



# CITIZENSHIP AND STATELESSNESS

(in)equality and (non)discrimination

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“[T]here is often an element of discrimination and/or arbitrariness at play, when individuals or entire groups become stateless. Discrimination and arbitrariness can manifest itself in an obvious, aggressive and even persecutory manner, such as when large communities are deprived of their nationality based on ethnicity or religion; or it can be more subtle and latent, such as the failure of states to prioritise legal reform that would plug gaps in the law which could cause statelessness. Thus, it is worth reminding ourselves that while states do have significant freedom to set out their own membership criteria, they also have a responsibility to protect against discrimination and arbitrariness, and to uphold international standards. Statelessness most often occurs when states fail to do so.”

## Institute on Statelessness and Inclusion, *The World’s Stateless Report, 2014*

Cover photo © Saiful Huq Omi  
Rohingya man in Malaysia

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## KEY MESSAGES

- The right to equality is a fundamental human right. It is increasingly recognised that efforts to combat statelessness and protect the rights of stateless people must address the underlying inequality and discrimination they experience.
- The right to equality requires that States adopt comprehensive anti-discrimination laws that protect against inequality and discrimination on grounds of statelessness. These laws must also protect against grounds of discrimination which cause statelessness, including, sex, gender, sexual orientation, gender identity, race, ethnicity or religion, language, disability, health status, birth status or social origin.
- The right to nationality, a fundamental human right, must be guaranteed without discrimination on arbitrary grounds including sex, gender, sexual orientation, gender identity, race, ethnicity, religion, language, disability, health status, birth status or social origin. Without nationality, stateless people struggle to access rights and services and are increasingly vulnerable to being arbitrarily denied quality education and health care; safe, secure and dignified work; inheritance and ownership of property; and basic financial, telecommunications and other services.
- Inequality and discrimination are causes of statelessness. Further, stateless persons face discrimination and inequality because of their statelessness. These challenges are inextricably linked to one another and measures to reduce statelessness must connect to efforts to protect stateless communities from inequality and discrimination. Further, the statelessness movement will benefit from better connections to the global equal rights movement.
- Positive action is a key aspect of the right to equality and, where appropriate, legislative, administrative and policy measures should be used to overcome stateless populations' past disadvantage (particularly where this is exacerbated by intergenerational statelessness) and accelerate progress towards equality.
- Understanding and responding to how multiple discrimination occurs between statelessness and other characteristics (such as poverty, ethnicity, sex etc.) is essential, for developing effective and comprehensive solutions to address the inequality and discrimination experienced by stateless people.
- Strategies to address inequality, discrimination and statelessness should be comprehensive and multifaceted, utilising a range of methods to effect change, including: documentation, monitoring and research; awareness raising, communication and collaboration; community empowerment; legal clinics and paralegal initiatives; advocacy and litigation.

Key messages

Introduction

Approaches to equality

Inequality, discrimination and statelessness

Statelessness caused by inequality and discrimination

Types of discrimination and measures to reduce inequality

Multiple discrimination

Inequality and discrimination of the stateless

Strategies to address inequality and discrimination against stateless people

Further reading, notes and glossary



The men in this photograph are Kuwaiti Bidoon, protesting their denial of Kuwaiti citizenship. Bidoon means 'without', signifying their statelessness. They are heavily discriminated against and stigmatised because they are Bidoon. The intergenerational nature of statelessness in Kuwait is further aggravated by gender discrimination in the nationality law. A Kuwaiti woman who marries a Bidoon man cannot pass on her Kuwaiti citizenship to her spouse or child.

Photo © Greg Constantine

# INTRODUCTION

## What do inequality and discrimination have to do with statelessness?

When globally at least 15 million people face a life without nationality, it is important to unpack this question, unravel the various ways in which inequality and discrimination cause statelessness and identify how stateless people face inequality and discrimination.

Understanding and addressing inequality and discrimination is critical to the full appreciation of statelessness and related human rights challenges. Further, it is important to understand how stereotypes, prejudice and stigma are used against different groups and communities to fuel inequality and discrimination and cause statelessness.

The vulnerability and marginalisation of stateless people is often highlighted by human rights NGOs, human rights treaty bodies, national governments and the media. The work of human rights defenders has served to expose the wide-ranging inequality and discrimination that stateless people face. Basic rights such as adequate healthcare, quality education and appropriate housing are consistently denied to stateless people. Stateless persons are often denied equality before the law, cannot access justice and have no political voice.

Lessons learnt from the history of human rights reveal that using the right to equality has been a key tool for combating the inequality and discrimination experienced by groups who have faced marginalisation and oppression. With this lesson in mind, it is essential that statelessness and equal rights actors become familiar with each other's fields so that they understand the extremely important role equality can play in securing equal rights for stateless persons and addressing global statelessness.

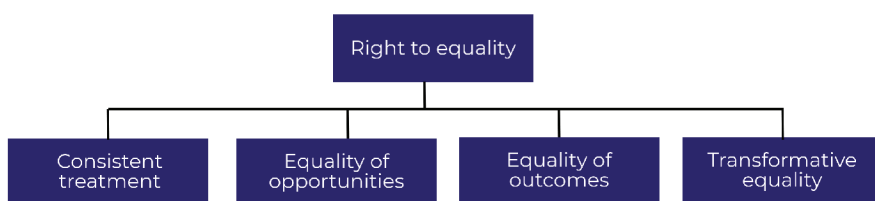
This booklet introduces the right to equality to statelessness actors and the problems of statelessness to equality actors. It introduces key concepts adopted by equality practitioners to protect vulnerable and marginalised groups. It also sets out the role of inequality and discrimination in creating statelessness and how statelessness can perpetuate inequality and discrimination. Finally, it presents some strategies that may be used by equality and statelessness practitioners to help address statelessness.

If you are an equality practitioner wondering how you might assist to protect vulnerable groups from statelessness or prevent discrimination against people who are stateless, or if you are a statelessness actor struggling to understand how the right to equality can benefit your work, this booklet is for you. It is part of our **Statelessness essentials** booklet series, which includes introductory booklets on statelessness and how it relates to various human rights, development and other issues. To learn more about this series and other available or forthcoming titles, please visit our website:

[www.institutesi.org](http://www.institutesi.org)

# APPROACHES TO EQUALITY

Victims' experiences of inequality and discrimination rarely fall neatly into discrete classifications. As a result, international human rights law adopts multifaceted formal and substantive approaches to the right to equality. This ensures that the right to equality protects against emerging patterns of inequality and cases of discrimination. There are four main approaches to equality that apply under international human rights law.



