RIGHTS**

**PROTECTION**

**Non-refoulement, protection for refugees, stateless persons, asylum seekers and IDPs.**

*Refugee & Statelessness Conventions, Global Compacts, Guiding Principles on Internal Displacement*

**Justice, equitability and inclusion, 'leave no one behind', 'reach the furthest behind first'.**

*Sustainable Development Goals*

**DEVELOPMENT**

**HUMANITARIAN**

**Humanity, impartiality, do no harm, needs-based response.**

*ICRC Code of Conduct for Disaster Relief, GA Resolution 46/182*

<sup>10</sup> A. de Chickera, 'As the world washes its hands of the stateless, they risk facing COVID-19 alone' Open Democracy (27 April 2020), available at <https://www.opendemocracy.net/en/world-washes-its-hands-stateless-they-risk-facing-covid-19-alone/>.

<sup>11</sup> UN Secretary-General (UNSG), 'Guidance Note of the Secretary General: The United Nations and Statelessness' (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>.

<sup>12</sup> For instance, stateless people are listed among the hidden populations that are hard-to-reach for the humanitarian sector in International Federation of Red Cross and Red Crescent Societies, 'Leaving no one behind: The international humanitarian sector must do more to respond to the needs of the world's most vulnerable people' (World Disasters Report 2018), available at: <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/10/B-WDR-2018-EN-LR.pdf>.

# Recommendations

ISI's findings, as set out in this report, confirm and reinforce the general message of the Joint Statement which we and 83 other Civil Society Organisations released on 27 May 2020. As such, we reiterate the recommendations made in this statement, to seven distinct stakeholder groups, and reaffirm our commitment to taking up these recommendations with each group. We also offer the following recommendations on the basis of this report:

## Health & Wellbeing

Ensure that access to healthcare is equal and universal, and not based upon nationality or legal status; that all fees and other barriers to access are removed; that public health imperatives take precedence over immigration and other motives which may place vulnerable communities at risk; and that all public health measures and related advice are communicated to all groups, including stateless persons and those at risk of statelessness, taking into account location, language, literacy and communication channels.

## Survival & Livelihoods

Extend emergency support packages to all, on the basis of need (and not other criteria); distribute relief regardless of legal status, prioritising first, the furthest left behind; take special measures to mitigate the transmission of COVID-19 in densely populated areas, such as camps, collective shelters and informal settlements.

## Hate Speech, Racism and Xenophobia

Desist from unfairly targeting or scapegoating minorities, migrants, stateless and other groups; prosecute and penalise those who perpetuate hate speech; and take steps to acknowledge and dismantle the root causes of structural discrimination.

## Border closures & Movement Restrictions

Ensure that border closures do not result in family separation, including by allowing non-citizen spouses and children to re-enter the territory; ensure that stateless persons with strong ties to a territory, including residence status, are allowed to return; provide legal status and protection to those deemed to be irregularly on the territory; and ensure that where livelihoods are damaged by the imposition of movement restrictions, those affected are adequately compensated.

## Recommendations of Joint Civil Society Statement

**1. States**, to not discriminate in COVID-19 responses on any grounds including citizenship, documentation or migration status; to make every effort to reach the furthest behind first, including the stateless; and to ensure that no one's right to nationality is undermined as a result of disruptions to registries or for any other reason.

**2. UN agencies**, including the WHO, WFP, UNHCR, OHCHR, UNICEF and UNDP to ensure that their COVID-19 responses identify and reach the stateless and other vulnerable and overlooked groups as a matter of priority, to provide them with critical information, healthcare and relief.

**3. Human rights actors**, including OHCHR, to maintain a spotlight on enduring discrimination, rising authoritarianism and harmful state practices such as police brutality in response to the COVID-19 pandemic; and to monitor and highlight rights violations faced by the stateless and those whose right to nationality is at risk.

**4. Humanitarian actors**, including the WFP, to identify and target emergency relief and aid to stateless and other vulnerable communities who are excluded from state relief efforts, in consultation with those working on these issues.

**5. Public health actors**, including the WHO and health ministries, to reinforce the importance of ensuring equal and adequate access to healthcare and public health information to all, regardless of nationality or statelessness, without fear of arrest, detention or reprisal.

## Insecurity and Detention

Ensure that statelessness determination procedures and asylum processes continue to operate during the pandemic; that increased policing powers are proportionate and do not result in the arbitrary targeting of vulnerable groups including the stateless; that immigration detainees are released with adequate status and support; and stateless persons, migrants and others are not detained as part of the COVID-19 response.

## New Risks of Statelessness

Treat registration services as essential, and ensure that birth registration and documentation services continue to operate during the pandemic; extend the validity of nationality and residency documentation even if people cannot apply at this time; combat intergenerational statelessness; and when encountering persons without documentation, desist from penalising them for this (through detention, denial of relief and access to healthcare etc.), but instead, to provide them with documentation and nationality.

## Sustaining Engagement on Statelessness and the Right to Nationality

Support long-term work to provide direct services to stateless persons as well as dedicated COVID-19 responses that include the stateless; promote greater attention to statelessness by UN, media and other actors; call for dedicated, intersectional and joined-up action to protect the rights of all vulnerable groups, including the stateless; and renew commitment to realising the right to a nationality for all.

**6. Media and social media actors**, to act responsibly, only publish verified information, counter xenophobia and hate speech and take decisive action against those who abuse media platforms to provoke hatred and prejudice against the stateless, migrants, minorities and other marginalised groups.

**7. Donors**, to support stateless communities, the crucial work of activists and grassroots groups, as well as the tracking, coordination and advocacy conducted at national, regional and international levels, to provide for and draw attention to the needs of stateless persons at this time.

Most importantly, we remind all stakeholders of the imperative to listen to, work with and be guided by stateless activists and communities, and to be accountable to them for actions and inaction, during this time of crisis and beyond.

**While the price already paid has been immense, we hope that through urgent and concerted action, we will together be able to promote a rights-based, inclusive and non-discriminatory response to COVID-19, based on the premise that no one, including the stateless, should be left behind. We stand ready to share information and work with all stakeholders in order to further this goal.**

# Towards a Coalition of the Excluded

**A statelessness-sensitive approach to the pandemic does not and should not mean a statelessness-first response.** Rather, a **'coalition of the excluded'** – which sees marginalised, disenfranchised and discriminated against groups recognise how different characteristics intersect and join forces to collectively demand their rights, equality, healthcare, inclusion and dignity – will be both more effective and efficient in demanding urgent COVID-19 relief and longer-term structural reform. **We stand in solidarity with all who endure structural discrimination and exclusion** and hope that this report helps to bring together excluded groups who have so much common ground.

At the time of writing this report, the killing of George Floyd by US police has catalysed a mass outpouring of protests in America and globally.<sup>13</sup> The #BlackLivesMatter movement has galvanised activism around the world, as people protest in solidarity with the African American community and against racism, xenophobia and prejudice. As Ben Okri wrote, *"across the world right now we are asking ourselves what it means to be human."*<sup>14</sup>

Mr. Floyd's last words have become a rallying call for justice. The image of a callously violent knee relentlessly and fatally asphyxiating him, has become a tragic symbol of the brutality, indifference and inevitability of structural racism and oppression. The Rohingya of Myanmar, the Uighurs of China, Palestinians, Kuwaiti Bidoon, Dalits and Muslims in India, Aboriginal Australians, Dominicans of Haitian origin, Europe's Roma; these are just some of the many groups who endure such systemic discrimination. Many within these groups are also being disproportionately impacted by the pandemic, as the problems that are at the root of most forms of exclusion, disadvantage and marginalisation are magnified.

This moment in time demands a coming together of historically excluded and marginalised communities. The image of a stateless Rohingya refugee or stateless Palestinian who has endured so much, standing in solidarity with Black America, is an image of hope.

**Globally, people of African descent and others have had to live the truths of systemic racism, and the associated pain, often without meaningful recourse as they navigate their daily lives. International leaders that have spoken out in solidarity with protestors, and with black people in the United States should also take this opportunity to address structural forms of racial and ethnic injustice in their own nations, and within the international system itself.**

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**Statement  
of 66 UN Independent Experts**<sup>15</sup>

A just and effective response – both to longer-term structural discrimination and the current pandemic – demands that we also recognise the intersectionality of discrimination, build alliances and strengthen collaboration, to break out of silos and recognise the common challenges faced by many vulnerable groups – without detracting from the uniqueness of each situation, status or characteristic. ISI is committed to working with like-minded groups to further this agenda.

## I CAN'T BREATHE

### COALITION OF THE EXCLUDED

**Stateless, minorities, women, migrants, SOGIE groups, indigenous persons, the disabled, refugees, the elderly etc.**

<sup>13</sup> J. Castellino, 'In the Name of George' Minority Rights Group International (4 June 2020), available at <https://minorityrights.org/2020/06/04/black-lives-matter/>.

<sup>14</sup> Ben Okri, 'I can't breathe: why George Floyd's words reverberate around the world' The Guardian (8 June 2020), available at <https://www.theguardian.com/commentisfree/2020/jun/08/i-cant-breathe-george-floyds-words-reverberate-oppression>.

<sup>15</sup> OHCHR, Statement on the protests against systemic racism in the United States, (5 June 2020), available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E>.

# Statelessness and...

## REFUGEES & MIGRANTS

Where statelessness and migration intersect, stateless migrants and stateless refugees commonly face further discrimination on account of their lack of nationality.<sup>16</sup> For example, “*stateless persons are uniquely vulnerable to prolonged detention*”,<sup>17</sup> because there is no country to which they can be returned.<sup>18</sup> However, most stateless persons have never migrated or been displaced, forming a distinct and often hidden population of ‘non-citizens’, whose legal status is often even more precarious. Where specific attention is paid in the COVID-19 response to ensure migrants, refugees and displaced populations are protected, such measures do not necessarily reach stateless groups.

## WOMEN

CEDAW Article 9 protects women’s equal nationality rights and is central to the object and purpose of the convention:<sup>19</sup> where a state maintains gender discriminatory nationality laws, this impacts on the fulfilment of most other convention rights. In approximately 50 countries where women do not have equal rights as men to pass on nationality to their children or spouses, or in relation to their acquiring and retaining their own nationality, women must now deal with the consequences of the non-citizenship and even statelessness of family members, as they attempt to navigate the pandemic.



**Global campaign for equal nationality rights**

**The COVID-19 virus is a natural disaster. But these additional hardships facing families affected by gender-discriminatory nationality laws are man-made, unjust, and unnecessary.**

## MINORITIES

75% of the world’s stateless belong to minorities.<sup>20</sup> “*Marginalisation and discrimination, in turn, tend to be further aggravated because of statelessness*”:<sup>21</sup> the denial or deprivation of nationality often completes the process of othering and erodes minorities’ claim to status, representation and rights. Where nationality is a tool wielded by authoritarian governments, statelessness is not simply a barrier to inclusion to be overcome as states respond to the pandemic. Rather, it is something more sinister, as it offers an excuse to further shirk responsibility, target and scapegoat a population already excluded and even vilified.



**Fernand de Varennes,  
UN Special Rapporteur  
on Minority Issues**

**The pandemic has exacerbated fear and feelings of insecurity which have been instrumentalised by extremists trying to find a convenient scapegoat. Historically, minorities have always been a target.**

<sup>16</sup> See, for instance, the research undertaken by the European Network on Statelessness, Institute on Statelessness and Inclusion and other partners within the #StatelessJourneys project, available at <https://statelessjourneys.org/>.

<sup>17</sup> UN Secretary-General (UNSG), ‘Guidance Note of the Secretary General: The United Nations and Statelessness’ (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>.

<sup>18</sup> Equal Rights Trust, ‘Unravelling Anomaly Detention, Discrimination and the Protection Needs of Stateless Persons’ (2010), available at: <https://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>.

<sup>19</sup> The CEDAW Committee has noted this on numerous occasions in Concluding Recommendations for State Parties under review, including in CEDAW/C/ARE/CO/1, para 16.

<sup>20</sup> UNHCR, “‘This is our home’. Stateless minorities and their search for citizenship’ (2017), available at: <https://www.unhcr.org/protection/statelessness/59f747404/home-stateless-minorities-search-citizenship.html>.

<sup>21</sup> UN Secretary-General (UNSG), ‘Guidance Note of the Secretary General: The United Nations and Statelessness’ (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>.





**Social, political and legal inclusion, including of stateless communities, are public health imperatives - never more so than during a global pandemic, when the cost of exclusion is measured in human lives.**

**Professor Jacqueline Bhabha -  
Professor of the Practice of Health and  
Human Rights, Harvard T.H. Chan School  
of Public Health**

COVID-19 does not discriminate and poses an unprecedented risk to us all.<sup>22</sup> However, the health risks for stateless persons are multi-faceted and compounded by pre-existing vulnerabilities. Many healthcare systems are based upon nationality<sup>23</sup> meaning that even in ordinary times, the stateless face significant barriers accessing healthcare.<sup>24</sup>

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates everyone's right to healthcare and States are under an obligation to respect this right by "*refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and irregular migrants*".<sup>25</sup> For non-nationals, however, access to healthcare is, in practice, often conditional upon a variety of factors such as legal status, ability to prove identity and/or ability to pay supplementary fees. These conditions often put health services out of reach for stateless persons, as many have no legal status, no identity documents and live in (relative) poverty. Governments have been known to block stateless persons' access to immunisation programmes<sup>26</sup> and other health services as citizens are prioritised.<sup>27</sup> Stateless persons may have shorter-than-average lifespans as a result of the discrimination they face in accessing healthcare.<sup>28</sup>

In a recent survey carried out by Ukrainian NGO, Right to Protection (R2P), - 46% of stateless persons surveyed during the pandemic were denied access to a family doctor due to lack of identity documents, and

the children of stateless persons faced barriers to accessing healthcare.<sup>29</sup> There is almost no access to healthcare in Ukraine for stateless persons with chronic diseases or disabilities due to lack of documents, and undocumented people can only seek emergency treatment.<sup>30</sup>

**In an internal survey we conducted of ENS members in March 2020, only 25% of respondents said stateless people they work with have unrestricted access to healthcare. 16% said stateless people have no access to healthcare at all in in the context in which they work. This is just one way in which stateless people are undoubtedly among those most impacted by the global pandemic and will surely be among those most affected by its fallout, unless their specific circumstances and views are considered by policymakers and government authorities and acted upon now.**

**Chris Nash**

**Director, European Network on Statelessness**

If restrictions to medical assistance based on citizenship or legal status are not lifted during the COVID-19 pandemic, including when vaccination programmes become feasible, stateless persons will struggle to

<sup>22</sup> UN Network on Migration, 'COVID-19 Does Not Discriminate; Nor Should Our Response' (20 March 2020), available at <https://migrationnetwork.un.org/statements/covid-19-does-not-discriminate-nor-should-our-response>.

<sup>23</sup> E. Batha, 'Millions of 'invisible' stateless could be denied help if they get coronavirus' Reuters (31 March 2020), available at <https://www.reuters.com/article/us-health-coronavirus-stateless-idUSKBN211FH>.

<sup>24</sup> UN Human Rights Council, 'Report on discrimination against women on nationality related matters, including the impact on children' A/HRC/23/23 (15 March 2013), p. 12.

<sup>25</sup> UN Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) (E/C.12/2000/4), para. 34. See also UN Committee on the Rights of the Child, general comment No. 15 (2013) (CRC/C/GC/15), para. 8; UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Joint general comment No. 4 (2017) (CMW/C/GC/4-CRC/C/GC/23), para. 55.

<sup>26</sup> UNHCR, 'I am here, I belong', available at [https://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport\\_ENG16.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport_ENG16.pdf).

<sup>27</sup> Refugees International, 'Futures Denied: Statelessness among Infants, Children, and Youth' (2008), available at <https://www.refworld.org/docid/48fef8632.html>.

<sup>28</sup> Kingston et al, 'Debate: Limitations on universality: the "right to health" and the necessity of legal nationality' (2010) BMC International Health and Human Rights, vol. 10(11), available at <http://www.biomedcentral.com/1472-698X/10/11>.

<sup>29</sup> Survey of 189 persons carried out by Charitable Fund 'Right to Protection' (22 May 2020), available at [https://reliefweb.int/sites/reliefweb.int/files/resources/access\\_of\\_stateless\\_persons\\_to\\_medical\\_care\\_during\\_the\\_covid-19\\_eng.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/access_of_stateless_persons_to_medical_care_during_the_covid-19_eng.pdf).

<sup>30</sup> Survey of 189 persons carried out by Charitable Fund 'Right to Protection' (22 May 2020), available at [https://reliefweb.int/sites/reliefweb.int/files/resources/access\\_of\\_stateless\\_persons\\_to\\_medical\\_care\\_during\\_the\\_covid-19\\_eng.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/access_of_stateless_persons_to_medical_care_during_the_covid-19_eng.pdf).

receive treatment if they become ill, not only seriously endangering their lives, but also the lives of others. In these times, it is particularly important to ensure that the rights to life and health of everyone are respected, “promptly and appropriately” and “without any discrimination”.<sup>31</sup>

The health risks for stateless persons are also compounded by the fact that many live-in conditions are conducive to the fast spread of the virus.

