

European Network of National Human Rights Institutions Position Paper with Recommendations on the Eradication of statelessness in Europe

1. Introduction

The European Network of National Human Rights Institutions¹ ('ENNHRI') expresses its deep concern that statelessness still exists in Europe, affecting at least 600,000 individuals in the region. ENNHRI calls upon European states, who have primary responsibility for the eradication of statelessness in Europe, to take measures to eradicate statelessness as soon as possible.

Statelessness hinders access to basic human rights. As a stateless person is not considered as a national by any state under the operation of its law,² a stateless person cannot claim protection by any state. This absence of nationality leads some states to deny stateless persons the very documentation that is necessary to enter or reside in any state lawfully.

Furthermore, the right to a nationality is a fundamental human right³ as it is an essential prerequisite to the enjoyment and protection of the full range of human rights. The right to nationality is based on the principle that nobody should be left stateless. A lack of nationality hinders access to basic human rights, such as education and health services. Statelessness increases vulnerability to poverty, discrimination, exploitation and marginalization. It encroaches on one's human dignity.

In its Resolution "Access to nationality and the effective implementation of the European Convention on Nationality"⁴, aiming at reducing and preventing statelessness in the member states of the Council of Europe, the Parliamentary Assembly calls upon the National Human Rights Institutes to take further action on this issue.

In the light of this call, ENNHRI urges European states to take steps to prevent and reduce statelessness and to provide stateless persons with unlimited access to the human rights, as laid down in the 1954 Convention relating to the Status of Stateless Persons.

¹ Please see Annex 1 for more information on ENNHRI.

² Article 1 sub 1 UN Convention relating to the Status of Stateless Persons (1954).

³ Article 15 Universal Declaration of Human Rights and article 4 of the European Convention on Nationality.

⁴ Resolution 1989 (2014).

2. Sign and ratify Conventions

In 2012 the European Union (EU), on behalf of its member states, made a pledge to the Secretary-General of the United Nations that those EU member states that had not yet done so would address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons, and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness.⁵

ENNHRI calls upon European states, if they have not yet done so, without delay to:

- Sign and/or ratify the UN Convention relating to the Status of Stateless Persons of 1954 and the UN Convention on the Reduction of Statelessness of 1961, and without restrictive reservations or declarations;
- Sign and/or ratify the European Convention on Nationality, adopted by the Council of Europe in 1997, and without restrictive reservations or declarations; and
- Act on statelessness issues in line with the four UNHCR Guidelines on statelessness.⁶

3. Stateless children

Nationality is part of a child's identity. Although international legal standards⁷ protect the child's right to acquire a nationality, in Europe children are still being born into statelessness. It is estimated that half of all the stateless people are children. In order to stop statelessness from spreading, it is of utmost importance that children no longer inherit statelessness from their parents.

In order to combat statelessness among children, an effective and inclusive system of birth registration is of great importance. Birth registration ensures official recognition of the facts of a child's birth: birthplace, date of birth and parentage. These facts are decisive in determining which nationality a person acquires.

Due to a lack of proper mechanisms establishing who is stateless or ensuring their access to a nationality, some children are registered as of unknown nationality. Registering children as having 'nationality unknown' should be permissible only to investigate whether or not they are stateless, and this status should not last longer than five years.

The following leading principles are in the best interests of the child and protect a child's right to a nationality.

ENNHRI therefore calls upon European states to:

⁵ <http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>.

⁶ Available here: www.refworld.org/statelessness.html.

⁷ Article 7 CRC, article 24 ICCPR.