## Equality as Consistent Treatment

Accordingly, people who are similarly situated should be treated in the same or similar ways. This approach advocates that:

1. the right to equality requires consistent treatment; and
2. arbitrary treatment or decision making based on irrational stereotypes, prejudice or other irrelevant criteria violates the right to equality.

When stateless people are treated differently to similarly situated non-stateless people, the formal approach to the right to equality is engaged to protect against unfair, arbitrary and inconsistent treatment.

**Examples in law:** Article 2 (1) of the ICCPR; Article 2(2) of the ICESCR and Article 2 (1) of the CRC provide that State Parties shall respect, ensure and/or guarantee the rights set forth within the Covenants without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

**Example in practice:** It is unlawful under international law for a Serbian official who is processing a Roma person's application to register the birth of their child, to take into consideration their racial, ethnic or religious background.

## Equality of Opportunities

This approach says that ‘equality as consistent treatment’ cannot achieve full and effective equality by itself. It stipulates that measures are needed to ensure that individuals from groups who have suffered past inequality and discrimination have the same economic, social, cultural, political and civic opportunities as those who have not. This approach aims to create a level playing field for groups who have suffered past inequality and discrimination by permitting the use of limited measures to equalise the starting points for individuals of such groups and improve their opportunities.<sup>1</sup>

**Examples in law:** Articles 1 and 2 of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Articles 3, 4 and 6 of the ILO Workers with Family Responsibilities Convention, 1981 (No. 156) provide that states must take measures to pursue equality of opportunity.

**Example in practice:** A university notes that despite a large stateless community living within its conurbation, stateless persons are significantly underrepresented in its workforce and student population. The university develops an outreach strategy to encourage stateless people to apply for new vacancies and university places. This includes increased advertising for new job opportunities within local media used by stateless people and recruiting an outreach officer to work with local stateless students and inform them about the opportunities and benefits of pursuing a degree.

## Equality of Outcomes

This approach adopts a stronger redistributive aim than the ‘equality of opportunities’ approach. It aims to fairly distribute economic, social, cultural, political and civic goods and benefits, to improve the position of those who have been historically disadvantaged. This approach says that to achieve full and effective equality, specific and targeted measures must be adopted to redress past inequality and disadvantage. In practice this includes putting in place legislative and other measures that will achieve concrete outcomes for individuals from such groups to put them on an equal footing with others.

**Examples in law:** Article 5(4) of the CRPD, Article 4 of CEDAW and Article 1(4) of CERD provide that special or specific measures which are necessary to accelerate or achieve ‘de facto equality’ of persons with disabilities, women and racial and ethnic minorities (respectively) shall not be considered discrimination.

**Example in practice:** Due to the gender imbalance at the senior level of corporate organisations, Norway requires a minimum of 40% of each gender on the Boards of Public Limited Companies.

How long will I have to wait to have equal rights with other people? I have been fighting for this my whole life.  
– Phra, Thailand



## Transformative Equality

This approach aims to advance the position of disadvantaged groups through changing existing social structures and the way organisations and institutions function. It requires adaptive changes in the practices, procedures and structures of organisations and institutions, pursuant to an assessment of how they fail groups who have experienced past inequality and discrimination. The intent is to make organisations and institutions more inclusive, representative and accessible to groups who have suffered historic inequality. This approach has been employed primarily when the strong equality guarantees, already present in a legal system, have failed to create the necessary change.

**Examples in law:** Section 149 of the 2010 Equality Act of the United Kingdom requires public authorities, in the exercise of their functions, to have due regard for the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

As a result, public authorities in the UK have a statutory duty to assess the impact of their policies and procedures on persons who possess relevant protected characteristics, such as race, sex, religion, disability, sexual orientation and age.



# INEQUALITY, DISCRIMINATION AND STATELESSNESS

Human rights professionals working with stateless communities will undoubtedly recognise the 'traditional' categorisation of causes of statelessness, such as conflict of nationality laws, the inheritance of statelessness by new-born children, state succession, administrative challenges, the lack of birth registration and the like.

Yet in some ways, the focus on these 'traditional' categories has limited stateless actors' understanding of the role of inequality and discrimination in causing statelessness, limiting the effectiveness of their responses. Some methods engaged to tackle statelessness only address the symptoms of statelessness and not the root causes.

a **STATELESS PERSON** is someone who is "not considered as a national by any state under the operation of its law"

There is an inextricable link between inequality, discrimination and statelessness. Inequality and discrimination both cause statelessness and impact the stateless. Understanding and addressing inequality and discrimination is critical to the full appreciation of the issues related to statelessness.<sup>2</sup> Further, it is important to understand how stereotypes, prejudice and stigma are used against different groups and communities to fuel inequality and discrimination and cause statelessness. Ignorance about, or the neglect of vulnerable groups can deepen their inequality and increase their risk of statelessness.

It is not only intentional stigmatisation, prejudicial treatment or discrimination that leaves groups vulnerable, marginalised and at risk of statelessness. Action and inaction frequently have unintended consequences. When this is the case, the challenge for human rights and statelessness stakeholders is to hold states to account where they fail to act with diligence or put in place mechanisms to manage such risks.



# STATELESSNESS CAUSED BY INEQUALITY AND DISCRIMINATION

## Protected grounds

International human rights law protects against discrimination on a wide range of grounds. It adopts what is termed an indicative rather than an exhaustive approach to deciding which grounds (including personal characteristics or status) should be protected from discrimination. Some protected grounds, like race, sex or political opinion are explicitly listed as prohibited grounds of discrimination together with an 'other status' clause. Listed grounds act as indicators to courts when deciding if a non-listed ground should be protected as an 'other status'.

Treaty bodies have been able to 'read into' human rights treaties, protection from discrimination on grounds such as sexual orientation which was not explicitly listed. Statelessness is not listed as a protected ground in international human rights treaties but may be 'read into' them.

A protected ground can be an actual or perceived **immutable** characteristic (which is unchangeable, entrenched and innate, e.g. race) or **mutable or acquired** status (which has been imparted on the individual and may change, e.g. statelessness).

Courts often apply different levels of scrutiny to different grounds of discrimination. For example, human rights law requires 'very weighty reasons' to justify a difference in treatment because of race or sex. Whereas less weighty reasons may be required to justify a difference in treatment because of language.



Article 2 of the CRC prohibits "discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Article 7 protects every child's right to a nationality.

Together they should ensure that no child is born stateless.