## CASE STUDY: BANGLADESH

In Bangladesh, COVID-19 lockdown was announced on 26 March. The country is ill-equipped to respond to the pandemic. There is extreme poverty, high population density, poor infrastructure, insufficient water and sanitation and inadequate healthcare facilities: a potentially fatal combination of factors even in normal times. Conditions are desperate for the approximately one million stateless Rohingya refugees living in Bangladesh’s Cox’s Bazar district.<sup>32</sup> However, the legacy of statelessness in Bangladesh extends to other communities as well.

Approximately four hundred thousand Bihari Urdu Speaking Bangladeshis live in 116 urban ‘refugee’ camps in Bangladesh. This community which was deprived of nationality when Bangladesh won its independence from Pakistan, was granted citizenship through court rulings in 2003 and 2008. However, community members still face barriers in accessing documentation to establish their nationality. They endure endemic poverty and discrimination, and prejudice still colours their experience and enjoyment of rights and services.

The camps are densely populated urban spaces, in which social distancing is impossible. Further, as fewer people are able to work during lock-down, the camps are more congested during the daytime, with people spilling into narrow lanes to escape the heat. The healthcare risks are significant. When two COVID-19 positive patients were identified in Geneva camp (the largest camp in Dhaka), they were not allowed to isolate in government quarantine centres. Community leaders believe this is due to discrimination against this minority group. Further, neighbourhood hospitals refuse to admit COVID-19 patients. They have reportedly also denied healthcare to non-COVID-19 patients from Geneva camp. Community leader and advocate, Khalid Hussain, has spoken of a pregnant woman who was not allowed to give birth in two state hospitals, and finally had no choice but to go to a private hospital, which performed a caesarean operation on her, for which she had to pay.<sup>33</sup>

Further, many members of the community earn their livelihoods in the informal sector, as barbers, butchers, rickshaw pullers, domestic workers, drivers and handicraft workers. They lost their jobs when the first cases were reported in the Geneva camp. Most live below the poverty line and face a real risk of starvation.

Community-based organisation, The Council of Minorities, has requested UN agencies, which are providing COVID-19 outreach and relief to slum dwellers, to provide the same assistance to the Urdu speaking community. However, they have not yet been reached. Speaking about this situation, **Khalid** told ISI:



**We are raising funds from the diaspora and helping with emergency relief. But the situation is desperate. Our community faces a lot of discrimination and we are being denied healthcare because of this. The Bihari Urdu Speaking community are not even getting basic government relief. Our people cannot socially distance and they are not allowed into hospitals, when it is known that they are from Geneva camp.**

<sup>31</sup> Inter-American Court of Human Rights, ‘Statement of the Inter-American Court of Human Rights 1/20’ (9 April 2020), available at [http://www.corteidh.or.cr/tablas/alerta/comunicado/Statement\\_1\\_20\\_ENG.pdf](http://www.corteidh.or.cr/tablas/alerta/comunicado/Statement_1_20_ENG.pdf).

<sup>32</sup> See the Rohingya case study further on in this report.

<sup>33</sup> ISI consultation with Khalid Hussain on 29 May 2020. Full interview on file with ISI.

It is not just in camp situations that stateless populations cannot socially distance or face discrimination and barriers to accessing healthcare. The insecure legal status of stateless persons, and those at risk of statelessness, often forces them to live on the fringes of society – with many living in close quarters without adequate housing or hygiene facilities. Many also work in the informal sector where it can be difficult to adhere to public health advice such as social distancing – assuming that stateless persons have even received such advice, in a language they understand, in the first place.

## CASE STUDY: THE DOMINICAN REPUBLIC

In the Dominican Republic, the impact of denationalisation policies and the risks associated with being stateless are becoming more evident during the pandemic. Dominicans of Haitian descent have faced long-standing discrimination and racism for many generations culminating in the arbitrary deprivation of their citizenship in 2013, rendering them stateless. Dominicans of Haitian descent are therefore “denied fundamental rights, such as the right to nationality of the country of birth, access to health care, and access to education”.<sup>34</sup> Many live in extremely poor rural communities (*bateyes*), only incorporated into local government planning in the late nineties, and in marginalised urban communities.<sup>35</sup> Lack of documentation is a barrier to obtaining any form of protection or assistance, meaning that they are at heightened risk of exposure during the pandemic. Small and overcrowded housing with shared bathroom facilities means that social distancing is impossible to maintain, and a lack of potable water means that good hygiene is difficult. The cost of renting is high, and those without documents are not entitled to the government’s humanitarian aid programme, meaning that they are forced to continue to work, despite the associated health risks. There have also been reports of stateless persons with documentation being excluded from assistance programmes during the pandemic.<sup>36</sup> According to **Ana Maria Belique** of Reconoci.do, a civil society movement defending the rights of Dominicans of Haitian descent,



**Persons of Haitian descent are already living in situations of extreme inequality and exclusion, which is worsened by the vulnerability that the pandemic has brought. It is in the bateyes that this exclusion and exploitation is manifested.**<sup>37</sup>

Problems accessing public health information have also been reported in countries such as the Czech Republic, since stateless people may not have access to TV broadcasts or online advice, and the information is often not translated into relevant languages.<sup>38</sup> In Kenya, there are concerns about low levels of awareness. The Nubian Rights Forum has reported that “*there are a lot of myths being spread especially about how black people are immune to the virus*”,<sup>39</sup> and stateless persons are being left out of community awareness programmes

and the distribution of preventive equipment. Protecting those who suffer structural discrimination requires a deeper commitment than merely removing previously enforced barriers. Positive steps must be taken through concerted and proactive efforts to address historical exclusion and reach people. It must be ensured that public health information is communicated in the right languages and through accessible means, and that this information reaches stateless persons.<sup>40</sup>

<sup>34</sup> IACHR, ‘Situation of Human Rights in the Dominican Republic’ OEA/Ser.L/V/II. Doc. 45/15 (31 December 2015), p. 48.

<sup>35</sup> R. Silié, C. Segura and C. Doré Cabral, *La nueva inmigración haitiana* (2002), FLACSO, Santo Domingo.

<sup>36</sup> ISI COVID-19 Survey response, May 2020.

<sup>37</sup> FES and OBMICA, Webinar on ‘Coronavirus y Desigualdades preexistentes: Movilidades en República Dominicana’ (8 May 2020), available at <https://www.youtube.com/watch?v=gmNe7om7MHY>.

<sup>38</sup> European Network on Statelessness, Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>39</sup> Nubian Rights Forum, ‘Community awareness and provision of preventive equipment against covid-19 for Kibera community’, available at <http://nubianrightsforum.org/wp-content/uploads/2020/03/COVID-19-APPEAL-TO-PARTNER-ORGANIZATION.pdf>.

<sup>40</sup> See Principle 9, ‘Human mobility and human rights in the covid-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons’, available at [https://zollberginstitute.org/wp-content/uploads/2020/04/Human-mobility-and-human-rights-in-the-COVID\\_final-1.pdf](https://zollberginstitute.org/wp-content/uploads/2020/04/Human-mobility-and-human-rights-in-the-COVID_final-1.pdf).

Further, the public health messaging must be practical for communities living in conditions which make social distancing etc. impossible, and communities must be provided basic resources (PPE, water, soap etc.) to enable them to act. Stateless populations must also be informed of any policy changes that affect them.

There has been some recognition of the need for a fully inclusive response. A joint statement by UN bodies emphasises that the *“primary focus should be on the preservation of life, regardless of status”*.<sup>41</sup> This involves states ensuring that everyone in their territory has equal access to healthcare and holding states to account if lack of citizenship, legal status or legal identity in any way precludes the enjoyment of the fundamental right to health.<sup>42</sup> Numerous states have indeed acknowledged that the only appropriate response is one that is truly inclusive – both from a human rights and a public health perspective, and some have announced specific policies to extend COVID-19 related health services to everyone within their territories.<sup>43</sup>

However, many countries have not pursued inclusive responses, and stateless persons continue to be left out. Moreover, inclusive policy does not necessarily equate with inclusion in practice. Stateless persons often have a precarious legal status, meaning that even in times of dire need they are less likely to seek help, medical or otherwise, for fear of being detained or subject to removal proceedings. Announcements by governments that legal status will not impact access to healthcare do not immediately or fully dispel longstanding fear or distrust of the authorities.<sup>44</sup> In fact, other measures put in place to respond to the pandemic may augment fear and risks. For example, increased policing powers in relation to COVID-19 in Canada have reportedly made it more dangerous for stateless persons, especially black and indigenous people of colour (BIPOC) stateless persons, to simply go outside, let alone access healthcare.<sup>45</sup> This not only impacts upon people who may have contracted the virus, but also those with underlying health conditions, who may already be affected by the suspension of, or change in policy towards access to, non-urgent medical services.

The lack of accurate information about the virus or inability to comply with advice about how to reduce the risk of contagion can also lead to increased fear and uncertainty. UN High Commissioner for Refugees

Filippo Grandi, has warned that *“COVID-19 is not just a physical health crisis, but is also now triggering a mental health crisis”*,<sup>46</sup> and ISI has received reports of the need for psychological support for stateless persons during the crisis, such as providing support through helplines.<sup>47</sup> The importance of taking psychological well-being and support needs into account has been recognised widely by the UN, which has said that *“mental health services are an essential part of all government responses to COVID-19”*.<sup>48</sup>

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<sup>41</sup> Joint press release from OHCHR, IOM, UNHCR and WHO (31 March 2020), available at [https://www.unhcr.org/news/press/2020/3/5e836f164/rights-health-refugees-migrants-stateless-must-protected-covid-19-response.html?mc\\_cid=1e3463bb60&mc\\_eid=28e52effdb](https://www.unhcr.org/news/press/2020/3/5e836f164/rights-health-refugees-migrants-stateless-must-protected-covid-19-response.html?mc_cid=1e3463bb60&mc_eid=28e52effdb).

<sup>42</sup> See ‘Human mobility and human rights in the covid-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons’, available at [https://zoberginstitute.org/wp-content/uploads/2020/04/Human-mobility-and-human-rights-in-the-COVID\\_final-1.pdf](https://zoberginstitute.org/wp-content/uploads/2020/04/Human-mobility-and-human-rights-in-the-COVID_final-1.pdf).

<sup>43</sup> UNHCR, ‘The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices’ (11 May 2020) available at: <https://www.refworld.org/docid/5eb2a72f4.html>.

<sup>44</sup> Issue based coalition, ‘Large Movements of People, Displacement and Resilience Key Messages and Advocacy Points on the COVID-19 outbreak’ (4 May 2020), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/76448.pdf>.

<sup>45</sup> ISI COVID-19 Survey response, May 2020. See also Malaysia case study in the section on ‘Insecurity and Detention’ in this report.

<sup>46</sup> UNHCR Press release, ‘UNHCR urges prioritization of mental health support in coronavirus response’ (14 May 2020), available at <https://www.unhcr.org/news/press/2020/5/5ebcfd784/unhcr-urges-prioritization-mental-health-support-coronavirus-response.html>.

<sup>47</sup> ISI consultation with Jawad Fairouz of SALAM for Democracy and Human Rights on 12 May 2020. Full interview on file with ISI.

<sup>48</sup> United Nations, ‘Policy Brief: COVID-19 and the need for Action on Mental Health’ (13 May 2020), available at [https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief-covid\\_and\\_mental\\_health\\_final.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief-covid_and_mental_health_final.pdf).

# Survival & Livelihoods

Nationality is a gateway through which people access many rights and services, many of which they should be entitled to regardless of whether they have a nationality or not. As set out in the ICESCR, everyone has the right to work (Art 6), social security (Art 9) and an adequate standard of living (Art 11). However, statelessness not only exposes people to poverty and marginalisation, but it can also render them invisible to government systems because they are simply not 'counted', making it harder to ensure they get the help they need. The lack of (proof of) legal identity, a global priority articulated in SDG 16.9., also undermines the pursuit of other SDGs on poverty eradication (SDG 1), zero hunger (SDG 2) and decent work (SDG 8). As a result of their precarious legal status, many stateless people work in informal sectors

that are more likely to be negatively impacted by lockdowns but they are also less likely to be caught by the safety nets that governments have put in place.<sup>49</sup>

During the pandemic, lockdowns across the world have resulted in mass loss of employment, and many stateless persons no longer have any source of income. In Ukraine, for example, 57% of stateless individuals surveyed in a study have lost their jobs due to lockdown, but lack of identity documents bars them from accessing unemployment support from the government.<sup>50</sup> In some circumstances, as is the case in Malta, government imposed rules require that any new job opportunity be filled by Maltese nationals only, preventing all non-nationals from accessing new employment.<sup>51</sup>

From **Uganda**, a member of the Benet community shared his experience of the pandemic with ISI. The Benet are one of several indigenous communities who are not recognised by the government as citizens. During lockdown, this community member reports, they have not been provided with food, social services, or information on the pandemic. They cannot access healthcare because it is conditional on paying and presenting an identity card which they do not possess. According to this survey respondent,



**To make matters worse, there were landslides and people were displaced, but there was no response from the government at all.**

The pandemic is also having a devastating effect on economies, with hunger predicted to rise to catastrophic levels.<sup>52</sup> Warding off starvation and economic disaster is a major focus of government responses, but humanitarian relief and financial support packages often prioritise citizens, leaving the stateless further behind. Such an approach is contrary to the 'needs' imperative which is a foundational humanitarian principle. Development and humanitarian organisations

must recognise and immediately address this blind spot.

In the United States, the \$2 trillion Corona Virus Relief Bill enacted by the Trump administration on 27 March excludes many non-citizens,<sup>54</sup> especially those who are undocumented.<sup>55</sup> As a result, an estimated 11.3 million families are unable to receive payments to help with the

<sup>49</sup> UNHCR, 'The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices' (11 May 2020) available at: <https://www.refworld.org/docid/5eb2a72f4.html>.

<sup>50</sup> Survey of 189 persons carried out by Charitable Fund 'Right to Protection' (22 May 2020), available at [https://reliefweb.int/sites/reliefweb.int/files/resources/access\\_of\\_stateless\\_persons\\_to\\_medical\\_care\\_during\\_the\\_covid-19\\_eng.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/access_of_stateless_persons_to_medical_care_during_the_covid-19_eng.pdf).

<sup>51</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>52</sup> At UNHCR's High Level Segment on Statelessness in late 2019, Uganda pledged to "by 2024, ensure that the Maragoli, Benet, Ugandan-Asian and other unrecognised communities present in Uganda since before 1926 are recognised as citizens of Uganda". The pandemic hit before such action could be implemented. See the report of the UNHCR High Level Segment available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

<sup>53</sup> 'Coronavirus: World risks 'biblical' famines due to pandemic – UN' BBC News (21 April 2020), available at <https://www.bbc.co.uk/news/world-52373888>.

<sup>54</sup> N. Narea, 'The missing piece in the coronavirus stimulus bill: relief for immigrants' Vox (01 April 2020) available at: <https://www.vox.com/2020/4/1/21197017/immigrants-coronavirus-stimulus-relief-bill>.

<sup>55</sup> A. Gomez 'Undocumented immigrants, fearful of Trump administration, could be hit hard by coronavirus' USA Today (23 March 2020) available at: <https://eu.usatoday.com/story/news/nation/2020/03/20/coronavirus-and-undocumented-immigrants-under-trump-fear-and-anxiety/5072337002/>.

economic burden of the pandemic.<sup>56</sup> According to a recent report, there are more than 200,000 people at risk of statelessness in the US,<sup>57</sup> and it is still unclear how these people have been impacted. Stateless persons are often left out even in responses that attempt to include vulnerable communities. In Pakistan, for example, relief packages for refugees and internally displaced persons were announced,<sup>58</sup> but beneficiaries were required to produce an identity card, thereby excluding stateless and undocumented communities, including many Afghan refugees, and those of the Bihari and Bengali

communities.<sup>59</sup> Concerns have further been raised in some country contexts regarding the safety of vulnerable communities in the delivery of food packages. In Malaysia for example, while there have been initiatives to ensure access to relief packages for both citizens and non-citizens,<sup>60</sup> organisations delivering aid are required to report to government authorities. Exposing the location of vulnerable communities to the authorities poses a significant risk in the context of arbitrary immigration roundups being carried out by the state.<sup>61</sup>

## CASE STUDY: JORDAN

Gender discriminatory nationality laws in Jordan deny women the equal right to confer their nationality upon their children or their foreign spouses. This can result in statelessness and can be the source of acute discrimination and marginalisation faced by these families. According to the Arab Women Organisation, a coalition member of the Global Campaign for Equal Nationality Rights, the government of Jordan has further embedded this type of discrimination during the pandemic by requesting identity card numbers to receive food packages, thus making aid conditional upon citizenship.<sup>62</sup> This has meant that non-citizen members of households (children and foreign spouses) have been denied potentially lifesaving assistance solely on the basis of the legal status they lack due to the implementation of a discriminatory law. Even before the pandemic, Jordan had come under scrutiny for the impact that gender discriminatory nationality laws have on access to rights and services. During a session of the Universal Periodic Review (UPR), Jordan received a recommendation to amend this law so that children of Jordanian mothers are not denied services based upon lack of citizenship.<sup>63</sup> The Committee on the Rights of the Child has expressed similar concerns.<sup>64</sup> The pandemic further highlights the devastating consequences of gender discriminatory nationality laws, and reinforces the need for urgent reform.