- Ensure acquisition of nationality for children born in the territory who would otherwise be stateless, either automatically at birth or following an application procedure. The first option is preferred as it eradicates periods of statelessness all together. Choosing the latter, the period of statelessness should be as short as possible, and no longer than five years of habitual residence. For those states who have signed the UN Convention on the Reduction of Statelessness of 1961, lawful residence may not be imposed as a requirement on the child nor may there be any additional requirement the parent(s) must fulfill (e.g. having lawful residence or being stateless themselves).⁸
- Raise awareness about the importance of birth registration to effectively combat statelessness.
- Strengthen procedures for birth registration so as to eliminate obstacles to registration for all newborns immediately at birth.
- Facilitate late birth registration and alternative forms of evidence such as witness testimony for those who were not registered at birth or whose registration was lost. For some groups this provides an opportunity to break the inter-generational cycle of lack of documentation.
- Give access to birth certificates in the country of birth, regardless of the parent's immigration status, gender or other obstacles in law and practice. Particular attention should be paid to any legislation that conflicts with this right, such as public servants' duty to report irregular migrants.
- Allow for registering children as having 'nationality unknown' only to investigate whether or not they are stateless, and for no longer than five years.

4. Access to rights: a determination procedure

The UN Convention relating to the Status of Stateless Persons of 1954 provides protection and access to fundamental human rights for stateless persons. To assess who has a right to access these human rights, it is important for states to identify who is stateless. The lack of an effective determination procedure leads to insufficient protection of stateless persons and hinders their access to these human rights.

ENNHRI therefore calls upon European states to:

- Establish a statelessness determination procedure in accordance with the definition of article 1 of the UN Convention relating to the Status of Stateless persons.

⁸ Article 1 paragraph 2, UN Convention on the Reduction of Statelessness of 1961.

- Safeguard, in accordance with UNHCR Guidelines on Statelessness 4, that such a procedure, amongst others:
 - is formalized in law;
 - is accessible for everyone on a state's territory, including persons without legal residence;
 - contains a shared burden of proof between the applicant and the state;
 - contains a standard of proof where it is sufficient to establish to a 'reasonable degree' that an individual is stateless;
 - requires an investigation only in those countries with whom the applicant has a bond;
 - refrains from removing the applicant from the territory pending the outcome of the determination process;
 - contains a right of appeal; and
 - results in decisions made and communicated within a reasonable time in order to prevent stateless persons from harsh delays and vulnerable situations facing national authorities.⁹

- Issue a residence permit once statelessness is established. Only then full enjoyment of the human rights as laid down in the UN Convention relating to the Status of Stateless Persons of 1954 is possible.

- Reduce the required period of residence in the country in order to acquire nationality for stateless persons, considering the vulnerability of the stateless persons.¹⁰

5. Awareness raising

For legislation and policy procedures safeguarding the rights of stateless people to be effective, it is important that policy makers and officials are fully aware of the specific needs and requirements of stateless persons.

In addition there is a need of gathering information on statelessness, its scope, causes and consequences (figures worldwide).

ENNHRI therefore calls upon European states to:

- Initiate an action plan in order to raise awareness with policy makers and officials at a national and local level on the issue of statelessness and make compulsory regular training courses on statelessness to officials and public servants.

⁹ UNHCR GUIDELINES ON STATELESSNESS NO. 2: Procedures for Determining whether an Individual is a Stateless Person, section 19.

¹⁰ This in line with the European Convention on Nationality, article 6 (4 sub g) and the 1954 UN Convention relating to the Status of Stateless Persons. Article 32 of the 1954 Convention states that 'The Contracting states shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'

- Establish a national Statelessness Registry with disaggregated data on gender, age, origin.

6. Council of Europe, Committee of Ministers

In April 2014 the Parliamentary Assembly of the Council of Europe adopted a Recommendation on Access to nationality and the effective implementation of the European Convention on Nationality.¹¹ It recommends that the Committee of Ministers:

- Examine ways and means of promoting accession to the European Convention on Nationality, as well as its speedy implementation at national level, and draft a recommendation on this matter;
- Re-establish an expert committee on nationality; and
- Stimulate and supervise that the member states establish a statelessness determination procedure at the national level.

Given the continuing existing of statelessness in Europe and the vulnerable position of this group, ENNHRI respectfully urges the Committee of Ministers to accept and implement the Recommendation of the Parliamentary Assembly.

7. European Union

Roma

Today an estimated 10-12 million Roma live in Europe, an unknown number of them is stateless. Roma face prejudice, intolerance, discrimination and social exclusion in their daily lives. They are marginalized and live in very poor socio-economic conditions.