## Gender Discrimination

At present approximately 50 countries have nationality laws which directly discriminate against women in the ability to acquire, change or retain their nationality, or confer nationality on their children or spouse. These countries include the Bahamas, Cameroon, Kuwait, Lesotho, Malaysia, Morocco, Nepal, Qatar and Saudi Arabia. Where a mother is prevented from passing her nationality to her child, that child may be at risk of statelessness if they are also unable to acquire nationality from their father.

Indirect gender discrimination can also cause statelessness, for example, in situations where single mothers cannot register the births of their children due to social stigma.

## The Prohibition of Discrimination under International Law

Treaty & Article(s)	Protected Grounds
1954 Convention - 3	Race, religion or country of origin.
CERD - 1, 2, 4, 5, 6	Race, colour, descent, or national and ethnic origin.
ICESCR - 2(2)	Race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.
ICCPR - 2(1), 4(1) 24(1), 26	race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.
CEDAW - All	Gender (women).
CRC - 2(1), 7(1), 8(1)	Child's or his or her parent's or legal guardian's race, colour, sex language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
CAT - 1(1)	All grounds
CPRMW - 1(1), 7(1)	Sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
CRPD - All	Disability; also 6 (women); 7 (children); 16(5) (women and children); 28 (2)(b) (women, girls, older people).
CED - 13(7)	Sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group.

### Race, Ethnic, Religious and Linguistic Discrimination

Large groups that are stateless tend to be ethnic, religious, racial or other minorities, who have been excluded through the denial or stripping of citizenship. Regardless of whether this exclusion was intentional (e.g. Rohingya in Myanmar) or due to a historical accident (e.g. Hill Tribes in Thailand), statelessness becomes a defining characteristic of the group and a basis for further exclusion. Statelessness that arises out of state succession and de-colonisation is most likely to be inflicted on minorities who are perceived as outsiders brought in by the former colonial powers (e.g. Tamils of Indian origin in Sri Lanka) or as a group loyal to the previous larger state (e.g. ethnic Russians in Latvia), despite the fact that these communities have lived in such countries for several generations. Where poor administrative practices such as the lack of birth registration lead to statelessness, racial and ethnic minorities who for reasons of exclusion, language, poverty or other factors cannot access registries (e.g. Roma in Europe) are disproportionately impacted. Where statelessness is inherited, there is likely to be less political will to rectify the statelessness of minority communities (e.g. Karana of Madagascar). Where forced migration causes or leads to statelessness, discrimination is often a factor as to why a minority was forced to leave a country or faces barriers to integrating in a new one (e.g. stateless Kurds from Syria).

# Case Study: The Dominican Republic (D.R.)



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Dominicans of Haitian descent have faced discrimination and racism for many generations, culminating in the arbitrary deprivation of their citizenship. Their ancestors migrated to the D.R. to work on sugarcane plantations. The Constitution recognised all persons born in the D.R. as citizens, unless their parents were in transit (in the country for no more than 10 days). But then things changed. Long-standing stigma and discrimination devolved into their political exclusion and statelessness.

**“It was devastating to hear the 2013 verdict and share this with over 20 young people. What tears my companions shed. I was consoling them, trying to stay strong and positive, but on the inside I was knocked down. Without any more tears to give, I felt I was drowning. I remember with enormous pain these words: ‘the tribunal has already legally killed me, so now there’s nothing left but to take my own life’. Without measuring all the harm that civil genocide did to us over the past five years - legally, emotionally, psychologically, materially - what stays with me is the memory of two youngsters who literally wanted to commit suicide.”**

**Rosa Iris Diendomi, Lawyer & Activist**

Legal Timeline	
2004	"In transit" redefined as without residence status.
2007	The Book of Foreigners segregates those born in the country into 'citizens' and 'non-citizens', denying ID cards and basic rights to the latter.
2010	New Constitution denies nationality to children of foreigners "residing illegally" in the D.R. However, those recognised as citizens prior to when the Constitution was enacted remain citizens.
2013	Constitutional Court retroactively deprives nationality of hundreds of thousands of Dominicans of Haitian descent born between 1929 and 2010.
2014	Those affected by Court ruling divided into Group A (births were recorded in the Registry) and Group B (births never registered).



© Diwakar Chettri

## Social Origin

Covert discrimination against socio-economically disadvantaged groups – most often the rural poor who cannot acquire documentation – can play a significant role in causing statelessness. Unseen barriers to accessing centralised administrative offices e.g. language, literacy, the cost and time of travel and lack of access to (information about) simplified documentation processes, are acutely felt by the socio-economically disadvantaged. The resulting lack of documentation – while not akin to statelessness (many citizens do not have documentation) – can result in statelessness for those who cannot prove their place or date of birth, parentage etc. This is particularly so if the disadvantaged group is a minority or lives in a border area, whose 'belonging' is more likely to be questioned.

## Birth and Inheritance

**"No discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents".<sup>3</sup>**

The inheritance of statelessness is the biggest cause of statelessness in the world. The failure of States to find solutions for statelessness means that new generations are born into statelessness every day. The lack of will to address statelessness is often linked to discriminatory attitudes and perceptions about belonging, including of children born out of wedlock. International law draws a red line on this issue and explicitly prohibits discriminatory treatment of children due to their birth status.

## Disability Discrimination

“Children with disabilities are at a particular risk of not being registered at birth which exposes them to further protection risks including statelessness”.<sup>4</sup>

Article 18(1)(a) of the CRPD requires State Parties to ensure that persons with disabilities ‘[h]ave the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability’. However, many countries – including Yemen and Ecuador – discriminate against people with psychosocial or intellectual disabilities, including those who lack mental capacity, in naturalisation proceedings, increasing their risk of statelessness.

Prejudicial social attitudes which may result in the failure of parents to register the births of disabled children – or barriers they face in doing so – can also cause statelessness.

In 2015 the UN HRC found that Denmark’s refusal to exempt an Iraqi refugee from the language requirement of Denmark’s citizenship test on medical grounds (including severe psychosis, aural hallucinations, depression and various physical disorders) constituted discrimination in violation of Article 26 of the ICCPR. (Q v Denmark, 2015)

## Political Opinion

In recent years, there has been an alarming surge in using deprivation of nationality as a ‘tool’ to protect national security, and the abuse of these powers to target human rights defenders. Stripping political dissenters of their nationality is becoming an increasingly common way for authoritarian states to suppress political opinion and free expression. Bahrain, Kuwait and Turkey are examples where this ‘tool’ has been used, raising a serious risk of statelessness where those affected do not have a second nationality.