There are examples of good practice initiatives being implemented, for example in the Sudan, where food distribution to vulnerable families is carried out without families needing to show individual documentation or a national identification number.<sup>65</sup> The US states of California and Washington have implemented measures to mitigate these issues: in California, there is an initiative to support workers regardless of immigration status;<sup>66</sup> and Washington has launched Corona Virus

relief funding for people without citizenship status or proof of a social security number.<sup>67</sup> Portugal have also taken some steps to address the knock-on effects of an insecure legal status by temporarily granting all migrants and asylum seekers the same rights as citizens.<sup>68</sup> Unfortunately, this only includes those who already have applications in the pipeline and does not cover non-citizens who reside in Portugal irregularly.

<sup>56</sup> M. Clark 'Coloradans in the U.S. illegally – and their citizen families – were denied coronavirus aid. Will the state step in?' The Colorado Sun (4 May 2020) available at: <https://coloradosun.com/2020/05/04/immigrants-federal-coronavirus-aid-colorado/>.

<sup>57</sup> Centre for Migration Studies, 'Statelessness in the US: A Study to Estimate and Profile the US Stateless Population' (2020), available at <https://cmsny.org/wp-content/uploads/2020/01/StatelessnessReportFinal.pdf>.

<sup>58</sup> The News 'Relief package for Afghan refugees, IDs' The News (1 April 2020) available at: <https://www.thenews.com.pk/print/637523-relief-package-for-afghan-refugees-ids>.

<sup>59</sup> The News 'CNIC condition must be abolished for stateless people to get free rations' The News (11 April 2020) available at: [https://www.thenews.com.pk/print/642472-cnic-condition-must-be-abolished-for-stateless-people-to-get-free-rations?mc\\_cid=1e3463bb60&mc\\_eid=28e52effdb](https://www.thenews.com.pk/print/642472-cnic-condition-must-be-abolished-for-stateless-people-to-get-free-rations?mc_cid=1e3463bb60&mc_eid=28e52effdb).

<sup>60</sup> M. Vanar 'Food being sent to islands off Semporna for citizens and non-citizens' The Star (26 March 2020) available at: <https://www.thestar.com.my/news/nation/2020/03/26/food-being-sent-to-islands-off-semporna-for-citizens-and-non-citizens>.

<sup>61</sup> ISI COVID-19 Survey response, May 2020. See Malaysia case study in the section on 'Insecurity and Detention' in this report.

<sup>62</sup> Global Campaign for Equal Nationality Rights, 'AWO Statement: Impact of COVID on families affected by gender-discriminatory nationality laws in Jordan', available at <https://equalnationalityrights.org/news/103-awo-statement-impact-of-covid-on-families-affected-by-gender-discriminatory-nationality-laws-in-jordan>.

<sup>63</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Jordan' A/HRC/25/9 (6 January 2014), para 120.24.

<sup>64</sup> UN Committee on the Rights of the Child, 'Concluding observations on the combined fourth and fifth periodic reports of Jordan' CRC/C/JOR/CO/4-5 (8 July 2014).

<sup>65</sup> UNHCR, 'The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices' (11 May 2020) available at: <https://www.refworld.org/docid/5eb2a72f4.html>.

<sup>66</sup> 'Governor Newsom Announces New Initiatives to Support California Workers Impacted by COVID-19' (15 April 2020), available at <https://www.gov.ca.gov/2020/04/15/governor-newsom-announces-new-initiatives-to-support-california-workers-impacted-by-covid-19/>.

<sup>67</sup> J. Peterson 'Washington opens no-barrier cash assistance for those without access to other programs' The News Tribune (21 April 2020) available at: [https://www.thenewstribune.com/news/coronavirus/article242157211.html?mc\\_cid=1e3463bb60&mc\\_eid=28e52effdb](https://www.thenewstribune.com/news/coronavirus/article242157211.html?mc_cid=1e3463bb60&mc_eid=28e52effdb).

<sup>68</sup> 'Coronavirus: Portugal grants temporary citizenship rights to migrants' Euronews (29 March 2020) available at: <https://www.euronews.com/2020/03/29/coronavirus-portugal-grants-temporary-citizenship-rights-to-migrants>.

## CASE STUDY: NEPAL

Nepal has one of the largest stateless populations in the world due to a combination of gender discriminatory nationality laws, a highly patriarchal social structure and poor birth registration rates. As a result, hundreds of thousands of persons who should be recognised as Nepali citizens, have no legal identity or status. Without status, Nepal's 'non-citizens' face disadvantage and exclusion throughout their lives. They cannot own or inherit land, travel freely, study or practice certain professions or even get a mobile phone. COVID-19 has resulted in further exclusion, as those without proof of citizenship have been blocked from accessing government relief initiatives.

The Nepali government imposed a mandatory nationwide lockdown on 24 March 2020. The country came to a standstill and work from home measures were implemented. In a country where millions are reliant on market trade, construction work and farming, the lockdown has caused indefinite uncertainty and an immediate loss of income. In response, the government implemented a relief system where packages including rice, lentils and other essential food items were to be distributed to those in need. To receive a relief package, recipients were required to produce a citizenship certificate and, in some circumstances, also the citizenship certificate of the owner of their home.

The Nepal Supreme Court has since issued an interim order for the government to issue relief regardless of citizenship or documentation, stating that the *"State should respect the right to live with dignity of every person, even during the pandemic"*, and that *"there is no doubt relief should be provided without discrimination"*.<sup>69</sup> Commenting on these developments, **Sabin Shrestha**, the Executive Director of the Forum for Women, Law and Development (FLWD) said:



**The Nepal government directed Ward Officers (local government officers responsible for distributing aid) to only provide COVID-19 relief to those who submit their citizenship certificates. As a result, FWLD received thousands of appeals for help. Some Ward Officers ignored this directive and also provided relief to people who didn't have citizenship. But most did not do this. FWLD joined other groups to challenge this directive in the Supreme Court and pleaded in the Court. The Court issued an interim order: everyone should receive relief, based on need - not on citizenship. FWLD is now working to raise awareness among all government officers and affected persons, of their obligations and rights to provide and receive future relief. FWLD will continue to monitor this situation and provide legal assistance to anyone who needs it.**

It remains unclear whether this will equate to inclusion in practice. It is difficult to monitor the situation due to lockdown, and civil society efforts are key in providing relief to stateless families. The Citizens Affected Persons Network (CAPN), for example, has been receiving appeals for help from stateless people in multiple locations across the country including Chitwan, Birgunj, Biratnagar, Dang, Nepalgunj, Hetauda, Pokhara, Kathmandu and Lalitpur. Local service groups are also, in some locations, providing cooked meals to those in need.

<sup>69</sup> Unofficial translation of the Interim Order by Forum for Women, Law and Development (FWLD), on file with ISI.

# Hate speech, Racism & Xenophobia



Asma Khader,  
Solidarity is Global Institute

**Discrimination against non-citizens has always been there, but it has become far worse and even more damaging with Covid-19.**

Although the causes of statelessness are multi-faceted and complex, often they have roots in longstanding racism, discrimination and xenophobia, and related hate speech against minorities, indigenous peoples and religious groups.<sup>70</sup> In fact, statelessness is often the “foreseeable product of discriminatory laws, policies and practices that aim to exclude or have the effect of excluding people who are considered foreign”.<sup>71</sup> In the Dominican Republic, for example, racial targeting of Dominicans of Haitian descent resulted in the arbitrary deprivation of their citizenship, and the Inter-American Court of Human Rights finding these nationality laws to be discriminatory.<sup>72</sup> During the pandemic, some leaders are using COVID-19 as a convenient excuse to seize more power, increase surveillance and derogate from human rights obligations under declared states of emergency.

At a time where inclusion and solidarity is most needed, instead, the pandemic has sped up the fragmentation of social cohesion as xenophobia, discrimination and racism has increased.<sup>73</sup> Foreigners and members of minority groups, including those who are stateless in their own country, are increasingly scapegoated, vilified and targeted for hate-speech. There has, for example, been an increase of Islamophobic hate speech and even violence in various countries such as Nepal, Bangladesh and India.<sup>74</sup> As racism and xenophobia thrive, the impacts on stateless persons and the risks of new cases of statelessness increase. The UN Committee on Migrant Workers and the UN Special Rapporteur on the Human Rights of Migrants have expressed concern about the increasing discrimination against minorities and have called upon states to take pro-active action to address this.<sup>75</sup>

## CASE STUDY: INDIA

Islamophobia has grown in India under the current Bharatiya Janata Party (BJP) government, and Muslims are “excluded and face risks of disenfranchisement, statelessness, detention and deportation”.<sup>76</sup> The update of Assam’s National Register of Citizens (NRC) in 2019, which threatens to leave 1.9 million (majority Muslim) people, stateless, and the Citizenship Amendment Act (CAA), which discriminates against Muslims by excluding Muslim refugees and migrants from neighbouring countries accessing citizenship, are two of main examples.<sup>77</sup> Islamophobia is becoming more commonplace as authorities exploit the pandemic to further an exclusionary, nationalist agenda, and many Muslims are being targeted by rumours that they are carrying the virus.<sup>78</sup> One individual reported that he was stopped by a police officer, directly blamed for spreading the virus, before being assaulted and left lying on the road for nearly an hour.<sup>79</sup> There have also been reports of online disinformation targeted at Muslims, propagated by the ruling party and the mainstream media. One such circulation of

<sup>70</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ A/HRC/38/52 (25 April 2018).

<sup>71</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ A/HRC/38/52 (25 April 2018), para. 11.

<sup>72</sup> See Inter-American Court of Human Rights, *Yean and Bosico v. Dominican Republic*, para. 260.

<sup>73</sup> See also the case studies in this report on Malaysia, the Rohingya, the Dominican Republic and Nepal.

<sup>74</sup> See, for example, The South Asia Collective Online Bulletin, ‘Latest Developments in South Asia’ (April 2020), available at <http://thesouthasiacollective.org/wp-content/uploads/2020/04/LatestDevelopments.html>.

<sup>75</sup> UN Committee on Migrant Workers and the UN Special Rapporteur on the Human Rights of Migrants, ‘Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants’ (26 May 2020), available at <https://www.ohchr.org/Documents/Issues/Migration/CMWSPM.JointGuidanceNoteCOVID-19Migrants.pdf>.

<sup>76</sup> ISI et al, ‘Joint submission to the UN Special Rapporteur on Freedom of Religion and Belief’ (1 June 2020), available at [https://files.institutesi.org/Joint\\_Submission\\_to\\_the\\_SR\\_on\\_FoRB.pdf?mc\\_cid=d4a9ae15f0&mc\\_eid=%5BUNIQID%5D](https://files.institutesi.org/Joint_Submission_to_the_SR_on_FoRB.pdf?mc_cid=d4a9ae15f0&mc_eid=%5BUNIQID%5D), para. 10.

<sup>77</sup> See Human Rights Watch, ‘India: Citizenship Bill Discriminates Against Muslims’ (December 2019); Human Rights Watch, ‘Shoot the Traitors’, Human Rights Watch (April 2020).

<sup>78</sup> Citizens Against Hate, ‘Hit Job: Using COVID-19 To deepen Anti-Muslim Bias and Weaken Muslim Voice’ (May 2020).

<sup>79</sup> H. Regan, ‘India’s Muslims feel targeted by rumors they’re spreading Covid-19’ CNN (24 April 2020), available at <https://edition.cnn.com/2020/04/23/asia/india-coronavirus-muslim-targeted-intl-hnk/index.html>.



misinformation uses the app TikTok to discourage Muslims from heeding public health advice, with some videos even claiming that “Corona virus is Allah’s NRC... it is Allah’s wish who stays and who is summoned up”.<sup>80</sup> Other online misinformation campaigns have occurred on Twitter, with #CoronaJihad trending.<sup>81</sup> There is also concern that the government is abusing its powers during lockdown to scale up arrests of those protesting against the discriminatory Citizenship Law.<sup>82</sup> Ravi Hemadri, who works with the Development and Justice Initiative says:<sup>83</sup>



**Covid-19 has come in handy for the hate mongers to target Muslims and Rohingya refugees as responsible for the virus [...] Luckily, India has a thriving civil society which has taken care of marginalised groups during the pandemic better than the government, who continues to limit and despise their role.<sup>84</sup>**

In many countries the targeted vitriol against vulnerable groups and minorities, is part of a narrative which further excludes those perceived as ‘other’ – this time, with the pandemic as the excuse. When minorities are also stateless or at risk of statelessness, the impact on life and community can be even more profound, as exclusion from citizenship generally occurs along ‘othering’ lines, and those who are perceived to be foreign are “vulnerable to a broad spectrum of human rights violations on account of this foreigner status”.<sup>85</sup> In Bulgaria for example, Romani populations are being targeted by the police for enforcement of quarantine measures, with little judicial oversight.<sup>86</sup> These drivers of exclusion, could have lasting implications for the treatment of vulnerable populations – minorities, migrants and refugees who face the brunt of racism and xenophobia. When these groups are also stateless, their nationality is contested or they face the risk of arbitrary

deprivation of nationality, the impact can be even greater. Where racism and xenophobia are exacerbated during the pandemic, this will have a lasting impact even after the pandemic has been brought under control. Such racism and xenophobia places the institution of citizenship and citizenship policy under increasing strain, with potential long-lasting negative effects including the risk of new cases of statelessness emerging in the future.

The relative invisibility of vulnerable groups, especially the stateless who are also legally invisible, both catalyses and reinforces structural discrimination and unequal treatment, leading to further marginalisation. As the pandemic compounds pre-existing discrimination, it also lays bare the need for deeper rooted reform, which involves addressing systemic discrimination rooted in racism, xenophobia and patriarchy.



**Racist and xenophobic attacks - in person and online - mean that racial, ethnic, and religious minorities in many parts of the world are fighting not only to survive the pandemic, but also to survive the deadly intolerance of other people. For minorities who are stateless, the scale of suffering is simply inhumane. And yet these groups and their experiences remain largely invisible to those with obligations to promote and protect human rights.**

**Tendayi Achiume,  
UN Special Rapporteur on Racism,  
Xenophobia and related forms of intolerance**

<sup>80</sup> A. Kumar, ‘Surge in TikTok videos aimed at misleading Indian Muslims over coronavirus precautions’ India Today (3 April 2020), available at <https://www.indiatoday.in/india/story/surge-in-tiktok-videos-aimed-at-misleading-indian-muslims-over-coronavirus-precautions-1662930-2020-04-03>.

<sup>81</sup> ISI et al, ‘Joint submission to the UN Special Rapporteur on Freedom of Religion and Belief’ (1 June 2020), available at [https://files.institutesi.org/Joint\\_Submission\\_to\\_the\\_SR\\_on\\_FoRB.pdf?mc\\_cid=d4a9ae15f0&mc\\_eid=%5BUNIQID%5D](https://files.institutesi.org/Joint_Submission_to_the_SR_on_FoRB.pdf?mc_cid=d4a9ae15f0&mc_eid=%5BUNIQID%5D), para. 29.

<sup>82</sup> ‘Citizenship law: Is India using COVID-19 emergency to arrest protesters?’ DW, available at <https://www.dw.com/en/citizenship-law-is-india-using-covid-19-emergency-to-arrest-protesters/a-53603260>.

<sup>83</sup> ISI COVID-19 Survey response, May 2020.

<sup>84</sup> ‘Civil Society and COVID-19 in India: Unassuming Heroes’ Middle East Institute (7 April 2020), available at <https://www.mei.edu/publications/civil-society-and-covid-19-india-unassuming-heroes>.

<sup>85</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ A/HRC/38/52 (25 April 2018), available at <https://undocs.org/A/HRC/38/52>, para. 30.

<sup>86</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

## PATRIARCHAL STRUCTURES AND INTERSECTIONAL DISCRIMINATION

Racism and xenophobia are two of the root causes of the discrimination which generates and perpetuates statelessness. During the pandemic, as racism, xenophobia and related hate speech abound, the long-term impacts upon the stateless will be immense, and the risk of new cases of statelessness increases. It is therefore important that the impact of intersectional discrimination is taken into account and we look at how other prejudices and societal structures can also exacerbate statelessness.