In 2011 the European Commission adopted a Communication calling upon the member states to develop a *national strategy for Roma integration* to achieve progress towards Roma integration. Four common areas for improvement were set: education, employment, health and housing.

By March 2012, all member states had presented a national strategy. Based on the assessment of these strategies, the European Commission made a set of policy recommendations in each area to point out priorities that Member States should further address.

ENNHRI stands ready to assist the European Commission to make sure the Member States include in their national strategies measures to prevent and combat statelessness among Roma. Statelessness is at the base of their integration problems and should be tackled without delay.

¹¹Recommendation 2024 (2014).

EU Agenda Home Affairs

Although access to nationality falls within the national sovereignty of member states, statelessness often occurs within the context of migration. As the European Union has extensive powers in that field¹², it is a starting point for addressing statelessness and providing protection through migration policy. Although statelessness is not a separate protection ground in the Common European Asylum System, the frequent references to this legal status in several EU Directives¹³ require that stateless persons are identified in a consistent manner across the EU Member States. ENNHRI calls upon the European Commission to develop instruments to ensure this.

Given the fact that the future agenda for EU Home Affairs policies 2015-2020 is now being developed, ENNHRI calls upon the European Council to include the identification and protection of stateless people on their agenda.

The European Network of National Human Rights Institutions (ENNHRI) will be represented at the Global Forum on Statelessness on 15 to 17 September 2014 in The Hague, Netherlands.

¹²TFEU, Title V, Chapter 2.

¹³Directive 2011/95/EU (Qualification Directive) and Directive 2013/32/EU (Procedures Directive).

ANNEX 1: About ENNHRI

The European Network of National Human Rights Institutions (ENNHRI) brings together National Human Rights Institutions (NHRIs) from across wider Europe.

NHRIs are state funded institutions, independent of government, with a broad legislative or constitutional mandate to promote and protect human rights. Although the specific mandates of NHRIs may differ, their functions generally include: monitoring; research; advising government and parliament; reporting to international treaty bodies; complaints handling; providing legal assistance; human rights education; training; and awareness raising.

NHRIs are accredited by reference to the UN Paris Principles to ensure their independence, plurality, impartiality and effectiveness. Once accredited, they receive speaking rights before various UN bodies, including the Human Rights Council. Globally, NHRIs form part of a global network of NHRIs (ICC) as one of four regional groups: Africa, Americas, Asia-Pacific and Europe.

ENNHRI was previously known as the European Group of NHRIs, which has been working for over 15 years to enhance the promotion and protection of human rights across Europe. ENNHRI's main areas of work are: aiding in the establishment and accreditation of NHRIs; facilitating capacity building and training; coordinating exchange of information and best practice between members; engaging with regional mechanisms; and intervening on legal and policy developments at a European level.

ENNHRI has permanent observer status at the Council of Europe's Steering Committee for Human Rights (CDDH) and has intervened in strategic litigation before the Strasbourg Court. ENNHRI works closely with its regional partners, such as the Council of Europe, OSCE-ODIHR, the EU Agency on Fundamental Rights, the EU institutions, OHCHR Europe Regional Office, UNDP Europe, Equinet and European civil society organisations.

ENNHRI's work is driven by its Chair and its six member Coordinating Committee (ECC). In addition, it has several working groups to coordinate its work in thematic areas, such as disabilities, asylum and migration, economic and social rights in times of economic crisis, and human rights and older persons. In 2013, ENNHRI established a Permanent Secretariat in Brussels. The Secretariat facilitates ENNHRI's work, by reference to its Strategic Plan 2014-16, and provides a central contact point for stakeholders.

Since 2008, ENNHRI has focused some of its work through an Asylum and Migration Working Group ('the Working Group'). The Working Group underlines that freedom of movement is both a human right and a fundamental freedom, which impacts on the enjoyment of many other human rights. The Working Group shares knowledge and experience in order to strengthen regional and international cooperation in the field of asylum and migration. It also provides support to members in addressing contemporary challenges in this area. The members of the Working Group come together to provide a stronger regional voice, in order to impact on policy, legislation and jurisprudence. The Working Group also facilitates engagement with regional mechanisms on asylum and migration issues.