## Other Grounds

The above are illustrative and not exhaustive examples of how inequality and discrimination can cause statelessness. As research develops it is inevitable that discrimination against other protected groups that relates to statelessness will be uncovered. For example, discrimination in access to nationality based on residence status (as a prerequisite for the application of statelessness safeguards) is becoming an increasing concern.

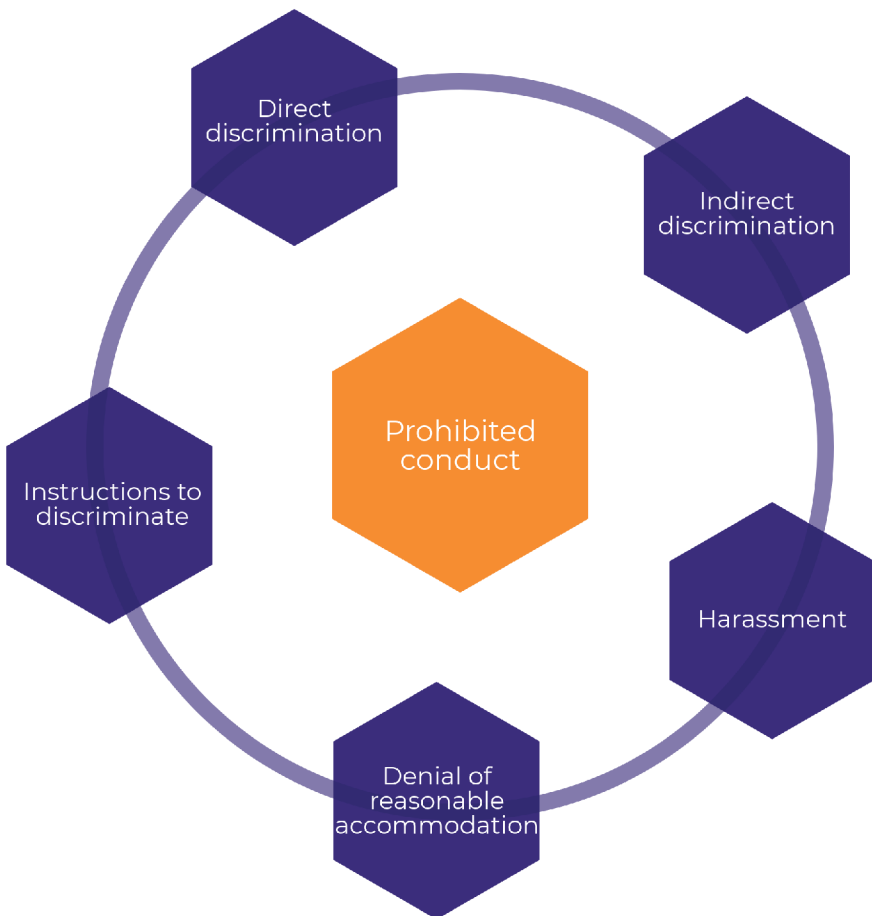
## Perceived Characteristic

Statelessness can also occur when individuals are perceived to possess a characteristic they do not in fact possess. Often communities that become stateless are perceived as foreigners or outsiders whose marginalisation make them vulnerable to discrimination and inequality. The belief that an individual or a community is from ‘elsewhere’, for example that they are Malawian not Kenyan or Iraqi not Kuwaiti is a common trend across different statelessness situations.

# TYPES OF DISCRIMINATION AND MEASURES TO REDUCE INEQUALITY

With more awareness of the impact of stereotyping, prejudice, discrimination and inequality as causes of statelessness, the question arises: **how does the human right to equality assist statelessness actors to protect the rights of the stateless?**

Stigma, prejudice and arbitrariness that result in inequality and discrimination are countered in international law through the prohibition of various forms of conduct. While forms of prohibited conduct continue to develop to meet new and more subtle patterns of inequality and discrimination, some of the most relevant include:





## Direct Discrimination

This aims to prohibit the most overt manifestations of discrimination in society. It occurs when for a reason related to one or more prohibited grounds a person (or group) is treated less favourably than another person (or group) is, has been, or would be treated. The legal test for direct discrimination has three parts:

1. Have you been treated less favourably?
2. Is this less favourable treatment because of a characteristic or status that you possess (or you are perceived to possess or are associated with)?
3. Is the treatment less favourable in comparison to the treatment of another person (or persons) who does not share that characteristic or status?



© Gihan de Chickera.

First published in Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, 2010.

Some jurisdictions provide that direct discrimination can never be justified, save for a very limited number of clearly defined circumstances. Others, for example the ECHR, provide that direct discrimination can be objectively and reasonably justified. In such jurisdictions, 'objective and reasonable justification' is a fourth part of the legal test, which requires courts to consider whether it has a 'legitimate aim' and whether the means of achieving that aim are 'proportionate and necessary'. Importantly, it is not necessary to prove motive or intention to establish direct discrimination.

**Example in practice:** Kezia is a stateless woman living in the Netherlands. She applied for a job as a cook in a school in The Hague. The school refused to employ her as it has a policy of not employing stateless people. The school's policy treats Kezia differently and puts her at a disadvantage because of her stateless status.

## Indirect Discrimination

This aims to prohibit covert manifestations of discrimination. It prohibits discrimination that may be present in a rule or practice which on its face is neutral and does not target a specific protected group, but which in practice has a detrimental effect on the person meant to be protected against discrimination, and which cannot be justified. The legal test to be satisfied is as follows:

- Have you been treated less favourably?
- Is this less favourable treatment due to the application of a provision, criterion or practice that would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons?
- Is there an 'objective and reasonable justification' for this less favourable treatment?

"Rarely do States explicitly discriminate on the basis of race, ethnicity or national origin in their citizenship stripping process. However, overbroad policies ostensibly rooted in national security concerns permit arbitrary enforcement - including arbitrary deprivation of citizenship - which in practice have a disproportionate effect on marginalised racial, national and religious groups".<sup>5</sup>

Indirect discrimination is a key legal tool for challenging **discrimination by proxy** - circumstances where the justification for the detrimental treatment is in fact a proxy for statelessness, or a characteristic that may cause statelessness. A person's lack of documentation or legal status, their inability to speak the official language, their failure to follow official procedures or national security considerations are frequently used as reasons to treat stateless people detrimentally and, where appropriate, these reasons should be regarded as '**proxies for statelessness**'. When such proxies are stated as the trigger for the detrimental treatment, their sinister purpose should be unveiled and the underlying discrimination on grounds of statelessness should be addressed. Legal protections against indirect discrimination (and in some cases direct discrimination) will assist to protect stateless people against this covert and insidious form of discrimination.