In particular, the effect of patriarchal structures, which although less visible, are also major drivers of exclusion, with states often relying upon patriarchal laws and gender-based discrimination to achieve exclusion along racialised, ethnic or religious lines.<sup>87</sup> The impact of patriarchy, like racism and xenophobia, is not restricted to how the law is drafted, or even how these laws are implemented, even though this does happen. For example, gender discriminatory nationality laws – present in approximately 50 countries worldwide – are typically used by states to preserve pre-conceived notions of ethnic or racial ‘purity’ and further ethno-nationalist ends.<sup>88</sup>

Patriarchal structures also shape how society interacts, the gendering of roles, and relatedly, the level of acceptance or tolerance with which societies treat different forms of exclusion and discrimination endured by women and men. A basic example is that girls are less likely to be documented than boys, simply because families, often influenced by the gendering of societal roles, will feel they have to prioritise registering the male child, if they cannot afford to pursue expensive and time-consuming documentation processes for both.<sup>89</sup> These decisions may be driven by economics and family structures i.e. a boy will work and bring in money, whereas a girl will get married and become part of another family, but are fundamentally underlined by the discrimination inherent within patriarchy.

If such undocumented girls live in countries that also have gender discriminatory nationality laws, or that require citizens to prove their belonging through arbitrary and bureaucratic registration processes, they are more likely to be denied their proof of legal identity and even their nationality as a result. And if these people belong to minority communities or are of migrant heritage, the intersection of different discriminations further marginalises them. In India for example, as Assam’s National Register of Citizens was finalised, women who are less likely to be literate or have documentation due to societal prejudices and norms and their children were impacted; particularly if they were from the Bengali Muslim community.<sup>90</sup>

The compounded impact of gender discriminatory nationality laws and every day sexism should not be underestimated during the pandemic. Violence against women and girls for example, has spiked under lockdown, with gender-discriminatory nationality laws adding to the hurdles faced by women trying to extract themselves from abusive relationships at this time.<sup>91</sup>

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<sup>87</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ A/HRC/38/52 (25 April 2018), para. 32.

<sup>88</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ A/HRC/38/52 (25 April 2018), available at <https://undocs.org/A/HRC/38/52>, para. 32.

<sup>89</sup> The UN Committee on the Elimination of Discrimination against Women has noted that discriminatory laws or practices may result in women and children being unable to access documentation, and has recommended that effective measures are implemented to ensure that women and girls have equal access to identity documentation (‘General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women’ (5 November 2014) CEDAW/C/GC/32, available at <https://www.refworld.org/docid/54620fb54.html>).

<sup>90</sup> Joint statement of 125 civil society organisations, ‘The biggest mass disenfranchisement of the 21st century’ (September 2019), available at <https://files.institutesi.org/cso-joint-statement-on-assam-nrc.pdf>.

<sup>91</sup> ISI et al, ‘Joint submission to the UN Special Rapporteur on Freedom of Religion and Belief’ (1 June 2020), available at [https://files.institutesi.org/Joint\\_Submission\\_to\\_the\\_SR\\_on\\_FoRB.pdf?mc\\_cid=d4a9ae15f0&mc\\_eid=%5BUNIQID%5D](https://files.institutesi.org/Joint_Submission_to_the_SR_on_FoRB.pdf?mc_cid=d4a9ae15f0&mc_eid=%5BUNIQID%5D), para. 32.



**When the first few cases of the Rohingya tested positive for COVID-19 in Bangladesh (on 14 May), it was 1,000 days since the majority of refugees had fled their homes in Myanmar to seek safe haven, and 50 days since lock down began in the camps, with little essential services, and scarcity of water. This is the nightmare that we are not ready for as a community. Our lives are already valued far less as refugees.**

Already at crisis point before the pandemic, the situation of stateless Rohingya has deteriorated even further. Many of the issues highlighted in this report – health & wellbeing, survival & livelihoods, hate speech, racism & xenophobia, border closures & movement restrictions, insecurity & detention – and more are encapsulated in the experience of the Rohingya, their exposure to the virus and the abandoning of individual and collective international responsibility towards them. Yasmin Ullah's words above – “our lives are already valued far less” – succinctly explain why the Rohingya endure so much, and where responsibility lies. Until and unless this changes, the invocation of international standards and state obligations will remain hollow promises to a community let down many times over.<sup>92</sup>

## MYANMAR

Inside Myanmar, lack of preparedness and health facilities, armed conflict, landmines, internal displacement, restrictions of movement and discrimination increase risks for the Rohingya population as the pandemic spreads. The Rohingya continue to endure state violence, but this now receives little international attention as COVID-19 dominates news cycles. In particular, there is growing concern that the military is capitalising on COVID-19 to carry out further crimes against the Rohingya and other groups. A report by Progressive Voice Myanmar highlights how COVID-19 is being weaponised for political gain, with minority groups including the Rohingya being disproportionately impacted.<sup>93</sup> Ongoing fighting in Myanmar's Rakhine State is leading to more civilian deaths – both Rakhine and Rohingya.<sup>94</sup>

The implementation and enforcement of public health policy has a clear discriminatory intent. Widespread diagnostic testing is limited in Myanmar, with IDPs in Rakhine being excluded, despite the heightened risk they face due to their living conditions. Additionally, punishments for not following public health guidelines have not been equitable. For example, the government fined only four of a hundred people who attended a Buddhist Monk's funeral, but all 14 mourners at a Muslim funeral were sued, with the twelve adults in attendance being imprisoned for three months.<sup>95</sup>

## BANGLADESH

**We will die from hunger before we die from COVID-19. Food shortage and lack of water is a real worry for me. Domestic violence is also increasing, and activities have stopped in the camps.**

Razia Sultana

Rohingya Women's Welfare Society

On 14 May, the first two people living in or adjacent to the Rohingya refugee camps in Cox's Bazaar tested positive for COVID-19.<sup>96</sup> The camps are home to nearly a million people and have been described as having eight times the population density of Wuhan city. Medical and humanitarian personnel are deeply concerned that COVID-19 can have a catastrophic impact, taking thousands of lives. The ability to take precautions or

<sup>92</sup> ISI will continue to shine a spotlight on these challenges in future, with updates and further reports being announced on our website [www.institutesi.org](http://www.institutesi.org).

<sup>93</sup> Progressive Voice, 'A Nation left behind: Myanmar's weaponization of COVID-19' (June 2020), available at [https://progressivevoicemyanmar.org/wp-content/uploads/2020/06/Final\\_PV-COVID-19\\_Report-2020.pdf](https://progressivevoicemyanmar.org/wp-content/uploads/2020/06/Final_PV-COVID-19_Report-2020.pdf).

<sup>94</sup> Radio Free Asia, 'Civilian Death Toll From Clashes in Myanmar's Rakhine Climbs to Over 250' (4 June 2020), available at <https://www.rfa.org/english/news/myanmar/clashes-06042020173131.html>.

<sup>95</sup> Z. Mann, 'Different Laws Applied to Myanmar COVID-19 Restrictions' The Irrawaddy (May 2020), available at <https://www.irrawaddy.com/specials/myanmar-covid-19/different-laws-applied-myanmar-covid-19-restrictions-lead-inconsistent-punishments-violators.html>.

<sup>96</sup> M. Sullivan, 'COVID-19 Has Arrived In Rohingya Refugee Camps And Aid Workers Fear The Worst' NPR (15 May 2020), available at <https://www.npr.org/sections/coronavirus-live-updates/2020/05/15/856584129/covid-19-has-arrived-in-rohingya-refugee-camps-and-aid-workers-fear-the-worst?t=1590412092983&t=1591861016393&t=1591876301310>. For more on the situation in Bangladesh, see the case study on Bangladesh earlier in this report.

<sup>97</sup> *Ibid.*

socially distance are virtually non-existent.<sup>98</sup> Meanwhile, the internet blackout continues to be implemented by Bangladesh – as in Myanmar – despite growing condemnation by Rohingya groups<sup>99</sup> and their allies.<sup>100</sup>

**In both Myanmar and Bangladesh, Rohingyas are severely suffering the internet ban. They are not being well informed about the pandemic, or how to prevent and contain the disease. Access to healthcare facilities and tests are limited. Both countries must lift the internet ban and provide unhindered access to all humanitarian aid and healthcare.**

Nay San Lwin

Free Rohingya Coalition

Razia Sultana, a Rohingya advocate, expressed her deep concern that after lock-down began, all programmes in the camps were halted, other than those deemed essential – such as the provision of food aid. She is concerned by the wider community impact as a result of the cessation of education, social and other activities. Of equal concern, is the lack of awareness among the population about COVID-19, and related misconceptions and fears. She believes that more must be done to recruit and train Rohingya volunteers, who are better placed to spread community awareness.

*“Rohingya are very oppressed, scared, worried that if anyone will go to isolation centre they will die.”<sup>101</sup> At present, many people with symptoms are not getting tested, for fear of being isolated and separated from*

their families, or being quarantined in the remote Bhashan Char island. Bangladesh authorities have already sent over 300 Rohingya to the island,<sup>102</sup> where Rohingya refugees in boats are also being disembarked and quarantined.<sup>103</sup>

## MALAYSIA

In May, the Malaysia Government refused safe entry to a boat carrying 360 Rohingya off the north-western island of Langkawi,<sup>104</sup> allegedly due to fears of the risk of the spread of COVID-19 into Malaysia by those aboard.<sup>105</sup> The boat was forced back out to sea where, adrift for weeks, resulted in the deaths of an estimated 60 Rohingya.<sup>106</sup> It was only after a dramatic mutiny,<sup>107</sup> that the boat was able to land in Bangladesh. Testimony of survivors reveals the horrors and deprivations that the Rohingya onboard were subject to.<sup>108</sup> Meanwhile, on 9 June, Malaysia detained 269 Rohingya refugees who arrived by boat, and is demanding that Bangladesh accept them.<sup>109</sup>

There has been a simultaneous ratcheting up of hate speech and xenophobia against the Rohingya in Malaysia.<sup>110</sup> Concerns were already raised in May, for example in a joint statement by the Rohingya Women Development Network and Elom Empowerment.<sup>111</sup> The hate speech manifesting predominately over social media includes threats of murder and sexual violence and many petitions have appeared calling for the expulsion of the Rohingya.<sup>112</sup> Meanwhile, some mosques in Malaysia have put up signs saying ‘No Rohingya’. Commenting on the deteriorating situation, Nay San Lwin said that *“Xenophobic attacks against Rohingyas in Malaysia is now like a new-normal.”*

<sup>98</sup> ‘Fears Rohingya Refugees face disaster after COVID-19 reaches Cox’s Bazaar’ The Guardian (15 May 2020), available at <https://www.theguardian.com/world/2020/may/15/fears-rohingya-refugees-face-disaster-after-covid-19-reaches-coxs-bazar>.

<sup>99</sup> ‘Bangladesh must lift internet restrictions after first coronavirus case in Rohingya refugee camps’ Rohingya Today (14 May 2020), available at <https://www.rohingyatoday.com/en/bangladesh-must-lift-internet-restrictions-after-first-coronavirus-case-rohingya-refugee-camps>.

<sup>100</sup> Refugees International, ‘Statement: COVID-19 in Rohingya Refugee Camps a ‘Nightmare Scenario’ (14 May 2020), available at <https://www.refugeesinternational.org/reports/2020/5/14/covid-19-in-rohingya-refugee-camps-a-nightmare-scenario>.

<sup>101</sup> Interview with Razia Sultana on 3 June 2020. Interview with ISI on file.

<sup>102</sup> ‘Infected Rohingya Refugees fleeing quarantine’ Asia Times (8 June 2020), available at <https://asiatimes.com/2020/06/infected-rohingya-refugees-fleeing-quarantine/>.

<sup>103</sup> ‘280 more rescued Rohingyas sent to Bhasan Char’ Dhaka Tribune (7 May 2020), available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2020/05/07/280-more-rescued-rohingyas-sent-to-bhashan-char>.

<sup>104</sup> ‘Malaysia turns back Rohingya boat over virus fears’ The Jakarta Post (17 April 2020), available at <https://www.thejakartapost.com/seasia/2020/04/17/malaysia-turns-back-rohingya-boat-over-virus-fears.html>.

<sup>105</sup> ‘Malaysia bars another Rohingya boat’ Bangkok Post (17 April 2020), available at <https://www.bangkokpost.com/world/1902125/malaysia-bars-another-rohingya-boat>.

<sup>106</sup> ‘60 Rohingya die, hundreds rescued from boat after two months at sea near Bangladesh’ South China Morning Post (17 April 2020), available at <https://www.scmp.com/news/asia/south-asia/article/3080295/60-rohingya-die-hundreds-rescued-boat-after-two-months-sea>.

<sup>107</sup> ‘Mutiny on the high seas saved trafficked Rohingya’ Dhaka Tribune (10 May 2020), available at <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2020/05/10/mutiny-on-the-high-seas-saved-trafficked-rohingya>.

<sup>108</sup> ‘Rohingya refugee crisis: The bodies were thrown out of the boat’ BBC News (29 May 2020), available at <https://www.bbc.co.uk/news/world-asia-52832841>.

<sup>109</sup> ‘Malaysia to ask Bangladesh to take back Rohingya refugees found at sea’ Reuters (9 June 2020), available at <https://www.reuters.com/article/us-myanmar-rohingya-malaysia-idUSKBN23G16D>.

<sup>110</sup> For more on the situation in Malaysia, see the Malaysia case study in this report.

<sup>111</sup> ‘Concerning Current Situation surrounding Rohingya Refugees in Malaysia’, available at <https://www.rohingyawomen.org/>.

<sup>112</sup> ‘Malaysia Urged to end violent threats against Rohingya refugees’ Al Jazeera (11 May 2020), available at <https://www.aljazeera.com/news/2020/05/malaysia-urged-violent-threats-rohingya-refugees-200511035157656.html>.

## OTHER CONTEXTS

In **India**, the government has targeted the Rohingya, singling them out for COVID-19 screening.<sup>113</sup> Given failed attempts to deport Rohingya refugees in 2019, there are serious concerns around this development. The exclusion of Rohingya and other refugees from accessing government COVID-19 relief measures has made survival difficult. Rohingya who live in squalid urban slums are also highly vulnerable to the virus. Rohingya in camps risk starvation as they struggle over access to food and water. The state-wide lockdown has hampered an already slow stream of resources.<sup>114</sup>

Meanwhile **Thailand** has detained 35 Rohingya children, women and men and is threatening to return them to Myanmar, in violation of the international law prohibition of refoulement. Commenting on this situation, **Amy Smith** of Fortify Rights said that *“Rohingya are refugees in need of protection. The COVID-19 pandemic does not justify the arbitrary detention or forced return of refugees.”*<sup>115</sup>

In **Australia**, those on bridging visas have no recourse to government relief, and are in a heightened state of vulnerability. This includes many Rohingya families, who are dependent on charity for their survival as a result. The Refugee Communities Association of Australia is providing much needed emergency relief to some families.<sup>116</sup> Commenting on the situation, General Secretary **Parsu Sharma-Luita JP** said:



**We decided to assist Rohingya Asylum Seekers after we were approached by a Rohingya community leader who told us of around 50 families who are not eligible to receive any support from government agencies. They have lost jobs due to COVID-19, their visas are rejected or they have bridging visas. Many are stuck at home due to lockdown, have no mobility and have no option but to depend on the goodwill of family and friends.**

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<sup>113</sup> For more on the situation in India, see the India case study in this report.

<sup>114</sup> ‘India: Rohingya in Pandemic Red Zone Face Starvation’, Anadolu Agency (April 2020).

<sup>115</sup> Fortify Rights, ‘Thailand: Protect Rohingya Refugees from Forced Return, Indefinite Detention’ (5 June 2020), available at <https://mailchi.mp/fortifyrights/thailand-protect-rohingya-refugees-from-forced-return-indefinite-detention>.

<sup>116</sup> Refugee Communities Association of Australia, ‘RCAA seeks support to continue providing essential food items to Asylum Seekers affected by COVID-19 during Ramadan’ (28 April 2020), available at <https://www.rcaoa.org.au/media-release/rcaa-seeks-support-to-continue-providing-essential-food-items-to-asylum-seekers-affected-by-covid-19-during-ramadan/>.

# Border Closures & Movement Restrictions



**States are required to ensure that restrictions on mobility adopted in response to COVID-19 respect the rights of all persons to leave any State and to re-enter their home States.**

**Human mobility and human rights in the covid-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons.<sup>1</sup>**

The COVID-19 pandemic has served to underscore the fact that citizenship does matter.<sup>2</sup> With many countries worldwide having closed their borders,<sup>3</sup> stateless persons, as well as those with insecure or undefined status, cannot return to the country where they work, study, or care for their families.<sup>4</sup> This will not only have an unprecedented effect on livelihoods, but can also lead to social disruption and family separation.

