2024 CERD Regional consultation – Racial discrimination in the enjoyment of the right to health

European Network on Statelessness

5 March 2024

Harmful practices (theme III)

- The right to access healthcare and social security usually depends on **residence or migration status**. While people recognised stateless or with international protection status are usually permitted to access these rights, stateless migrants who only hold a temporary residence permit or a form of 'tolerated' or irregular stay will often face significant challenges in accessing healthcare, which is generally limited to emergency care only. Similarly, *in situ* stateless populations who lack identity documents and/or proof of nationality also face significant barriers to accessing healthcare.[1]

- Stateless people often face various obstacles in obtaining **identification documents** necessary to access healthcare, which is exacerbated where they also face discrimination due to belonging to a minority group. The inability to **register children at birth** can also limit an individual's access to basic rights such as healthcare. This disproportionately impacts minority groups such as Romani people due to a range of factors, including inability to meet documentary evidence requirements, discriminatory attitudes of registry officials, and poverty and marginalisation.[2] Children in migration in Europe are also impacted due to barriers to birth registration, and a lack of awareness about (risk of) statelessness and lack of procedures to identify where a child born in transit or in a host country would otherwise be stateless.[3]

- **Other barriers** to access healthcare include institutional mistrust, discrimination on the part of healthcare providers, and financial, health literacy, language, cultural, and logistical barriers.[4]

- Many stateless people and those at risk of statelessness report refraining from accessing healthcare due to a **fear that their lack of residence status could put them at risk** of detention, deportation, refusal of services, or further discrimination when accessing health services. They often additionally fear that service providers will **share information** about

[1] European Networks on Statelessness (ENS), Report: Situation assessment of statelessness, health, and COVID-19 in Europe Covid report (April 2021), p. 8.
[2] ENS, Submission to the UN Special Rapporteur on violence against women and girls (May 2023).
[3] ENS, No child should be stateless: Ensuring the right to a nationality for children in migration in Europe (2020).
[4] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), p. 3.

their insecure residence status with law enforcement or immigration authorities.[5] In Europe, very few countries have firewalls prohibiting the exchange of information between health and immigration authorities (e.g. there are no firewalls in Albania, Bulgaria, North Macedonia, Montenegro, Romania, and Ukraine),[6] and in some countries, public officials must mandatorily report certain immigration matters to the enforcement authorities (e.g. in Belgium).[7]

- There are reports that women and children may be excluded from **reproductive healthcare** services because of their statelessness, lack of health insurance or financial means, or due to discrimination. Undocumented and stateless women may also be unable to access hospitals to give birth, particularly those belonging to minoritized communities such as Roma who may lack access to health insurance due to their lack of legal identity and may also live in rural areas. Undocumented mothers may not be allowed to register the births of their children without having their own situation regularised, which often is a complex bureaucratic process.[8] In many countries, a child can only be registered at birth if the parents (particularly the mother) are able to submit certain identification documents (e.g. in Montenegro and Serbia).[9]

- Harmful practices such as **child, early and forced marriages** have remained unaddressed in some countries and have a detrimental impact on girls' access to their right to health. In Serbia, for example, such practices almost exclusively affect the Roma community and have been inadequately addressed by the State under the misguided pretext that they are 'part of Roma tradition and culture' rather than a serious violation of the rights of the child and the rights of women and girls. Such prejudices and stereotypes are very harmful and prevent an adequate response. Lack of legal identity can be an exacerbating factor in limiting women and girls' choices, and can be a consequence of such practices if women and girls have limited agency to regularise their documentation or residence status, or access public services.[10]

- **Covid-19** has exacerbated pre-existing discrimination and marginalisation experienced by many stateless people in Europe. There were widespread reports of xenophobia, racism and antigypsyism towards migrants, refugees, and minority groups during the pandemic, sometimes fuelled by political rhetoric blaming particular groups for the spread of disease.[11] Stateless people may not have full access to public health information or be included in health policies and responses during emergencies such as COVID-19.

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[5] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), p. 3.
[6] ENS, Submission to the UN Special Rapporteur on violence against women and girls (May 2023).
[7] ENS, Submission to the UN Special Rapporteur on violence against women and girls (May 2023).
[8] ENS, Submission to the UN Special Rapporteur on violence against women and girls (May 2023).
[9] ENS, Submission to the UN Special Rapporteur on violence against women and girls (May 2023).
[10] Praxis, League of Roma SKRUG, Institute on Statelessness and Inclusion, ENS, and European Roma Rights Centre, Joint alternative report submitted to the 94th session of the Committee on the Elimination of Racial Discrimination in relation to the second and third reports of Serbia (October 2017).
[11] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), p. 3.

- Statelessness can have a significant impact on **mental health**. Not having a nationality leads to feelings of invisibility, a perceived lack of identity and sense of belonging, being misunderstood,[12] stress and fatigue within bureaucratic systems, as well as trauma on children. This is an underexamined issue within literature on statelessness and on mental health, but nevertheless is a daily reality for those affected, severely undermining their right to health. Resources, awareness-raising, and further research are crucial to address the mental health impact of statelessness.