**Example in practice:** Sabin, a stateless Nepalese man, applies for citizenship for his child. An official tells him that to submit a successful application, he will need to provide a copy of his child's birth certificate. As with many stateless parents in Nepal, Sabin has been unable to obtain a birth certificate for his child. He explains this to the official, but the official says that without the birth certificate the child's citizenship application will not be processed.

## Harassment

Unwanted conduct related to a prohibited characteristic or status, with the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, constitutes harassment.

**Example in practice:** Sandra, a Dominican child of Haitian origin, takes a one-hour bus journey to school each day. On the bus, other children make odious remarks about her colour, use derogatory names against her and call her a foreigner.

## Denial of Reasonable Accommodation

It may be necessary for public and private sector organisations to provide reasonable accommodation for different capabilities. Reasonable accommodation is defined under Article 2 of the CRPD as 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.'

**Example in practice:** The parents of a child with hearing impairments wish to send her to a mainstream school. The proposed school would need to provide around 15 hours per week of interpretative assistance to this child. The school argues that it cannot afford this, thus hampering the child's equal access to education.

In considering whether (in)action constitutes denial of reasonable accommodation, statelessness actors should critically scrutinise whether the situations they encounter would amount to this type of discrimination. For example, in circumstances where a state will only accept a birth certificate as proof of identification for a citizenship application, does the refusal of applications from stateless parents on this basis amount to a denial of reasonable accommodation on grounds of statelessness?

## Instructions to Discriminate and Victimisation

Protection against instructions to discriminate aims to cover third parties who do not discriminate themselves but whose actions cause others to discriminate.

Victimisation occurs when a person subjects another person to a detriment because that other person has, or intends to make a complaint or allegation of discrimination; or gives evidence or information in connection with a complaint.

**Example in practice:** The driver of Sandra's school bus, Jose, is concerned about the harassment she experiences. He raises this with his supervisor, who in response, murmurs a racial slur about Haitians. Jose then approaches the parents of the other children. The parents complain to his supervisor and Jose is immediately suspended without pay.

# The Sustainable Development Goals (SDGs)

The SDGs, adopted by the UN in 2015, are a universal call to action to end poverty and promote prosperity, while protecting the planet. There are 17 SDGs and 169 targets.

The SDGs aspire to “leave no one behind” and to reach the furthest behind first. Special attention must be paid to groups most in need. Further, structures that engender exclusion, disadvantage and impoverishment must be addressed. Equality is therefore a central principle of the SDGs. Goals 10 (reduced inequalities) and 5 (gender equality) directly aspire to realise equality and most other Goals also bear relevance.



10.2: empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.

10.3: ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

The forms of prohibited conduct set out on pages 16 - 18 also cover discrimination by association and discrimination on the basis of a perceived characteristic.

## Discrimination by Association

**Discrimination by association** occurs in circumstances when someone is treated unfavourably on the basis of another person's protected characteristic.

**Example in practice:** The mother of a stateless child is forced to pay for private medical treatment for her child, because the public health service denies free medical treatment to stateless persons.

## Discrimination on the basis of a Perceived Characteristic

When someone is treated unfavourably because others believe they belong to a particular group, even though, in reality, they do not.

**Example in practice:** A Kuwaiti Bidoon is not allowed to open a Kuwaiti bank account because she is perceived to be Iraqi.

## Positive Action

The different forms of discrimination discussed above are most often experienced cumulatively. Discriminatory practices entrench inequality, affecting minorities over generations. And so, it is often not possible to end inequality just by prohibiting discriminatory conduct alone.

Therefore, alongside measures to combat discrimination, **positive action (also referred to as affirmative action)** is permitted under human rights law. This includes a range of legislative, administrative and policy measures to overcome past disadvantage and accelerate progress towards equality. Any positive action taken must be necessary, proportionate and time-limited. Further, actions should be clear, targeted and specific; subject to periodic review; designed to address past disadvantage and accelerate progress towards equality; and used to meet the specific needs of disadvantaged groups.

Positive action is not the same as 'positive discrimination' as positive action does not constitute 'discrimination' if its aim is to achieve full and effective equality and the means adopted are proportionate to that aim.

**Examples in practice:** : Positive action takes many forms. Quotas and reservations as practiced in Indian public service recruitment and university admissions or recruitment to the Police Service of Northern Ireland; as well as reducing the points required to enter educational systems as practised in universities in the USA, all constitute positive action.

## Minority Rights Group International

Focusing on the rights of minorities and indigenous peoples worldwide, Minority Rights Group International (MRG) has worked with many communities who, in a broader context of discrimination and exclusion, are at risk of statelessness. Through research, advocacy and capacity building, MRG works to end their invisibility and secure recognition of their rights as full and equal citizens.

'Unsurprisingly, a large proportion of the millions of stateless persons belong to minorities or indigenous peoples – indeed, it is often the culmination of a long history of persecution and neglect by the state. At MRG, we bring our experience working with marginalised communities to address the underlying drivers of statelessness. With a voice and a platform, their situation is that much harder for governments to ignore.'

**Claire Thomas, Deputy Director**



minority  
rights  
group  
international

# MULTIPLE DISCRIMINATION

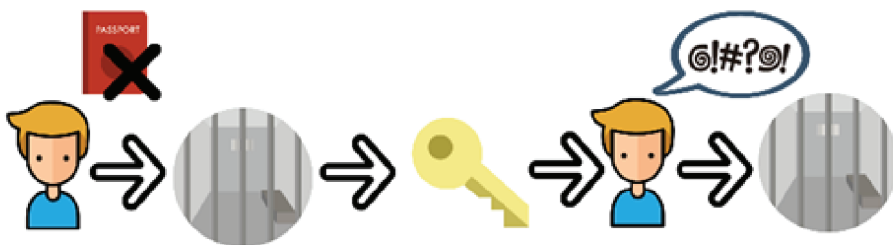
Multiple discrimination is discrimination against a person based on more than one ground. It is an important concept because every stateless person has multiple characteristics (a gender, sexual orientation, ethnicity, age, religion etc.). While from a statelessness practitioner's perspective a person's statelessness status may be the key issue, this may not be the case for the person concerned. Inequality and discrimination rarely operate to isolate a person's stateless identity and often it is a person's multiple characteristics that attract inequality and discrimination. It is likely that stateless girls and women are more vulnerable to multiple discrimination (on the basis of statelessness and gender), disadvantaging them more than stateless men and non-stateless women.