The International Covenant on Civil and Political Rights (ICCPR) protects the right to free movement and to not be arbitrarily deprived the right to enter your own country (Art 12). The Human Rights Committee has recognised that all persons have a right to enter (and remain in) their own country - where one's own country is broader than 'country of nationality' and depends upon special ties to the country.<sup>5</sup> Moreover, "a State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country".<sup>6</sup> In the context of COVID-19, movement restrictions should not be based solely upon citizenship, but also take due account of other factors – such as ties to, or residence in a state. States should ensure that stateless persons with strong ties to a territory, including residence status, are allowed to return.

The closure of borders to everyone except citizens also compounds the suffering of families who have been impacted by gender discriminatory nationality laws. The

Global Campaign for Equal Nationality Rights reports that many such families are now facing increased hardships, including family separation, as they are unable to return home.<sup>7</sup> In the context of Malaysia, for example, women cannot pass their nationality to their children if they are born abroad. With the announcement of a strict Movement Control Order (MCO), non-citizen spouses and children of Malaysian women are now only allowed into the country if they obtain a pass, but many do not meet the requirements.<sup>8</sup> Pregnant women who were outside the country now face the choice of returning home to give birth without their foreign spouse in order to obtain Malaysian nationality for their child, or remaining abroad and giving birth to a child who has no guarantee of ever becoming a Malaysian citizen.<sup>9</sup> In an open letter to a senior government minister, the Foreign Spouses Support Group draws attention to these issues:

*During normal circumstances, most Malaysians with foreign spouses were used to doing what is termed a "visa run" to a neighbouring country due to a bureaucratic process that does not allow the renewal of tourist/social visit passes of non-citizen spouses and citizens.*

*Should this become an option once the MCO is lifted, it would bring with it a heightened risk of infection, not only for spouses but also to their family members upon their return. Additionally, there is also uncertainty as to when these spouses and children will be allowed to return to Malaysia once they leave the country.<sup>10</sup>*

## CASE STUDY: LEBANON

Lebanon is one of the twenty five countries worldwide that do not allow women to confer nationality upon

<sup>117</sup> Available at <https://zolberginstitute.org/covid-19/#Human%20Rights%20Document>.

<sup>118</sup> L. Piccoli, 'Coronavirus restrictions on movement may jeopardize the lives of the most vulnerable' The Washington Post (5 April 2020), available at <https://www.washingtonpost.com/politics/2020/04/05/coronavirus-restrictions-movement-may-jeopardize-lives-most-vulnerable/>.

<sup>119</sup> As of 22 May 2020, 161 countries have fully or partially closed their borders (UN, 'Policy Brief: COVID-19 and People on the Move' (June 2020)).

<sup>120</sup> In general, non-nationals may see freedom of movement restricted. See UN Human Rights Council, 'Report on discrimination against women on nationality related matters, including the impact on children' A/HRC/23/23 (15 March 2013), para. 46.

<sup>121</sup> OHCHR, 'CCPR General Comment No. 27: Article 12 (Freedom of Movement)' (adopted on 2 November 1999), available at <https://www.refworld.org/pdfid/45139c394.pdf>.

<sup>122</sup> Ibid, para. 21.

<sup>123</sup> Global Campaign for Equal Nationality Rights, 'Gender-Discriminatory Nationality Laws Add to Families' Suffering during COVID-19 Pandemic', available at <https://equalnationalityrights.org/images/zdocs/COVID--Gender-Discrimination-in-Nationality-Laws-Impact-GCENR-Statement.pdf>.

<sup>124</sup> For more on the Malaysia context, see the case study on Malaysia in this report.

<sup>125</sup> Global Campaign for Equal Nationality Rights, 'Challenges faced by Malaysian women with children born overseas during the Covid-19 crisis', available at <https://equalnationalityrights.org/news/105-challenges-faced-by-malaysian-women-with-children-born-overseas-during-the-covid-19-crisis>.

<sup>126</sup> Bina Ramanand and Melinda Anne Sharlini, 'Open letter to Ismail Sabri on non-citizen spouses, children' Malaysiakini (4 June 2020), available at <https://www.malaysiakini.com/letters/528698>.

their children on an equal basis as men, and one of the approximately fifty countries that deny women the right to pass their nationality onto a foreign spouse.<sup>127</sup> This means that children and foreign spouses are at risk of statelessness, and are not afforded the same rights as Lebanese nationals, often having to rely on visas to remain in the country. During the pandemic, the government has been allowing nationals to return from overseas, but has excluded children and spouses of Lebanese women due to their status as non-citizens.<sup>128</sup> This has led to numerous cases of family separation, where many are denied the right to return to their motherland. In one such case, a Lebanese mother is worried about her son who is studying abroad and is unable to return home as he is not a Lebanese national. *“Officials exclude our children and deny them the right to return to their motherland... leav[ing] them to an unknown fate where their lives may be in danger”* says My Nationality is a Right for Me and my Family campaign, a Lebanese campaign group working to achieve equal nationality laws. *“Their only fault [is] that they were born in a homeland that was unjust to their mothers”*.<sup>129</sup> Not only do Lebanese women have to navigate challenges of family separation during the crisis, but many also have to contend with their families being denied aid because they are married to, or even have been married to and then subsequently divorced, a foreigner.<sup>130</sup>

Movement restrictions can also impact livelihoods. In Kenya, for example, the Pemba people, a community of a stateless fisherman, are hard hit by the pandemic, and the dusk to dawn curfew means that they are unable to fish as regularly as before. There is also *“no market for their fish so their source of sustenance has been closed”*.<sup>131</sup>

Movement restrictions are also problematic for those who need to move in order to seek safety, and have led to those with urgent protection needs, including stateless people, being refused entry by states. The push-backs or denial of disembarkation of several boats carrying stateless Rohingya persons is a stark illustration of the pandemic being used a tool of exclusion.<sup>132</sup> In Cyprus, too, for example, there have been reports of boats of Syrian refugees being denied entry to the territory due to

COVID-19 concerns.<sup>133</sup> Although states control their borders, everyone has the right to seek asylum and the Human Rights Committee has said that in certain conditions, non-nationals may *“enjoy the protection of the Covenant [ICCPR] even in relation to entry or residence, for example when consideration of non-discrimination, prohibition of inhuman treatment and respect for family life arise”*.<sup>134</sup> Even in the context of a global crisis, there is no excuse for states to turn their backs on the most vulnerable, particularly given the strong and clear international standards, which clarify state obligations to protect refugees and asylum seekers, rescue at sea and desist from *refoulement*.<sup>135</sup> It is essential that these basic principles, already embedded in human rights, protection and humanitarian frameworks, are not forgotten and continue to be robustly applied.<sup>136</sup>



**Ban Ki-moon, in ‘ASEAN must act to save Rohingya refugees in the Bay of Bengal’<sup>137</sup>**

**Managing public health is a key consideration at this time of Covid-19, and must be managed in parallel with asylum and refugee reception, especially with international assistance. As ever, managing public health is easier and more effective when migration and refugee movements are organised and managed by governments, and not left to the human traffickers that exploit the desperate through dangerous illicit pathways.**

<sup>127</sup> Global Campaign for Equal Nationality Rights, ‘The Problem’, available at <https://equalnationalityrights.org/the-issue/the-problem>.

<sup>128</sup> Lebanese Women’s Right to Nationality and Full Citizenship, ‘Statement by “My Nationality is a Right for Me and my Family” campaign’ (6 April 2020), available at <https://www.facebook.com/jinsiyati/posts/10156747458462143>.

<sup>129</sup> Lebanese Women’s Right to Nationality and Full Citizenship, ‘Statement by “My Nationality is a Right for Me and my Family” campaign’ (6 April 2020), available at <https://www.facebook.com/jinsiyati/posts/10156747458462143>.

<sup>130</sup> A. Sewell, ‘Lebanese women with foreign spouses denied coronavirus aid’ Saudi Gazette (9 May 2020), available at <https://saudigazette.com.sa/article/592870>; Briefing by “My Nationality is a Right for Me and my Family” campaign during COVID 19 Pandemic, available at <https://www.facebook.com/jinsiyati/>.

<sup>131</sup> ISI COVID-19 Survey response, May 2020.

<sup>132</sup> See in more detail the case study on the Rohingya in this report.

<sup>133</sup> A. Connelly, ‘Cyprus pushes Syrian refugees back at sea due to coronavirus’ Al Jazeera (30 March 2020), available at <https://www.aljazeera.com/news/2020/03/cyprus-pushes-syrian-refugees-sea-due-coronavirus-200330091614066.html>.

<sup>134</sup> UN Human Rights Committee, ‘CCPR General Comment No. 15: The Position of Aliens Under the Covenant’ (11 April 1986), available at <https://www.refworld.org/docid/45139acfc.html>.

<sup>135</sup> The principle of non-refoulement is a clear international legal standard, defined, inter alia, in Article 33(1) of the 1951 Convention relating to the status of refugees (see UNHCR, Note on Non-Refoulement (Submitted by the High Commissioner) EC/SCP/2 (23 August 1977), available at <https://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>). Article 14(1) of the Universal Declaration of Human Rights, inter alia, guarantees the right to seek and enjoy asylum in other countries. Principles related to rescue at sea are also established in the 1982 UN Convention on the Law of the Sea (see UNHCR, ‘Rescue at Sea: A Guide to Principles and Practice as Applied to Refugees and Migrants’, available at <https://www.unhcr.org/publications/brochures/450037d34/rescue-sea-guide-principles-practice-applied-migrants-refugees.html>).

<sup>136</sup> See the table on the four frameworks in the beginning of this report.

<sup>137</sup> Ba Ki-Moon, ‘ASEAN must act to save Rohingya refugees in the Bay of Bengal’ Reuters (26 May 2020), available at <https://news.trust.org/item/20200525164836-i3wm6>.

# Insecurity & Detention

The immigration detention of stateless persons is *prima facie* arbitrary, and therefore should be prohibited under Article 9 of the ICCPR. With no country to be deported to, the legitimate purpose of removal cannot be met for stateless persons, within a reasonable time.

**The immigration detention of stateless persons is one of the silent tragedies of our globalised world that plays out behind closed doors, away from the gaze of the media, but with significant, irreparable human cost. It is a tragedy that is completely preventable, but due to a lack of will and attention, continues to harm thousands of lives all around the world every year.**

————— François Crépeau,

UN Special Rapporteur on the human rights of migrants  
(2011-2017)<sup>138</sup>

Nonetheless, stateless persons are at a high risk of being arrested and placed in immigration detention due to lack of identity documents or legal status.<sup>139</sup> They are also “*uniquely vulnerable to prolonged detention*”<sup>140</sup> as they have no country to be deported to.

The COVID-19 crisis has catalysed increased action and advocacy challenging the continued use of immigration detention. The argument is twofold:

1. As countries close their borders, removal is no longer possible (within a reasonable period of time). This renders any ongoing detention arbitrary and unlawful, as, unless there is a reasonable prospect of removal and the detaining authorities are actively pursuing imminent removal, the detention does not meet the requisite international law standards which prohibit arbitrariness.
2. As the pandemic takes hold, it is cruel, inhuman and degrading treatment, as well as a violation of the right to health (and potentially life), to detain people in conditions which are conducive to the transmission of the pandemic.

## DETENTION ACTION

In the UK, Detention Action, an organisation which advocates against the use of immigration detention, has taken legal action against the UK government’s detention practices during the pandemic. The organisation takes issue with the Home Office’s failure to disclose its detention policies during COVID-19, and its “irrational and discriminatory approach” which has resulted in many held in detention unable to understand their rights or challenge why they are being detained. Detention Action has challenged the government on the basis of the continued detention of hundreds of persons, including those with underlying health conditions, who cannot be removed to their home country due to border closures during the pandemic. Previous litigation in March 2020 resulted in nearly 1,000 persons being released, and a commitment from the UK Home Office to review all detention cases.<sup>141</sup>

Such developments should underscore the arbitrariness of ongoing detention of stateless persons, both in normal times, and in the context of the pandemic. The same logic which declares that where removal is not imminent due to the pandemic, detention is unlawful, should also apply when removal is not imminent due to statelessness.

Indeed, various countries have released people from detention due to concerns surrounding COVID-19, a good practice from the perspective of public health. However, often it is not clear how or if they will be supported upon release. In Slovenia for example, people have been released without accommodation or support

<sup>138</sup> European Network on Statelessness, ‘Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners’ (2015), available at [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_Detention\\_Toolkit.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf).

<sup>139</sup> European Network on Statelessness, ‘Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change’ (2017), available at [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf).

<sup>140</sup> UN Secretary-General (UNSG), ‘Guidance Note of the Secretary General: The United Nations and Statelessness’, (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>, p. 7.

<sup>141</sup> Detention Action, ‘press release: government faces fresh legal challenge to immigration detention during covid-19, after settling first immigration detention case’ (18 May 2020), available at <https://detentionaction.org.uk/2020/05/26/press-release-government-faces-fresh-legal-challenge-to-immigration-detention-during-covid-19-after-settling-first-immigration-detention-case/>.



leaving them vulnerable and at risk of destitution.<sup>142</sup> Releases from detention, and any moratoriums on the use of detention, must be accompanied by adequate protocols<sup>143</sup> that ensure appropriate alternatives to detention, with full access to rights and services.<sup>144</sup> Further, stateless people are facing new risks of detention in the context of the COVID-19. Fear of arrest is undermining public health efforts, as stateless and irregular migrants choose not to seek help, medical or otherwise. The situation is made worse by increased policing powers as emergencies are declared.<sup>145</sup>

There are serious concerns about the spread of COVID-19 in detention centres due to the inability to adhere to preventive measures such as social distancing, lack of protective equipment and hygiene items, as well as limited access to water, food and health supplies.<sup>146</sup> Extended periods of time in detention increases the

likelihood of exposure to the virus and stateless persons are often there indefinitely. Despite calls for releases and amnesties, there have been many reports worldwide of continued detention in inadequate, unsanitary conditions,<sup>147</sup> with fears worsened as cases of COVID-19 in detention centres are reported.<sup>148</sup> Moreover, often stateless persons have complex cases where specialist legal advice is needed, but there has been less access to legal advice, support services and detainee visits during the pandemic due to lockdowns. In Belgium, for example, NGOs have been unable to visit or provide legal assistance to detainees.<sup>149</sup> There have also been reports of people put in solitary confinement as pre-emptive measures to curb the spread of the virus,<sup>150</sup> despite potential implications related to freedom from torture, cruel, inhuman or degrading treatment, as well as mental health.

## CASE STUDY: MALAYSIA

In Malaysia, a series of arrests have taken place under the guise of 'COVID-19 concerns', where thousands of migrants, probably including stateless persons undocumented asylum seekers, and refugees, have been rounded up and detained by the Ministry of Defence,<sup>151</sup> resulting in human rights violations and serious public health implications. This practice contradicts and undermines the Ministry of Health's announcement at the beginning of the pandemic that all persons, regardless of status, could come forward for testing without fear of arrest and detention – a move heralded at the time by the international community as an example of good and inclusive practice. The Ministry of Health has unfortunately, failed to intervene in response to these raids. Not only does this raise serious concerns from a public health perspective, but it also raises questions as to why there is a lack of common messaging and contradictory actions by different government departments, especially in times of a pandemic, when security depends upon public health.

The justification is that these raids are necessary in response to COVID-19, and the government initially said that those detained had tested negative and that detention centres are not crowded, so there is no chance of an outbreak. The government, propagating false narratives that demonise non-citizens, has also said that non-Malaysians have been targeted because foreign workers are more likely to spread COVID-19, and that undocumented persons were not coming forward for testing. These two statements are contradictory, and new cases of COVID-19 in Malaysian detention centres have now been recorded.<sup>152</sup> However, there are concerns that the full scale of the outbreak within centres is being underreported, and that humanitarian actors are being denied access to detention centres.<sup>153</sup>

<sup>142</sup> Global Detention Project, 'COVID-19 Global Immigration Detention Platform', available at <https://www.globaldetentionproject.org/covid-19-immigration-detention-platform>.

<sup>143</sup> International Detention Coalition, 'Releases from Immigration Detention & Moratoriums on the Use of Detention', available at <https://idcoalition.org/covid-19/key-developments/#releases>.

<sup>144</sup> For example, non-custodial, community based alternatives. See International Detention Coalition, 'Alternatives to Detention', available at <https://idcoalition.org/alternatives-to-detention/>; UN High Commissioner for Refugees (UNHCR), 'Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention' (2012), available at: <https://www.refworld.org/docid/503489533b8.html>. For guidelines on COVID-19 and immigration detention, see the UN Network on Migration, 'COVID-19 & Immigration Detention: What can Governments and Other Stakeholders do?', available at [https://migrationnetwork.un.org/sites/default/files/docs/un\\_network\\_on\\_migration\\_wg\\_atd\\_policy\\_brief\\_covid-19\\_and\\_immigration\\_detention.pdf](https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention.pdf).