- There is a **lack of empirical data** regarding health in stateless communities, meaning the true impact of discrimination cannot be fully understood. This exacerbates the discrimination of minority groups disproportionately affected by statelessness, such as Romani communities in Europe, leading to neglect within public health policy.[13]

We **recommend** that, in General Recommendation no 37, the CERD encourages Contracting States to:

- Ensure equal access to health services for stateless people regardless of nationality, residence, or documentation status.[14]
- Register all children immediately upon birth regardless of the migration or residence status of their parents or family members[15] and simplify birth registration procedures and access to birth certificates[16]
- Remove mandatory requirements for authorities to report undocumented individuals to immigration authorities and clearly prohibit the sharing of information about migrants suspected of irregular residence status with immigration authorities.
- Guarantee the right to health of all on their territory, including stateless people and including during and after pandemics such as the COVID-19 pandemic.[17]
- Address xenophobia, racism and antigypsyism that has increased during the Covid-19 pandemic and ensure that State responses do not fuel this. [18]
- Address through training and other measures prejudicial and stereotypical attitudes that prevent adequate responses to child, early, and forced marriages in minority communities
- Adopt measures to eradicate institutional racism and antigypsyism and involve stateless people in the development of activities targeting healthcare and other service providers.[19]

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[12] Nina Murray & al., Spotlighting Romani women's activism and role in addressing statelessness in Europe (2021); ENS & Rosa Luxemburg Stiftung, in collaboration with Romani women activists, Briefing: Romani women's activism and role in addressing statelessness in Europe (2021).

[13] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021).

[14] (Covid briefing, p. 4: https://www.statelessness.eu/sites/default/files/2021-04/ENS_Health_Situation_Assessment_Europe-Briefing.pdf)

[15] UN Convention on the Reduction of Statelessness, 1961: Articles 1 and 4; International Covenant on Civil and Political Rights, 1966: Article 24(2); Convention on the Rights of the Child, 1989: Articles 3 and 7; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7.

[16] ENS, Submission to the UN Special Rapporteur on violence against women and girls (May 2023).

[17] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), p. 3.

[18] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), pp. 5-6.

[19] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), pp. 5-6.

- Carry out participatory and ethical research on the right to health with stateless populations with participatory methodologies being prioritised to ensure the voices of diverse stateless people are heard.[20]
- Address the invisible nature of statelessness by improving available data, including (anonymised) health monitoring data, to support evidence-based policy and programming. [21]

[20] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), p. 6.
[21] ENS, Briefing: Situation assessment of statelessness, health, and COVID-19 in Europe (April 2021), p. 6.

General observations on the first draft of the General Recommendation N° 37 (theme IV)

- While the foregrounding of intersectionality in Paragraph 9 of the draft General Recommendation is welcomed, an explicit mention of statelessness would expand the value of this intersectional analysis to encompass the role of statelessness or nationality status in undermining the right to health.
- Paragraph 10 notes how the exclusion from access to documents or identification constitutes direct discrimination under the Convention where it is required to exercise the right to health. An explicit reference to statelessness as a cause and consequence of lack or loss of documents and residence or nationality status would be a welcome addition to foreground the vulnerability of *in situ* populations who are stateless or at risk of statelessness in accessing the right to health, alongside the reference to forced movement.
- This is also relevant to Paragraph 16 of the draft General Recommendation, where the specific vulnerabilities of *in situ* stateless populations could be further emphasised. Historic discrimination is a significant cause of *in situ* statelessness, for instance among Romani communities in Europe, and requires nuanced solutions to advance their right to health that may differ from groups from migratory backgrounds.
- While stateless people enjoy protection under this Convention, the roots of their discrimination can often be more invisible than for other groups that experience discrimination. As such, the identification and determination of statelessness through a dedicated statelessness determination procedure, leading to a protection status, grounded in national law, is vital to improve access to healthcare among the stateless population, both during the application and once recognised stateless. This relates to the obligations to introduce wide measures to eliminate all forms of discrimination outlined in Paragraphs 24 and 25, as well as for the monitoring and measuring of health-related discrimination outlined in Paragraph 32.
- The identification of statelessness is also crucial to address the intersectional challenge of statelessness within groups that experience other forms of discrimination on, *inter alia*, racial or ethnic grounds, or gender grounds. The fact that nationality enables access to rights, combined with patriarchal and gendered norms, discrimination, and historic deep-rooted antigypsyism often means that stateless people, who are women and/or Romani, for example, may have limited economic independence, access to information and access to social security, and therefore be prevented from fulfilling rights such as access to healthcare.
- There is no recommendation regarding the nexus between birth registration, statelessness, and access to healthcare. The experiences of Romani communities exemplify the scope of the problem where children are not registered at birth, exacerbating health inequality. This requires legislative and policy measures to mitigate this structural inequality for minority and stateless groups.