Similarly, it is often not one, but multiple forms of discrimination which lead to statelessness. In Nepal for example, while gender discrimination is the primary driver of statelessness, the rural poor, Dalits and those living in border regions (the Tarai belt) are more likely to be denied citizenship. Understanding and responding to the complex ways in which disadvantage and discrimination intersect, is essential to developing strategies to address statelessness.

The existing understanding in equality and human rights law is that multiple discrimination can take at least two forms:

## Additive Multiple Discrimination ("Additive Discrimination")

Cases of additive discrimination (also known as compound or cumulative discrimination) arise when a person, as a result of multiple identities, experiences separate discriminatory acts in relation to different grounds, each of which contributes to the same less favourable treatment at the same time.

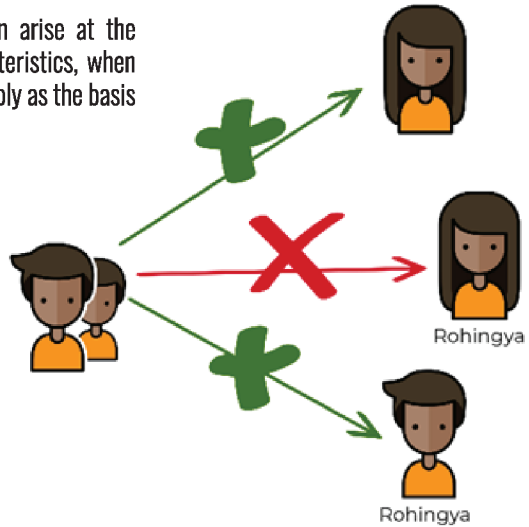


**Example in practice:** Tom is a stateless migrant, subject to removal proceedings. After six months' detention, he is released on bail as he cannot be removed. However, he has to report weekly to the police. Because Tom is also a linguistic minority, he fills out the police forms incorrectly, inadvertently breaking his bail condition. He is re-detained. But for Tom's stateless status added to his status as a linguistic minority, he would not be re-detained.

## Intersectional Multiple Discrimination ("Intersectional Discrimination")

Cases of intersectional discrimination arise at the intersection between personal characteristics, when two or more grounds operate inextricably as the basis of discrimination.

**Example in practice:** Hasina is harassed while walking down the street by a group of Rakhine men, because she is a Rohingya woman. That same group of men do not harass Rakhine women or Rohingya men.



Stateless persons and communities are at risk of being subjected to both additive and intersectional multiple discrimination. Human rights, development and social science research is beginning to unpack the various ways in which multiple discrimination arises in different countries and contexts. Nonetheless, more (and different types of) research and data are needed to go beyond the technical/legal causes of statelessness and look at socio-economic and other barriers to inclusion and their impact on multiple discrimination.

What is clear is that international human rights law has now started to take multiple discrimination seriously. It is frequently raised as a concern in the observations and comments of treaty bodies and the reports of special procedure mandate holders. The CESCR's General Comment No. 20 and Resolution 32/2 of the UN Human Rights Council, setting out the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity are recent examples. Further, newer human rights treaties contain express provisions on multiple discrimination (e.g. Article 6(1) of the CRPD).

As a result, individuals who have been victims of multiple discrimination are now successfully seeking redress before international courts and human rights bodies.

# INEQUALITY AND DISCRIMINATION OF THE STATELESS

**All human beings are born free and equal in dignity and rights.<sup>6</sup>**

Nationality is one among many human rights everyone is entitled to. It is denied to stateless people, yet denial of nationality should not mean other human rights protections should fall away for them. That being said, international law is inherently discriminatory – privileging citizens over non-citizens (e.g. in relation to the right to vote or free movement). These legal rules are based on the principle that everyone will enjoy the rights which attach to nationality somewhere. However, the stateless – perennial outsiders – are disregarded in this calculation. As a result, they:

**“Face challenges in all areas of life, including: entering or completing schooling; accessing healthcare services [...] obtaining a birth certificate [...] falling back on social security [...] obtaining a passport or indeed being issued any form of identity documentation [...] international travel [...] and] free movement”.<sup>7</sup>**

Stateless populations can be vulnerable to discrimination, harassment, incitement to violence and exploitation. They may be seen as less ‘deserving’ of protection and support. They are frequently unable to participate in political and social life. Under these conditions, it is difficult for stateless persons to realise their capabilities and live with dignity, free from poverty. They are also vulnerable to arbitrary and lengthy immigration detention. In extreme cases, stateless persons suffer persecution and endure forced displacement. The denial of their fundamental rights and their exclusion from society is further heightened by their inability to access justice. This results in a vicious cycle, which is difficult to break.

The nature of inequality and discrimination means that left unchecked, it is inevitable. Indeed, in more sinister cases, such as the Rohingya, it is the reason a minority is stripped of its nationality – so that they can be discriminated against more intensely and with less scrutiny, on the justification that they do not belong and are not entitled. Therefore, in addition to continuing to face discrimination on the basis of pre-existing characteristics, a person’s status as stateless often becomes a basis for further discrimination. Both additive and intersectional discrimination have become regular features of the statelessness, inequality and discrimination landscapes.

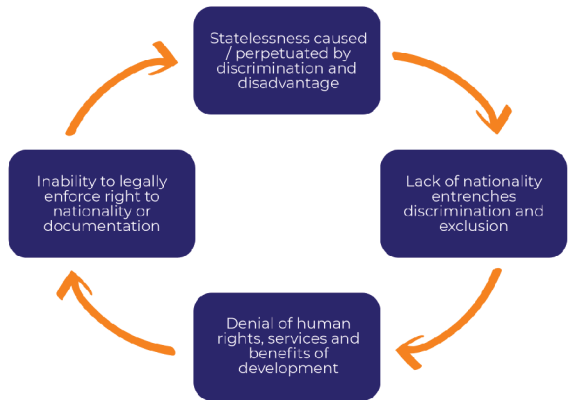
The stateless can be a minority within a minority. For example, marginalisation is both a cause and a consequence of statelessness amongst Roma. It has manifest:

**“as lack of financial means, lack of access to education, to civil status documentation, to governance and democratic structures,<sup>8</sup> to formal employment, to healthcare, and to basic dignity and a sense of self-worth and belonging”.**



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.

Without the means to break this cycle, it continues unabated.