<sup>145</sup> See Malaysia case study below.

<sup>146</sup> OHCHR, 'Urgent action needed to prevent COVID-19 "rampaging through places of detention" – Bachelet' (25 March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>.

<sup>147</sup> International Detention Coalition, 'Continued Detention and Inadequate Conditions in Immigration Detention', available at <https://idcoalition.org/covid-19/key-developments/#detention>.

<sup>148</sup> See eg 'Migrant workers contract Covid-19 at Thai detention centre' UCA News (5 May 2020), available at <https://www.ucanews.com/news/migrant-workers-contract-covid-19-at-thai-detention-center/87922>.

<sup>149</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>150</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>151</sup> 'Malaysia rounds up migrants to contain coronavirus, U.N. warns of detention risks' Reuters (2 May 2020), available at <https://uk.reuters.com/article/uk-health-coronavirus-malaysia-migrants/malaysia-rounds-up-migrants-to-contain-coronavirus-un-warns-of-detention-risks-idUKKBN22E048>.

<sup>152</sup> N. Daim, 'New Covid-19 cluster detected at Bukit Jalil immigration depot' New Straits Times (21 May 2020), available at <https://www.nst.com.my/news/nation/2020/05/594431/new-covid-19-cluster-detected-bukit-jalil-immigration-depot>.

<sup>153</sup> UNHCR, for example, has been denied access since August 2019, meaning that they are unable to identify those with protection needs or advocate for their release. See 'Immigration detention centres become Malaysia coronavirus hotspot' Al Jazeera (2 June 2020), available at <https://www.aljazeera.com/news/2020/06/immigration-detention-centres-malaysia-coronavirus-hotspot-200602004727890.html>.

According to various civil society groups that ISI has consulted with, the immigration raids have contributed to a culture of fear where those with insecure legal status – both undocumented and documented - will be reluctant to come forward for testing, or seek medical care if unwell. UN experts have condemned the practice in Malaysia, stating that “the fear of arrest and detention may push these vulnerable population groups further into hiding and prevent them from seeking treatment, with negative consequences for their own health and creating further risks to the spreading of COVID-19 to others”,<sup>154</sup> and authorities have been urged to stop these raids.<sup>155</sup> This is even more important in the context of a pandemic, where social distancing and other preventive measures are not possible.



Maalini Ramalo, DHRRA Malaysia

**Arrest and detention during a pandemic are an outright threat to human lives. We cannot end a pandemic by pretending an invisible section of our community does not exist. Larger concern remains with no national or international NGOs being allowed to access persons who are detained during this period. For fear of being arrested and mistreated, the already marginalised stateless communities are now scared to go out to purchase their groceries, let alone access other basic emergency healthcare assistance. How far have we gone in allowing the bureaucracy to give or take away human rights?**

Civil society groups are rallying to provide aid to the vulnerable and promote an inclusive response. DHRRA Malaysia, for example, has formed a support group #COVIDCAREMY to provide basic relief items as well as counselling services for marginalised communities, including the stateless, and has provided relief to over 7,000 families.<sup>156</sup> Ultimately, the lesson from Malaysia is clear: response to the pandemic should be managed from a human rights and public health perspective, rather than an immigration control perspective.

Another issue of concern is that stateless migrants are also more likely to be left in limbo during the pandemic as many states have temporarily suspended protection procedures. Statelessness Determination Procedures,<sup>157</sup> have stalled in many countries, meaning that those entitled to rights as recognised stateless persons are left waiting and without crucial protection during the crisis. Similarly, the halting of immigration procedures in many countries will result in persons remaining

undocumented and at heightened risk of detention, which will contribute to an already existent sense of insecurity for vulnerable populations and will likely have a significant impact on mental health. In Egypt, for example, suspension of registration with UNHCR has led to those unable to register being treated as undocumented migrants, which has resulted in an increase in detention to already crowded centres.<sup>158</sup>

<sup>154</sup> 'Malaysia rounds up migrants to contain coronavirus, U.N. warns of detention risks', Reuters (2 May 2020), available at <https://uk.reuters.com/article/uk-health-coronavirus-malaysia-migrants/malaysia-rounds-up-migrants-to-contain-coronavirus-un-warns-of-detention-risks-idUKKBN22E048>.

<sup>155</sup> OHCHR, 'Malaysia / COVID-19: "Stop crackdown on migrants, journalists and civil society" – UN rights experts' (21 May 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25900>.

<sup>156</sup> DHRRA Malaysia, 'COVIDCAREMY: Press Release on Exclusion of Stateless Persons' (28 April 2020), available at <https://dhrmalaysia.org.my/covidcaremy-press-release-on-exclusion-of-stateless-persons/>.

<sup>157</sup> The UN has recommended that states establish formal statelessness determination procedures with due process safeguards in order for stateless individuals to be able to claim protection. (UN Secretary-General (UNSG), 'Guidance Note of the Secretary General: The United Nations and Statelessness', (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>, p. 7).

<sup>158</sup> International Detention Coalition member input, 'Lockdowns and Border Closures', available at <https://idcoalition.org/covid-19/key-developments/#border-news/2020/06/immigration-detention-centres-malaysia-coronavirus-hotspot-200602004727890.html>.

# New Risks of Statelessness



**The pandemic has been instrumentalised to whittle away certain human rights and legal protections; to clamp down on dissent; to treat stateless people as threats to security. Political leaders are also using the crisis to undermine multilateralism, which is the very foundation for international human rights.**

**Fernand de Varennes,  
UN Special Rapporteur on Minority Issues**

The Convention on the Rights of the Child obligates the immediate registration of all births and guarantees every child's right to acquire a nationality (Art 7). SDG 16.9 pursues "legal identity for all, including birth registration". The centrality of documentation, identity and nationality to the enjoyment of basic human rights and access to development, is self-evident.<sup>159</sup>

Documentation and registration is of vital importance in normal times, as well as during emergency situations such as displacement, conflict and pandemics. However, we are witnessing that civil registration and documentation procedures, including mobile birth registration, have been temporarily suspended in some countries.

## STATELESSNESS AND... CHILDREN

The right to a nationality is a fundamental right of every child. Yet, every ten minutes a child is born stateless. The enjoyment of rights set out in the UN Convention on the Rights of the Child is also "not limited to children who are citizens ... and must therefore [...] be available to all children [...] irrespective of their nationality, immigration status or statelessness". Yet, statelessness is known to be "particularly devastating" to children's rights such as access to health care and education, thus heightening vulnerabilities during this time of pandemic.



**As an unregistered or 'stateless' child, you are invisible to the authorities – it's as if you never existed. [...] This lack of formal recognition by any state means you may be denied health care, education and other government services.**

**UNICEF Executive Director Henrietta H. Fore,  
An open letter to the world's children,  
September 2019**

In Bangladesh, for example civil registration is not regarded as an essential, and civil registry staff are even 'on holiday';<sup>160</sup> in Colombia, birth registration is limited and is operating through notaries;<sup>161</sup> and in Burkina Faso, the government has suspended the issuance of national identity cards.<sup>162</sup> Where births go unregistered and ID cards are not issued, this can heighten the risk of statelessness among groups who struggle to establish their nationality. COVID-19 has also increased the vulnerability of surrogate children in Europe, as Spain,

for example, has announced that it will no longer process birth registration of babies born to surrogate mothers in Ukraine, which could lead to statelessness.<sup>163</sup>

Some countries are allowing documentation to be requested online; however, this requires access to internet and an ability to navigate procedures online, which may not be possible for the most vulnerable and disadvantaged, including stateless persons.<sup>164</sup> Other countries, such as the Côte D'Ivoire, which has a large

<sup>159</sup> See ISI, 'Sustainable Development Goal 16.9: 'Legal Identity', Nationality & Statelessness' (2018), available at <https://files.institutesi.org/Legal-identity.pdf>.

<sup>160</sup> UN Legal Identity Agenda, 'Bangladesh', available at <https://unstats.un.org/legal-identity-agenda/covid-19>.

<sup>161</sup> UN Legal Identity Agenda, 'Colombia', available at <https://unstats.un.org/legal-identity-agenda/covid-19>.

<sup>162</sup> UNHCR, 'Impact of COVID-19 on the protection of displaced and stateless populations' (15 April 2020), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/75706.pdf>.

<sup>163</sup> 'Spain to reject registration of babies born to surrogate mothers in Ukraine' EuroNews (20 February 2020), available at <https://www.euronews.com/2019/02/20/spain-to-reject-registration-of-babies-born-to-surrogate-mothers-in-ukraine>.

<sup>164</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

stateless population,<sup>165</sup> regard civil registration as an essential service, and are keeping civil registries open, “particularly for registering births and deaths”. Despite this good practice, due to the pandemic “the reduced mobility of the population due to fear of contamination and compliance with the provisions in force has slowed down the use of civil registration services and will have an impact on civil registration activities.”<sup>166</sup>

Such documentation and registration challenges exacerbate immediate problems in relation to the pandemic, but also subject people to longer-term risks of enduring statelessness. This risk is heightened for those who belong to minority communities, those of migrant heritage, those living in border regions or having nomadic lifestyles, as their belonging is more likely to be doubted and scrutinised. In Bangladesh for example, the paralegal services that the Council of Minorities provides to members of the formerly stateless Urdu speaking minority community, have come to a standstill as a result of lockdown. While this community’s legal claim to Bangladeshi citizenship has been clarified and guaranteed by the courts, in practice, community members face structural barriers underpinned by discriminatory and prejudicial attitudes towards them, when they seek to register vital events or obtain documentation to prove their identity. In this context, the paralegal services provided by the Council

of Minorities are of vital importance. Community leaders are deeply concerned that the longer these services cannot be provided, the greater the risk to nationality and proof of identity, which will have long-term consequences.<sup>167</sup>

The UN Secretary General has previously recommended the use of creative approaches to improve institutional capacity to document persons’ civil status and to address gaps in coverage.<sup>168</sup> One such approach, is to conduct registration of births and civil status in conjunction with national campaigns, such as public health inoculation. This could be of particular interest as the pandemic evolves: where vaccinations are rolled out in future, these could be used as an entry point to identify people with documentation needs and signpost them to relevant procedures to address this, rather than seeing their lack of documentation as a barrier to them receiving the vaccinations we all need.

Other procedures, such as naturalisation ceremonies or court hearings concerning acquisition or confirmation of nationality, have also been put on hold due to the virus in various countries.<sup>169</sup> In the United States, for example, the closing of the Citizenship and Immigration (USCIS) services office resulted in the suspension of naturalisation ceremonies, despite the possibility of holding ceremonies online.<sup>170</sup> Suspension of procedures

**A Human Rights Council Resolution** recognises that while it is important to promote birth registration for all, those who lack registration documents should not be penalised:



**Ensure that lack of birth registration or documents of proof of birth does not constitute an obstacle to access to and the enjoyment of relevant national services and programmes, in accordance with international human rights law.**<sup>171</sup>

The Resolution also urges UN bodies, agencies, funds and programmes “to ensure that persons with no birth registration are not discriminated against in any of their programmes”. The approach taken by the Human Rights Council is to:

- Promote universal access to birth registration and other legal ID because this is critical in unlocking access to rights and services; and
- Ensure that those without legal identity documentation are not denied access to or discriminated against in their enjoyment of rights and services

This inevitable tension also underlies the issue of statelessness: everyone has the right to a nationality, yet no one should be denied access to other rights because their right to a nationality has been denied.

<sup>165</sup> See country profile in ISI, ‘The World’s Stateless: Deprivation of Nationality’ (March 2020), p. 48.

<sup>166</sup> UN Legal Identity Agenda, ‘Ivory Coast’, available at <https://unstats.un.org/legal-identity-agenda/covid-19>.

<sup>167</sup> ISI consultation with Khalid Hussain, on 29 May 2020. Full interview on file with ISI.

<sup>168</sup> UN Secretary-General (UNSG), ‘Guidance Note of the Secretary General: The United Nations and Statelessness’ (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>, p. 11.

<sup>169</sup> For a list of the operation of civil registration authorities by country during the pandemic, see <https://unstats.un.org/legal-identity-agenda/covid-19>.

<sup>170</sup> C. Rampell, ‘These would-be citizens want to vote this fall. Why is the Trump administration blocking them?’ The Washington Post (14 May 2020), available at [https://www.washingtonpost.com/opinions/these-would-be-citizens-want-to-vote-this-fall-why-isnt-the-us-conducting-remote-oath-ceremonies/2020/05/14/d8b27a5a-9613-11ea-91d7-cf4423d47683\\_story.html](https://www.washingtonpost.com/opinions/these-would-be-citizens-want-to-vote-this-fall-why-isnt-the-us-conducting-remote-oath-ceremonies/2020/05/14/d8b27a5a-9613-11ea-91d7-cf4423d47683_story.html).

<sup>171</sup> UN Human Rights Council, Resolution on Birth registration and the right of everyone to recognition everywhere as a person before the law (23 March 2015).

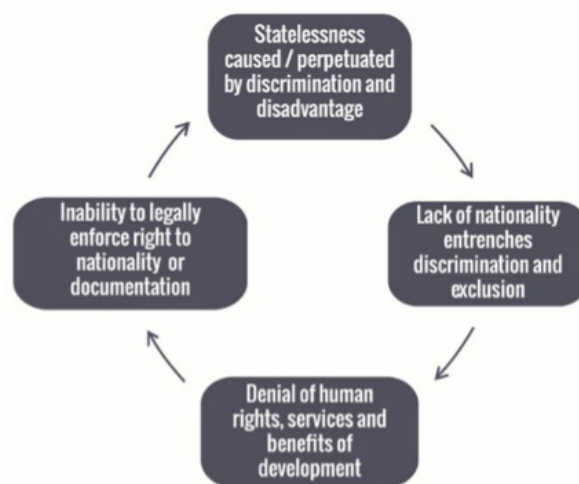
will not only have a knock on effect on access to (health) services and government support for those waiting for citizenship confirmation, but will also create a backlog of applications, and the possibility of applicants' children missing out on citizenship eligibility due to age requirements as the process is delayed. Consular services are also closed in some countries, impacting the acquisition of nationality by descent where registration with consular authorities is necessary,<sup>172</sup> as well as the extension of the validity of identity documents for persons abroad.<sup>173</sup>

Where the pandemic is fuelling xenophobic rhetoric, the intensified othering of certain groups may also lead to new cases of denial or deprivation of nationality. As UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Tendayi Achiume, has pointed out, "*racist and xenophobic ideologies*", as well as "*institutionalised laws, policies and practices*", can result in discrimination in accessing citizenship and immigration status.<sup>174</sup> In countries where digital identity systems are already in place, citizens may face renewed 'vetting' of their nationality status if biometric IDs are used to help trace those who have had a case of COVID-19.<sup>175</sup>

## CASE STUDY: THE ROMA COMMUNITY

In Europe, there are approximately 10 to 12 million Romani people,<sup>176</sup> who make up one of Europe's most marginalised ethnic minorities. The Roma have long experienced systemic discrimination, exclusion and rights deprivations, which both cause statelessness and are exacerbated by statelessness in Roma communities. Access to documentation, such as birth registration, identification and permanent residence is a significant challenge for the Roma. Bureaucracy, discrimination and cost have all been previously cited as barriers to accessing documentation, perpetuating the risk of (intergenerational) statelessness.<sup>177</sup> The nexus between administrative practices, discrimination and documentation has been previously explored, and it has been noted that "*bad administrative practices often enable discrimination and prejudice to be determinative of whether or not a person will be recognised as a citizen*".<sup>178</sup> During the pandemic, it has been reported that there has been a rise in antigypsyism and discrimination.<sup>179</sup> This combined with the fact that many civil registries are operating limited services, may result in new cases of (intergenerational) statelessness, with increased discrimination and bureaucracy leading to a mutually reinforcing 'justification' for continued exclusion. If civil registration gaps, including those caused by the pandemic, are not addressed, there will be a heightened (risk of) statelessness down the line, especially for vulnerable groups such as the Romani community, whose belonging might be questioned by the state.

The intergenerational nature of most stateless situations in the world further entraps the stateless into poverty. The statelessness of parents is often inherited by their children and grandchildren, exacerbating and perpetuating their exclusion, disadvantage, poverty and marginalisation. The risk that the pandemic catalyses new statelessness, which becomes intergenerational, is very real. Without the means to break this cycle, it continues unabated.



<sup>172</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>173</sup> The UN Secretary General has specified that effectively addressing statelessness includes "providing assistance to undocumented migrants and their children to obtain documentation, including supporting emergency consular assistance", and that this falls under the mandate of the International Organisation for Migration. (UN Secretary-General (UNSG), 'Guidance Note of the Secretary General: The United Nations and Statelessness' (November 2018), available at: <https://www.refworld.org/docid/5c580e507.html>, p. 16).

<sup>174</sup> UN Human Rights Council, 'Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance' A/HRC/38/52 (25 April 2018), available at <https://undocs.org/A/HRC/38/52>.

<sup>175</sup> R. Chandran, 'Biometric IDs can be a 'gamechanger' in coronavirus antibody tests' Reuters (8 April 2020), available at <https://www.jpost.com/health-science/coronavirus-biometric-ids-could-be-gamechanger-for-tests-vaccines-624028>.

<sup>176</sup> Council of Europe, 'Descriptive Glossary of Terms relating to Roma Issues' (May 2012), available at: <https://rm.coe.int/1680088eab>, p. 6.

<sup>177</sup> European Roma Rights Centre et al, 'Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine' (October 2017), available at [http://www.errc.org/uploads/upload\\_en/file/roma-belong.pdf](http://www.errc.org/uploads/upload_en/file/roma-belong.pdf).

<sup>178</sup> A. de Chickera and J. Whiteman, 'Addressing statelessness through the rights to equality and non-discrimination', in L. van Waas and M. Khanna (eds), Solving Statelessness (Wolf Legal Publishers, 2016), p. 104-105.

<sup>179</sup> European Network on Statelessness, "'Even before the pandemic, statelessness has been invisible" - Involving stateless people in Europe's COVID-19 response' (May 2020), available at [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/COVID-19%20%26%20statelessness\\_position%20paper\\_final.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/COVID-19%20%26%20statelessness_position%20paper_final.pdf).

# Sustaining Engagement on Statelessness & the Right to a Nationality



**Beth Fernandez,**  
Deputy Director, Sigrid Rausing Trust

**Ultimately, it is only in trying to address the systemic impediments to people having citizenship that people are going to flourish in society and not merely survive as human beings. This requires long-term work, and sustained engagement from a variety of actors.**

The work of civil society organisations and human rights defenders engaged in championing the rights of stateless persons and promoting the right to a nationality has been drastically affected by the pandemic in numerous ways. Crucial in-person services such as legal counselling for people navigating nationality procedures and support to stateless persons in immigration detention have been interrupted by policies restricting movement, convening

and access to certain facilities. In 13 out of 21 European countries surveyed by the European Network on Statelessness, disruptions to in person services such as accessing persons or outreach activities were reported, and five countries reported an inability to progress casework due to the restricted operations of competent authorities and courts.<sup>193</sup>

## UNITED STATELESS

United Stateless was established and is led by stateless people in the USA. It started as a simple conversation between several stateless persons who found each other through social media and by tracking articles about cases. They quickly found solidarity in the act of sharing their stories with one another. "A stateless life is one of terrible isolation, as the feeling of non-belonging is pervasive. We have united to help each other" explain Karina and Ekaterina, two of the founders. However, COVID-19 has meant that they have had to find new and creative ways to work.



**While the pandemic is preventing us from organizing social meetings, which is an important part of how we support one another, we are moving forward with our mission and finding new ways to remain an impactful organization. The advocacy plans we've made around events and gatherings that have been and are being cancelled will have to be reimagined and implemented in new ways.**

The pandemic has also contributed towards reducing the (already low) attention to statelessness in media and political discourse,<sup>194</sup> with reports of increased difficulty of sustaining advocacy.<sup>195</sup> With many UN human rights processes - such as the UPR or the UN treaty body

sessions - either temporarily suspended or pushed back, the gradual progress of mainstreaming statelessness and the right to a nationality within human rights procedures will hit a temporary block.<sup>196</sup>

<sup>193</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>194</sup> European Network on Statelessness, "Even before the pandemic, statelessness has been invisible" - Involving stateless people in Europe's COVID-19 response' (May 2020), available at [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/COVID-19%20%26%20statelessness\\_position%20paper\\_final.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/COVID-19%20%26%20statelessness_position%20paper_final.pdf).

<sup>195</sup> Internal survey of ENS members carried out by the ENS Secretariat in March 2020.

<sup>196</sup> For example, the 36th session of the Universal Periodic Review has been postponed. See [https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25733&LangID=E&mc\\_cid=60675f394b&mc\\_eid=28e52effdb](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25733&LangID=E&mc_cid=60675f394b&mc_eid=28e52effdb).

While the UN has consistently called for all persons rights to be protected, statements by the High Commissioner for Human Rights,<sup>197</sup> Special Procedures<sup>198</sup> and Treaty Bodies,<sup>199</sup> which highlight the need to protect vulnerable groups in the time of COVID-19, but fail to explicitly mention the stateless, stand as reminders of the long road ahead. Commenting on this reality, ISI co-director **Amal de Chickera** wrote:

**As these voices amplify some groups, an unintended consequence is to heighten the invisibility of others, and to pit vulnerable groups against each other. If the UN says certain groups have the greatest needs, and if donors channel funds primarily in their direction, those excluded will be doubly victimised. The stateless are one such group, conspicuous for their absence from most lists, and not prioritised in the many COVID-19 rapid response funds that donors have so impressively scrambled together.<sup>200</sup>**

Indeed, many groups doing much-needed work face severe and growing funding shortages, and the limited traction achieved for policy advocacy and donor support on statelessness over the last five years threatens to dissipate as the pandemic draws attention away.

In the Bangladesh Rohingya camps, for example, only programmes related to COVID-19 are being allowed to go ahead, meaning that organisations are increasingly having to connect their programmes to COVID-19 in order to continue work.<sup>201</sup>

## CASE STUDY: KUWAIT

Kuwait is home to an estimated 200,000-300,000 stateless persons known as the 'Bidoon' who were excluded from obtaining citizenship when the country first undertook efforts to register its population after independence. Their resultant lack of recognition as Kuwaiti citizens was inherited by subsequent generations. Kuwait also has a discriminatory nationality law which prevents women from passing citizenship to their children, aggravating the statelessness problem. The Bidoon have long been marginalised by the government, their treatment deteriorating significantly from the mid-1980s onwards<sup>202</sup> and the government continuously blocks attempts to obtain citizenship.<sup>203</sup> Without documentation, the Bidoon are prevented from accessing basic services or rights, an issue which has come up multiple times during Kuwait's review by UN human rights bodies – including the specific problem of lack of access to health-care services.<sup>204</sup> In 2019, the suicide of a 20-year old Bidoon man who had been denied the civil documentation needed to study and work brought to the fore the conditions of marginalisation and exclusion faced by the Bidoon, and sparked protests, to which the authorities responded with harsh crackdowns, generating further social tension.<sup>205</sup>

The structural discrimination and social stigma experienced by the Bidoon placed them in a vulnerable position when the pandemic spread to Kuwait, where one of the first cases of infection was reportedly confirmed to be of a young Bidoon man, in February 2020. Early on in the response to the pandemic inside Kuwait, many Bidoon doctors and nurses have stepped forward as volunteers – despite the long-standing restrictions they face themselves on access to healthcare and the right to work in the formal sector.<sup>206</sup>

<sup>197</sup> Michelle Bachalet, UN High Commissioner for Human Rights, 'COVID-19 pandemic – informal briefing to the Human Rights Council' (9 April 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>.

<sup>198</sup> OHCHR, No exceptions with COVID-19: "Everyone has the right to life-saving interventions" – UN experts say' (26 March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25746&LangID=E>.

<sup>199</sup> OHCHR, 'UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19' (24 March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25742&LangID=E>.

<sup>200</sup> Amal de Chickera, 'As the world washes its hands of the stateless, they risk facing COVID-19 alone, openDemocracy (27 April 2020), available at <https://www.opendemocracy.net/en/world-washes-its-hands-stateless-they-risk-facing-covid-19-alone/>.

<sup>201</sup> ISI consultation with partner working in Bangladesh on 3 June 2020. Full interview on file with ISI.

<sup>202</sup> Minority Rights Group International, 'Kuwait: Bidoon', available at <https://minorityrights.org/minorities/bidoon/>.

<sup>203</sup> Human Rights Watch, 'Kuwait: Dozens injured, arrested in Bidun crackdown' (19 February 2011), available at <https://www.hrw.org/news/2011/02/19/kuwait-dozens-injured-arrested-bidun-crackdown>.

<sup>204</sup> See, for example, the recommendation by the Netherlands during the UPR (A/HRC/29/17, 157.241) (28 January 2015); or the concluding observations by the Committee on the Rights of the Child (CRC/C/KWT/CO/2) (29 October 2013)

<sup>205</sup> Amnesty International, 'Kuwait: Authorities crackdown on protesters demanding citizenship rights' (17 July 2019), available at <https://www.amnesty.org/en/latest/news/2019/07/kuwait-authorities-crackdown-on-protesters-demanding-citizenship-rights/>.

<sup>206</sup> T. McGee, 'The COVID-19 Crisis and New Agency for Stateless Bidoon in Kuwait' (27 April 2020), available at <https://blogs.lse.ac.uk/mec/2020/04/27/the-covid-19-crisis-and-new-agency-for-stateless-bidoon-in-kuwait/>.

This generated a shift in some of the narrative towards the Bidoon, who are usually painted as illegal immigrants and people who are not loyal to Kuwait. As one commentator reported, “*These medical professionals have emerged from the crisis as strong advocates on behalf of the wider community of excluded Bidoon. Their actions, moreover, serve to counter the social stigma and suspicion that the state has often perpetuated surrounding the statelessness problem it refuses to resolve*”.<sup>207</sup> In such a context, the evolving situation of the pandemic may open new avenues for discussing the realisation of the right to nationality, demonstrating the importance of maintaining a focus on longer-term systemic change and supporting relevant actors to take advantage of these potential opportunities to make gains. Already, the window in Kuwait appears to be closing as, with the slowing of the COVID-19 outbreak, the Bidoon who had volunteered for the frontlines of the public health response are being let go, without any benefits being offered. As **Areej al-Shammiry**, scholar and activist in social justice and international studies, has commented:



**The media attention on their volunteer work was hijacked to focus on citizen volunteer work, since the issues surrounding anti-immigrant racism, that have been growing over the last few years, have hit their peak in COVID-19 times.**<sup>208</sup>

In spite of the praise for these nurses and doctors, for many Bidoon the lockdown only confirmed how vulnerable their position in society is. When movement restrictions were imposed and permission was needed via an online system even to leave the house to buy food, the Bidoon and other undocumented persons faced great complications in registering and navigating this system. These types of measures that were brought in as part of the response to the pandemic have also led to the exposure of previously nationality problems affecting other populations in Kuwait. A growing problem is posed by the risk of statelessness among the children of migrant workers (often victims of trafficking).<sup>209</sup> Some of these children are now young adults, so it is a problem that has been ongoing for many years, yet it is only now that the issue has been unearthed. This demonstrates the need to not only sustain, but adapt and step up engagement on statelessness and the right to a nationality in Kuwait.

Organisations are having to reimagine the ways in which they work, with various new initiatives such as helplines being launched. The Forum for Women, Law and Development in Nepal, for example, launched a legal helpline service at the beginning of April to provide necessary legal information, advice and consultation to those requiring assistance during the pandemic – including to those denied citizenship.<sup>210</sup>

New and urgent problems are emerging, as set out in this report, yet statelessness will continue to remain a neglected issue if urgent and concerted action is not taken. Part of an inclusive response is to recognise the importance of the contribution of groups, such as stateless persons, refugees and migrants, to society.<sup>211</sup> As noted by the UN, the crisis offers an opportunity to strengthen efforts towards durable solutions and economic and social integration.<sup>212</sup>



**Civil society is the middleman between communities and the government, but during the pandemic there have been restrictions on movement which has affected the crucial work of civil society.**

**Asma Khader,  
Solidarity is Global Institute**

<sup>207</sup> T. McGee, ‘The COVID-19 Crisis and New Agency for Stateless Bidoon in Kuwait’ (27 April 2020), available at <https://blogs.lse.ac.uk/mec/2020/04/27/the-covid-19-crisis-and-new-agency-for-stateless-bidoon-in-kuwait/>.

<sup>208</sup> ISI conversation with Areej al-Shammiry on 8 June 2020.

<sup>209</sup> OCHCR, ‘Preliminary findings on the visit to Kuwait by Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children’ (14 September 2016), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20487&LangID=E>.

<sup>210</sup> Forum for Women, Law and Development, ‘Legal Helpline Service: Factsheet’. On file with ISI.

<sup>211</sup> See Kuwait case study above.

<sup>212</sup> UN, ‘Policy Brief: COVID-19 and People on the Move’ (June 2020), p. 17.



## CASE STUDY: KENYA

Kenya is home to a large number of stateless persons, the majority of whom are members of ethnic minorities, such as the Shona, Pemba, Barundi, Nyarwanda and the Nubian communities.<sup>213</sup> Members of these communities who have access to Kenyan citizenship often face structural barriers accessing identification documents, which renders them at risk of statelessness. Lack of documentation poses a challenge for the inclusion of members of these minority groups, as Kenya is moving towards becoming a digital society where being able to prove one's identity is central to accessing one's rights as a citizen. Kenya recently introduced a digital National Integrated Identity Management System (NIIMS) which was controversial for a number of reasons, including because access to public services was made conditional on having a Huduma Namba (identification number). This meant mass exclusion from access to public services for individuals who could not obtain a Huduma Namba. The NIIMS was legally challenged in 2019 by civil society actors, including the Nubian Rights Forum. An initial ruling was issued in early 2020 which (temporarily) suspended the implementation of NIIMS.

Within the Kenya context it is important to highlight the plight of the Nubian community, who are a particularly vulnerable during the COVID-19 pandemic. They reside in Kibera which is one of the largest slums in the world, home to at least 300,000 people. Residents of the slum do not have access to necessities like potable water, health facilities and sanitation management, to name a few. Overcrowding is a major issue in Kibera, as large families frequently share small homes and houses are near one another. The congestion in the slum makes it easy for the virus to spread at a rapid pace. Poverty and marginalisation also make residents of Kibera, particularly members of the Nubian community who face challenges in accessing documentation, extremely vulnerable during this pandemic.

Members of the Nubian community, as many residents of Kibera, depend on day wages to support themselves and their families. This has resulted in many members of the community making the decision to risk their health and continue going to work, especially since accessing government assistance is extremely difficult for them.<sup>214</sup> Yasah Kimei from the Nubian Rights Forum - a grassroots entity created by the Nubian community for the Nubian community - pointed out that to receive the current unemployment assistance the government is offering Kenyan youths, *"you need a national identity card, which 90% of them [members of the Nubian community] do not have."* In addition, it has become clear that members of the community find it difficult to obtain sanitation products, like soap and facemasks, to protect themselves and their families from the virus due to their high cost. Finally, it is important to note that the Nubian community is also at high risk of abuse by the authorities during the lockdown, and an increase of cases of abuse by the police has been reported since the lockdown began.

Civil society actors like the Nubian Rights Forum have been advocating for the rights of the Nubian community for many years, and have not stopped their work during the pandemic despite a complete lack of funding and external assistance. They have been actively seeking assistance to provide community members with the necessary sanitation products to protect their health and have also been raising awareness about the virus and monitoring violence within the community. Regarding lack of funding, Yasah noted that:



**Most of our paralegals depend on grants from donors. But since the COVID-19 pandemic has started, everyone is withholding their grants, so even recording human rights violations on the ground (such as numerous cases of domestic violence and sexual abuse) is a challenge.**

<sup>213</sup> See Institute on Statelessness and Inclusion, *The World's Stateless Report: Arbitrary Deprivation of Nationality* (2020) available at [https://files.institutesi.org/WORLD'S\\_STATELESS\\_2020.pdf](https://files.institutesi.org/WORLD'S_STATELESS_2020.pdf), p. 50.

<sup>214</sup> See Nubian Rights Forum, 'Appeal to Partner Organizations: community awareness and provision of preventive equipment against COVID-19 for Kibera community' (2020).

# Joined Up Civil Society Response

## IN SOLIDARITY WITH THE STATELESS

An urgent call to **states, donors and other stakeholders** to promote and protect the rights of stateless persons in their COVID-19 responses

As governments across the world confront the COVID-19 pandemic, facing deeply challenging decisions on protecting public health while averting starvation and warding off economic disaster, it is increasingly evident that in times of crisis, states are largely embracing a "Citizens First" approach. Denied nationality and deprived basic rights and welfare, the stateless were already marginalised before the crisis. They now face even greater, life-threatening marginalisation, with potentially disastrous consequences.