**Equality offers a roadmap for ending this vicious cycle and addressing not only the causes of statelessness but also the inequality and discrimination that stateless persons endure on a daily basis.**

Lessons from human rights history suggest that the equality framework, if proactively used as a tool of first instance rather than a measure of last resort, is capable of countering the oppression and marginalisation that historically vulnerable groups have experienced. The civil rights movement in the USA, the global LGBTQI rights campaign, the push for Roma rights in Europe etc., show that there are benefits of integrating equality frameworks within the theory for change for statelessness. Calls to make equality a structural principle that underpins efforts to end both statelessness and the inequality experienced by stateless groups are compelling for at least five reasons:

1. The equality framework has a strong track record of tackling prejudice, stigma and stereotyping, which fuel inequality and discrimination.
2. The equality framework offers solutions to addressing discrimination as a result of both inherent immutable characteristics (e.g. ethnic origin) and acquired status (e.g. poverty or illiteracy).
3. The equality framework and equality networks can offer civil society space for statelessness movements, wherein for example, Roma rights discourse can include Roma statelessness issues or gender equality discourse can include addressing gender discriminatory nationality laws.
4. Statelessness campaigns can benefit from the technical tools, skills and experience of equal rights practitioners.
5. Key political and legal stakeholders are familiar with equal rights discourses making related awareness raising and communication on statelessness easier.

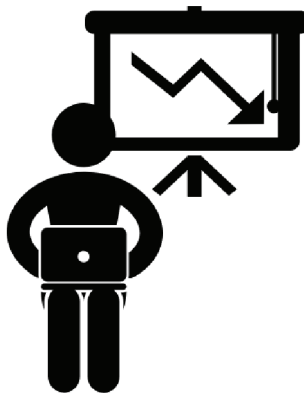
# STRATEGIES TO ADDRESS INEQUALITY AND DISCRIMINATION AGAINST STATELESS PEOPLE

- Strong equality provisions should be the cornerstone of progressive and inclusive human rights strategies for stateless people.
- Statelessness actors should put strategies to address the inequality and discrimination experienced by stateless people at the forefront of their work.
- Stateless people and statelessness actors should adopt a range of strategic tools to counter inequality and discrimination, including:

## Documentation, Monitoring and Research

There is a need for increased monitoring, documentation and research into both the impact of inequality and discrimination in causing statelessness and the inequality and discrimination inflicted on stateless persons. A key lesson learnt from the equality field is that to expose the full range of ways that inequality and discrimination affect vulnerable populations, the information and data gathered through documentation and research should be both qualitative and quantitative. Therefore, it should be a common practice to gather appropriate statistics and evidence in a disaggregated manner that captures the individual's full identity.

So far, monitoring, documentation and research tools have mainly focused on how certain forms of discrimination, for example, gender, race or religion, have perpetuated statelessness and the inequality of the stateless. Less well understood is how more covert forms of inequality and discrimination contribute to the overall stateless problem globally. Statelessness and equal rights actors have yet to gather comprehensive information of the full impact of issues such as discrimination by proxy, indirect or multiple discrimination. Research into these issues as well as the risks of and from statelessness of discrete populations such as girls or the disabled in communities that are vulnerable to statelessness, would improve the understanding of the wider impact of inequality and discrimination in this field.



## Awareness Raising, Communication and Collaboration

There is a need to improve communication between statelessness and equality actors, so that they can become aware of each other's skills and techniques and share good practice on national and international issues. At present, statelessness actors have been relatively successful in developing international and regional statelessness networks. At the same time, equality actors have found success in unifying their agendas and developing national forums to address protection gaps. Increasing convergence between these equality forums and statelessness networks is likely to have a significant strategic impact through sharing good practice, skills and experience and building the capacity of both sets of human rights defenders. Closer collaboration may open new avenues for litigation, advocacy and community empowerment through strengthening the scope and influence of each other's agenda, sharing knowledge to counter common challenges and amplifying each other's voice before national and international political stakeholders



## Community Empowerment

At local and national levels, it is extremely important that stateless communities and those at risk of statelessness are empowered to raise their own concerns and advocate for their own rights. Community empowerment is more than the involvement, participation or engagement of stateless communities. It requires community ownership and action by stateless populations that explicitly targets social and political change. Community empowerment strategies should aim to support stateless outreach programmes, develop local statelessness networks and communication tools, increase the voice of stateless people in political, policy and legal discourses and improve access to the arts and media for stateless communities. In short, stateless individuals and communities must be empowered to become thought, political and legal leaders of their own movements.

An important aspect of community empowerment is that stateless populations are empowered to reach out and form coalitions on a transnational and international basis. Such forums stimulate discussion, support and solidarity so that experiences can be shared and technical skills and resources can be further developed.



## Legal Clinics and Paralegal Initiatives

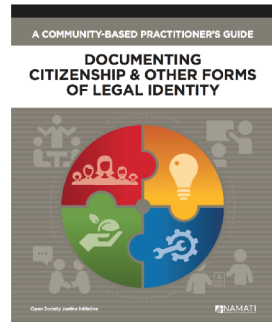
Facilitating legal clinics that provide information to, and improve skills of stateless communities so that they know and can enforce their rights, is a key starting point to ensure their ownership of the stateless agenda. Building the capacity of communities in this way will ensure knowledge and skills are directly imparted to stateless communities. It will also create a foundation for sustainably protecting rights long term.



Paralegal initiatives can also play a very effective role in supporting and advising stateless populations to deal with legal applications and proceedings, and helping them access documentation and citizenship.

### Hot Resource!

Based on the experiences of dozens of existing projects and lessons learnt from across the globe, this Guide by Namati and Open Society Justice Initiative provides step-by-step instructions on establishing paralegal or other community-based programmes to help people obtain legal identity documents and citizenship.



## Advocacy Within Human Rights and other Frameworks

Advocacy targeting national and international human rights actors should aim to put stateless research findings and recommendations firmly on the agendas of political, policy and legal stakeholders. Advocacy strategies should always aim to empower stateless communities by ensuring they can directly advocate for their rights.

- **Effective advocacy** involves building a solid evidence base to support goals.
- **Successful advocacy** strategies should identify partnerships and opportunities for collaboration that will have a multiplier effect.
- **Pragmatic advocacy** requires the clear presentation of aims and objectives to political and legal stakeholders.



Advocacy must be underpinned by clear and concise principles to create effective change for stateless communities. This includes providing network and partnership opportunities for national NGOs and affected persons; facilitating connection and collaboration between those working on statelessness and those working on equal rights; using international and regional human rights mechanisms more effectively; engaging the global development, humanitarian, migration, trade and investment discourses; and working in a more interdisciplinary and intersectoral way.