We, the undersigned 84 civil society actors, work on the right to nationality, non-discrimination, and statelessness around the world. We have been tracking and responding to the devastating impact of the COVID-19 pandemic and state responses to it, on those whose nationality and belonging is denied or under threat. We have observed that in democratic states, measures including border closures and movement restrictions, health assistance, emergency relief and economic stimulus packages, privilege citizens and their concerns. Migrants, refugees, populations at risk of statelessness and the stateless themselves are left behind. Those without documentation to prove their citizenship or desired protection status are most at risk. Moreover, with rising authoritarianism, as leaders exploit the pandemic to grab more power, increase surveillance, and delegate from human rights obligations under declared states of emergency, non-citizens and members of minority groups – including those residing and registered stateless in their own country – are increasingly scapegoated, vilified and targeted for hate speech, arbitrary detention and even expulsion.

### SIGNATORIES

ADC Memorial  
Africa Foundation, Malta  
Americas Network on Nationality and Statelessness  
Amnesty International  
Asia Pacific Refugee Rights Network  
Asian Federation Against Involuntary Disappearances (AFAD)  
Bahrain Women Union  
Bangladesh Institute of Human Rights (BIHR)  
Beyond Borders Malaysia  
Burmese Rohingya Organisation UK  
Canadian Centre on Statelessness (CCS)  
CADAM Asia  
Center for Justice and International Law (CEJIL)  
Central Asian Network on Statelessness  
Centre for Advancement of Development Rights (CEADDER), Nigeria  
Charitable Fund "Right to Protection" (CFP), Ukraine  
Citizens Against Hate  
Citizenship Affected People's Network, Nepal  
Coalition de la Société Civile Involontaire Centre Québécois (CICQ), Côte D'Ivoire  
Collective for Research and Training on Development-Action (CORTA)  
My Nationality is A Right for Me and My Family Campaign  
Conscience International Sierra Leone (CISL)  
Consonant  
Development and Justice Initiative (DAJI), India  
Development of Human Resource for Rural Areas (DHRRA), Malaysia

**The COVID-19 pandemic highlights our collective and individual vulnerability, bringing into sharp focus the paramount importance of at all times promoting, protecting and fulfilling everyone's universal human rights, wherever they may be and whatever status they may have. In addition to demanding urgent and immediate action, the crisis provokes longer-term introspection and highlights the need for structural change to dismantle discriminatory and degrading laws, policies and practices, which deny and deprive nationality while excluding, marginalising and penalising on this basis.**

## SOME EXAMPLES OF CIVIL SOCIETY INITIATIVES & STATEMENTS ON STATELESSNESS IN THE GLOBAL PANDEMIC:

- **Statelessness Network Asia Pacific** statement on COVID-19, including regional developments and responses.<sup>180</sup>
- **Central Asian Network on Statelessness** statement calling for equal access for stateless persons to services and treatment.<sup>181</sup>
- **Global Campaign for Equal Nationality Rights** statement on gender discriminatory nationality laws and COVID-19.<sup>182</sup>
- **European Network on Statelessness** statement on statelessness in a public health crisis;<sup>183</sup> and a position paper based on discussions facilitated with stateless activists and community representatives.<sup>184</sup>
- Joint NGO call to action facilitated by the **Equal Rights Trust**, on addressing discrimination and inequality in the global response to COVID-19.<sup>185</sup>
- **DHRRA Malaysia** statement on the effect of COVID-19 on stateless persons in Malaysia, including the government and DHRRA's response.<sup>186</sup>

On 27 May, 84 civil society organisations working on the right to nationality, non-discrimination and statelessness, many of which work globally or have a regional focus, but most working at national level in over 30 countries, called on states, UN agencies, human rights actors, humanitarian actors, public health actors, media and social media actors and donors to take urgent action to promote a rights-based and inclusive response to the pandemic, while also being guided by, and being accountable to, stateless activists and communities. This statement **'in solidarity with the stateless'**, is an example of the type of joined-up action being taken by civil society on this crisis. As the endorsers rally behind the key messages set out in the statement and reach out to relevant stakeholders on this basis, we hope that we will be able to collectively push for wider recognition of the COVID-19 impact on the stateless, and the need to address this through targeted action. The statement is available in [ENGLISH](#), [ARABIC](#), [SPANISH](#) and [ALBANIAN](#).<sup>187</sup>

<sup>180</sup> Central Asian Network on Statelessness, 'Network appeal on fears for stateless persons during the global pandemic COVID-19' (14 April 2020), available at <https://centans.net/ru/%d0%be%d0%b1%d1%80%d0%b0%d1%89%d0%b5%d0%bd%d0%b8%d0%b5-%d1%81%d0%b5%d1%82%d0%b8-%d0%be%d0%b1-%d0%be%d0%bf%d0%b0%d1%81%d0%b5%d0%bd%d0%b8%d1%8f%d1%85-%d0%b7%d0%b0-%d0%bb%d0%b8%d1%86-%d0%b1%d0%b5%d0%b7/>.

<sup>181</sup> Statelessness Network Asia Pacific, 'Growing concerns for stateless persons in Asia and the Pacific during the COVID-19 global pandemic', available at [https://files.institutesi.org/SNAP\\_Covid19.pdf](https://files.institutesi.org/SNAP_Covid19.pdf).

Global Campaign for Equal Nationality Rights, 'Gender-Discriminatory Nationality Laws Add to Families' Suffering during COVID-19 Pandemic' (April 2020) available at <https://equalnationalityrights.org/images/zdocs/COVID---Gender-Discrimination-in-Nationality-Laws-Impact-GCENR-Statement.pdf>.

<sup>183</sup> European Network on Statelessness, 'What happens to people with no nationality in a public health crisis?' (April 2020) available at [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_COVID-19-statelessness-statement.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_COVID-19-statelessness-statement.pdf).

<sup>184</sup> European Network on Statelessness, "'Even before the pandemic, statelessness has been invisible" - Involving stateless people in Europe's COVID-19 response' (May 2020), available at <https://www.statelessness.eu/resources/even-pandemic-statelessness-has-been-invisible-involving-stateless-people-europe-s-covid>.

<sup>185</sup> 'Call to Action: Addressing discrimination and inequality in the global response to COVID-19', available at <https://www.equalrightstrust.org/sites/default/files/images/COVIDResponse.pdf>.

<sup>186</sup> DHRRA Malaysia (7 April 2020), available at <https://equalnationalityrights.org/images/zdocs/DHRRA---The-Impact-of-COVID-19-on-Stateless-People-in-Malaysia-12th-April-2020.pdf>.

<sup>187</sup> Joint statement, 'In solidarity with the stateless: An urgent call to states, donors and other stakeholders to promote and protect the rights of stateless persons in their COVID-19 responses'.

## UNHCR'S RESPONSE

UNHCR is mandated to identify, reduce and prevent statelessness and to protect stateless persons. UNHCR's Global Campaign to End Statelessness by 2024 is just beyond its halfway point, and a high-level event in October 2019 saw many states, UN agencies and NGOs make pledges in relation to this campaign. In May 2020, UNHCR released policy briefs on 'The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices',<sup>188</sup> and the 'Impact of COVID-19 on the protection of displaced and stateless populations: West and Central Africa'.<sup>189</sup> Further, UNHCR and the WHO signed an agreement to strengthen and advance public health services to refugees, asylum seekers and stateless persons.<sup>190</sup> The agreement however appears to focus on displaced populations and it is not yet clear how it will benefit the majority of stateless persons who are in their own country. While the UN Secretary General issued a policy brief on COVID-19 and people on the move in June 2020,<sup>191</sup> this does not refer to statelessness.

**The UN's Inter Agency Working Group on Statelessness may be well placed to address this gap by drawing on the Secretary General's 2018 Guidance Note on Statelessness, to produce supplementary guidance in the context of COVID-19.**

# Stateless Last? Joint Civil Society Webinar on Being 'Stateless in a Global Pandemic'.



On 28 May, ISI co-hosted a joint webinar discussing the effects of COVID-19, and government responses, on stateless populations around the world. We heard perspectives from actors working on the ground in the

**Dominican Republic, Kenya, Malaysia, Jordan and North Macedonia.** As ISI Co-Director, Amal de Chickera, who moderated the webinar, outlined: *“often situations that are deeply local can have a global effect and we need to underline these commonalities”*. Across the five country contexts, it is clear that governments have been turning their gaze inwards during the pandemic, prioritising their citizens at the expense of the stateless and those without documents, who are already facing disproportionate risks due to their already marginalised position as persons excluded by the state. Another common theme across the five country contexts was the importance of civil society action in providing support to vulnerable communities during the pandemic – made more difficult by funding sources drying up; as well as the need for longer-term sustained and collaborative action to address the structural issues at the root of statelessness.

<sup>188</sup> UNHCR, 'The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices', (11 May 2020), available at <https://www.refworld.org/docid/5eb2a72f4.html>.

<sup>189</sup> UNHCR, 'Impact of COVID-19 on the protection of displaced and stateless populations: West and Central Africa' (15 April 2020), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/75706.pdf>.

<sup>190</sup> UNHCR, 'WHO and UNHCR join forces to improve health services for refugees, displaced and stateless people' (21 May 2020), available at <https://www.unhcr.org/news/press/2020/5/5ec64b6b4/unhcr-join-forces-improve-health-services-refugees-displaced-stateless.html>.

<sup>191</sup> UN, 'Policy Brief: COVID-19 and People on the Move' (June 2020), available at <https://ghana.un.org/sites/default/files/2020-06/SG%20Policy%20Brief%20on%20People%20on%20the%20Move%20%281%29.pdf>.

<sup>192</sup> See in more detail the case studies on the Dominican Republic, Kenya, Malaysia, Jordan and the Roma community in this report. For more information on North Macedonia, see R. Medik, 'The only way to overcome COVID-19 is to work together: Involving stateless people in Europe's COVID-19 response' (28 May 2020), available at <https://www.statelessness.eu/blog/only-way-overcome-covid-19-work-together-involving-stateless-people-europe-s-covid-19-response>.



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**We need to think on two levels: one is the immediate response to the needs, and the other is a strategic human rights approach, where equal citizenship rights should be provided to the families of Jordanian women. [...] we base these demands on the human rights principles that should not only be respected in “normal” situations, but especially during crises.**

**Asma Khader,  
Solidarity Is Global Institute (Jordan)**



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**The Roma community, NGOs and authorities need to collaborate to raise awareness. [...] In the long run, greater effort is needed to ensure that Roma are included in society and have equal access to basic rights.**

**Remzi Medik,  
Bairska Svetlina – Centre for  
Development of Roma Community  
(North Macedonia)**



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**State should realise efforts to guarantee the access to Dominican identity and nationality documents, in line with international obligations. This will ensure sustainable solutions are attained, leaving nobody behind, in the current crisis, and in any future crisis.**

**Bridget Wooding,  
Platform Dominican@s por Derecho**

We also heard reflections from Deputy Director of the Sigrid Rausing Trust, **Beth Fernandez**, and UN Special Rapporteur on Minority Issues, **Fernand de Varennes**. They reaffirmed the need to address the long-standing structural exclusion manifested in statelessness and to be watchful of new threats to human rights protection that are emerging within the pandemic context.



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**As donors we need to have a dialogue with all grantees about what they are currently doing on statelessness, as we would on gender or sexual orientation or other forms of identity. Statelessness is a core rights issue; without citizenship you cannot access a whole host of other rights. It is legally solvable and very concrete and depends on political will.**

**Beth Fernandez,  
Deputy Director, Sigrid Rausing Trust**

# ISI's COVID-19 Response



At our World Conference on Statelessness last year, we featured an empty white chair, to focus minds on all those who should have been with us but could not travel. Over the course of the conference, participants wrote on the chair, the names of the absent. If the conference was held today, the white chair would represent us all.<sup>215</sup>

...  
In this time, we offer solidarity. We may not be in this together to the same degree, but we must be in this together. We began our message with a question, “how do you conduct an international campaign or foster a global movement from your living room?” We don’t know the answer yet. But the more living rooms that connect together, the more we look out for each other, the more we learn about ourselves and our world in these dark times, the better we will do.

**We offer you an empty white chair, with space for all.**

Ever since the COVID-19 pandemic struck, we have been tailoring our existing programmes (movement building, advocacy, discrimination, child rights and Rohingya) to meet new needs, and have set up a dedicated COVID-19 response.<sup>217</sup> This response aims to strategically leverage ISI's position (as the sole NGO working on the right to nationality globally), networks (communities, activists, NGOs and academia) and expertise (research, advocacy, training and technical knowledge etc.), to lead and coordinate a joined-up civil society response to the crisis. In particular, we aim to collect data, strengthen capacity and conduct advocacy to:

**1. Ensure** government, UN, NGO and other stakeholders in the COVID-19 response are better equipped and connected to identify, protect and reach all stateless people in their response, including all essential healthcare and relief programming.

**2. Call out, challenge and demand** accountability when stateless people are targeted and pushed further to the periphery – including through hate speech, arbitrary detention, discriminatory denial of healthcare and other services.

**3. Stand in solidarity** with stateless people, ensure that their voices are heard and strengthen connections among statelessness actors to enhance joined-up action.

**4. Strengthen collaboration and ties** with other marginalised groups through an informal ‘Coalition of the Excluded’, to promote a ‘together we are stronger’ approach to advocacy and activism when seeking the same solutions and remedies (law and policy reform, access to healthcare and relief, combatting discrimination etc.) from the same advocacy targets (states, UN agencies, humanitarian actors etc).

## COVID-19 EMERGENCY STATELESSNESS FUND (CESF)

Central to our COVID-19 response, is the establishment of a dedicated COVID-19 Emergency Statelessness Fund (CESF). The CESF is a targeted and time-bound initiative that will enable us to raise and channel resources to, strengthen capacities of and work in partnership with NGOs and citizenship rights activists at the frontline of the crisis. The fund will be used to implement research-based action advocacy, by ISI and those civil society groups and activists that are already well positioned to have an impact on the ground.

The fund will be administered by ISI, with the guidance of a CESF Committee, which will be appointed by the ISI Board and comprise people directly affected by statelessness, civil society representatives, advocates, humanitarian actors and grant makers.

<sup>215</sup> ISI, 'World Conference on Statelessness' (2019), available at [https://files.institutesi.org/World\\_Conference\\_on\\_Statelessness\\_Report\\_2019.pdf](https://files.institutesi.org/World_Conference_on_Statelessness_Report_2019.pdf).

<sup>216</sup> 'COVID-19 and us: a message from ISI's co-directors' (March 2020), available at <https://www.institutesi.org/news/covid-19-a-message-from-our-co-directors>.

<sup>217</sup> ISI, 'COVID-19 and Statelessness', available at <https://www.institutesi.org/pages/covid-19>.

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We are also appreciative of the continuing support of the Sigrid Rausing Trust, Oak Foundation, American Jewish World Service and the Dunn Family Foundation.

## **METHODOLOGY**

This report was compiled using information collated from ISI's survey on COVID-19 and statelessness; civil society consultations with partners at international, regional, national and grassroots levels; internal surveys conducted by the European Network on Statelessness and the Global Campaign for Equal Nationality Rights; as well as extensive desk review drawing from numerous online sources. The information was collected between April and June 2020. This is ISI's first report documenting the effects of COVID-19 on stateless persons, and we will continue to provide updates as the situation evolves through our monthly bulletin and our dedicated COVID-19 page.

## **ABOUT US**

**The Institute on Statelessness and Inclusion (ISI)** is an independent non-profit organisation dedicated to promoting inclusive societies by realising and protecting the right to a nationality for all. Established in August 2014, ISI is the first and only human rights NGO dedicated to working on statelessness at the global level. Our work combines research, training, advocacy, creating knowledge tools, information-sharing and building strategic alliances. ISI is incorporated in the Netherlands, where it has Public Benefit Organisation (PBO) status.



Filippo Grandi,  
UN High Commissioner for Refugees

**The right to a nationality is a fundamental human right and in this time of crisis it can mean the difference between life or death.**

In the context of a global pandemic, stateless persons are more vulnerable than ever. The relationship between the state and the stateless vacillates between enforced invisibility and targeted persecution, and unless this relationship is urgently challenged, the COVID-19 impact on the stateless will be immense and – for many - irreversible. There are an estimated 15 million stateless persons worldwide, whose urgent needs must be highlighted, to ensure they are included in COVID-19 preparedness, response and mitigation efforts.

The **Institute on Statelessness and Inclusion** (ISI) has been tracking the effects of the pandemic on stateless persons globally, and have identified seven key areas of concern: health & well-being; survival and livelihoods; hate speech, racism and xenophobia; border closures and movement restrictions; insecurity and detention; new risks of statelessness and sustaining engagement on statelessness and the right to nationality.



Joint statement by 84 civil society  
organisations (27 May 2020)

**Denied nationality and deprived basic rights and welfare, the stateless were already marginalised before the crisis. They now face even greater, life-threatening marginalisation, with potentially disastrous consequences.**

**While the price already paid has been immense, we hope that this report will help to galvanise urgent and concerted action, in order to promote a rights-based, inclusive and non-discriminatory response to COVID-19, based on the premise that no one, including the stateless, should be left behind.**