## Litigation

Whether in a national court of first instance or an international human rights court, litigation is often the principal way of securing redress for infringements of individual or group rights. Courts often have the authority to provide redress by awarding compensation. Some courts have more wide-ranging authority to order restitution, injunct state authorities from acting in a particular way or order authorities to take concrete action to remedy a violation of the applicant's rights. Some seminal judgments can even compel governments to change law, policy or practice. Successful litigation also has a range of auxiliary benefits. It turns a spotlight on the activities of governments and holds them to account for their human rights failures. Important cases can spark public discourse, contribute to public education on significant issues and shape legal policy development.



Victims and human rights defenders pursuing litigation should note that it presents a unique set of challenges. For example, it can be more time consuming and costly than other strategies. However, the equality provisions within international human rights law may mitigate these risks. Where litigation appears to be unjustifiably delayed or expensive, lawyers might argue that unequal access to justice is itself a matter of unlawful discrimination against stateless people. As documentation and research uncovers how inequality and discrimination cause and flow from statelessness, strategic equality litigation, particularly before higher courts, can be a key tool in protecting and advancing the human rights of stateless people. Litigators have successfully adopted the equality framework to protect both stateless people and vulnerable and marginalised groups who have suffered infringements of their rights in a similar way to stateless populations. Using equality provisions within international law has the potential to protect stateless people and unlock new tools against emerging human rights violations.

Finally, it is important to remember that statelessness is a status which is unlikely to be cherished or evoke pride among most of those who share it. In contrast to some communities (ethnic or religious minorities for example), stateless populations are unlikely to celebrate their stateless status, which is often the consequence of discrimination, largely unwanted and a burden on the individual or community.

In this way stateless people share common ground with other groups who have acquired an unwanted status (e.g. poverty). But although stateless people may not want their status, like someone who suffers from poverty, they also do not want to be discriminated because of their acquired status. Therefore, it may also be beneficial for statelessness actors to be guided by strategies used by anti-poverty or harm reduction movements when developing strategies that aim to reduce statelessness and reduce the harmful effects of statelessness.

## FURTHER READING

Below are some key resources on statelessness, equality and discrimination:

- Clifford, J. "Equality", Chapter 18, *The Oxford Handbook of International Human Rights Law*, Ed. Dinah Shelton, Oxford University Press (2013)
- De Chickera, A. and Whiteman, J. "Addressing statelessness through the rights to equality and non-discrimination", Chapter 4, in van Waas L. and Khanna M. (eds.) *Solving Statelessness*, Wolf Legal Publishers (2016)
- Schiek, D, Waddington, L and Bell. M, "Cases, Materials and Texts on National, Supranational and International Non-discrimination Law", Hart Publishing (2007)
- Uccellari, P. "Multiple Discrimination: How law can reflect reality", *The Equal Rights Review*, Volume One (2008)
- Brett, P. 'Discrimination and Childhood Stateless in the work of the UN human rights treaty bodies', in *Institute on Statelessness and Inclusion, The World's Stateless – Children* (2017)
- Statelessness web page of Minority Rights Group International:  
<http://stories.minorityrights.org/statelessness/>

## ENDNOTES

- 1 Clifford, J. 'Equality', Chapter 18, *The Oxford Handbook of International Human Rights Law*, Ed. Dinah Shelton, Oxford University Press (2013), p.428.
- 2 De Chickera, A. and Whiteman, J. "Addressing statelessness through the rights to equality and non-discrimination", Chapter 4, in van Waas L. and Khanna M. (eds.) *Solving Statelessness*, Wolf Legal Publishers (2016)
- 3 UNHRC, General Comment 17, 'Rights of the Child', para. 8
- 4 UNHCR, 'Working with people with disabilities in forced displacement: Need to know guidance', 2011, p. 9, available at: <http://www.unhcr.org/4ec3c81c9.pdf>.
- 5 UN General Assembly, Report of the Special Rapporteur on Contemporary Forms of Racism, A/HRC/38/52, April 2018, para 57.
- 6 Article 1 of the Universal Declaration of Human Rights
- 7 Institute on Statelessness and Inclusion, *The World's Stateless*, Wolf Legal Publishers 2014, pp. 29-30
- 8 ISI, ERRC & ENS, 'Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine', October 2017, p. 43.

# GLOSSARY OF ABBREVIATIONS

<b>1954 Convention</b>	1954 Convention relating to the Status of Stateless Persons
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEDAW Committee</b>	Committee on the Elimination of Discrimination Against Women
<b>CED</b>	Convention for the Protection of All Persons from Enforced Disappearances
<b>CERD</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>CESCR</b>	UN Committee on Economic, Social and Cultural Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>ECHR</b>	European Convention on Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organisation
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WHO</b>	World Health Organisation



## STATELESSNESS & HUMAN RIGHTS The Universal Periodic Review



Institute on  
Statelessness and  
Inclusion

statelessness  
*essentials*

This booklet is number 8 of the Institute's **statelessness essentials** series. Other booklets in the series are:

1. An introduction to statelessness
2. Childhood statelessness
3. All about statelessness: What development actors need to know
4. All about the SDGs: What statelessness actors need to know
5. Statelessness & Human Rights: The Universal Periodic Review
6. Statelessness & Human Rights: The Convention on the Rights of the Child
7. Statelessness & Human Rights: The Convention on the Elimination of All Forms of Discrimination Against Women

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What do inequality and discrimination have to do with statelessness?

When globally at least 15 million people face a life without nationality, it is important to unpack this question, unravel the various ways in which inequality and discrimination cause statelessness and identify how stateless people face inequality and discrimination.

Understanding and addressing inequality and discrimination is critical to the full appreciation of statelessness and related human rights challenges. Further, it is important to understand how stereotypes, prejudice and stigma are used against different groups and communities to fuel inequality and discrimination and cause statelessness.

Lessons learnt from the history of human rights reveal that using the right to equality has been a key tool for combating the inequality and discrimination experienced by groups who have faced marginalisation and oppression. With this lesson in mind, it is essential that statelessness and equal rights actors become familiar with each other's fields so that they understand the extremely important role equality can play in securing equal rights for stateless persons and addressing global statelessness.

If you are an equality practitioner wondering how you might assist to protect vulnerable groups from statelessness or prevent discrimination against people who are stateless, or if you are a statelessness actor struggling to understand how the right to equality can benefit your work, this booklet is for you.

To learn more about this series and other available or forthcoming titles, please visit:

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The Institute on Statelessness and Inclusion is an independent non-profit organisation committed to realising the right to a nationality for all, through our role as expert, knowledge partner, catalyst for action and advocate for change.