



European
Network on
Statelessness

11 May 2023

SUBJECT: Submission to the Special Rapporteur’s upcoming Thematic report on the nexus between violence against women and girls, discrimination in nationality laws, and statelessness

Dear Special Rapporteur Alsalem,

The European Network on Statelessness (ENS)¹ welcomes this opportunity to inform the Special Rapporteur’s upcoming Thematic report on the nexus between violence against women and girls, discrimination in nationality laws, and statelessness.

Please find below a summary of the main findings and recommendations from our research, drawn from our [Statelessness Index](#) and previous consultations held with ENS members, including community members and Romani women activists.

While no country in Europe has discriminatory nationality laws that explicitly deny women the right to confer their nationality on their children on an equal basis with men, significant gender-related barriers remain in the implementation of nationality laws, access to birth registration, and consequent impact on the enjoyment of fundamental rights.

I. Reproductive healthcare and birth registration

Registering births is crucial to prevent statelessness, as it allows the facts necessary to determine the child’s nationality status to be recorded. In Western Balkan countries, for example, Roma, Ashkali and Egyptian communities are disproportionately impacted by barriers to birth registration² due to a range of factors, including inability to meet documentary evidence requirements, discriminatory attitudes of registry officials, and poverty and marginalisation.³ Children in migration in Europe can also face barriers to the registration and documentation of their births,⁴ as lack of awareness about statelessness and procedures to identify and protect stateless people increase the risk of statelessness and can expose stateless children to immigration detention and other violations of their fundamental rights. Difficult access to reproductive healthcare for some women, both refugees and from minoritized communities, also has consequences on their children’s birth registration and access to documentation to acquire or confirm a nationality.

¹ The [European Network on Statelessness](#) (ENS) is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 180 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments.

² ENS & Rosa Luxemburg Stiftung, in collaboration with Romani women activists, [Briefing: Romani women’s activism and role in addressing statelessness in Europe](#) (2021)

³ See [ENS Statelessness Index](#) on North Macedonia, Montenegro, Romania, Albania, Bulgaria, Serbia and Ukraine.

⁴ ENS, [No child should be stateless: Ensuring the right to a nationality for children in migration in Europe](#) (2020).

1. Documentation requirements

There are reports that women and children may be excluded from healthcare services because of their statelessness, lack of health insurance or financial means, or due to discrimination. Women may also be unable to access hospitals to give birth, particularly those belonging to minoritized communities such as Roma who may be undocumented and live in rural areas.⁵ Women who give birth at home may encounter more difficulties in registering the birth of their child, because of additional documentation required. To circumvent strict financial requirements, there are also instances of women who borrow the health insurance card of a friend or family member to give birth at a health institution. In such cases, their child is registered with the name of the cardholder, which creates many ensuing issues and may lead to the child's nationality status or statelessness not being adequately identified.⁶ Sometimes, mothers who are undocumented are not allowed to register the birth of their children without having their own situation regularised, which often is a complex bureaucratic process.

In many countries, a child can only be registered if the parents (particularly the mother) are able to submit certain identification documents.⁷ In **Germany**, to register a birth, unmarried parents must submit the birth certificate of the mother and declaration of paternity, birth certificate of the father, and custody declarations (if available).⁸ In **North Macedonia**, where the mother of the child is unregistered or does not possess a valid ID card or residence permit, she cannot register her child and a birth certificate will not be issued.⁹ In **Montenegro**, in practice, there are bureaucratic barriers to registering a child's birth if the parents are undocumented, particularly if they are not receiving support or advice from an NGO.¹⁰ In **Serbia**, late birth registration is possible but it is a complex and lengthy procedure that requires the mother to be present and registered.¹¹

2. Reporting requirements

Measures adopted to report people with irregular residence to immigration authorities represent additional challenges for registering the birth of children, especially for mothers. In Europe, very few

⁵ Tirana Legal Aid Society, Institute on Statelessness and Inclusion (ISI), ENS, & European Roma Rights Centre (ERRC), Joint submission to the Human Rights Council at the 33rd session of the Universal Periodic Review (Third Cycle), Albania, 4 October 2018.

⁶ Nina Murray & al., [Spotlighting Romani women's activism and role in addressing statelessness in Europe](#) (2021).

⁷ ENS, [Thematic briefing: Birth registration and the prevention of statelessness in Europe: Identifying good practices and remaining barriers](#) (2020), p.8-10.

⁸ ENS, [Statelessness Index: Germany; Statefree, ENS, ISI, Joint submission to the Human Rights Council at the 44th session of the Universal Periodic Review \(Fourth Cycle\), Germany](#), 5 April 2023.

⁹ ENS, [Statelessness Index: North Macedonia; Macedonian Young Lawyers Association, ISI, ENS, ERRC & Minority Rights Group International, Joint submission to the Human Rights Council at the 32nd session of the Universal Periodic Review \(Third Cycle\), Macedonia](#), 12 July 2018.

¹⁰ ENS, [Statelessness Index: Montenegro](#). The Committee on the Elimination of Racial Discrimination (CERD) called on Montenegro to 'ensure the registration of children in cases where the mother is unknown or lacks an identification document and continue efforts to provide them with identification documents and with legal aid, when necessary, for birth registration'. See CERD, Concluding observations on the combined fourth to sixth periodic reports of Montenegro, 19 September 2018, CERD/C/MNE/CO/4-6, para 15(f). In October 2019, under UNHCR's global #IBelong campaign, Montenegro pledged to ensure effective birth registration of children whose mothers do not have identification documents.

¹¹ ENS, [Statelessness Index: Serbia](#). See also [Praxis & ENS, Joint submission to the Human Rights Council at the 43rd Session of the Universal Periodic Review \(Fourth Cycle\), Serbia](#), 11 October 2022.

countries have firewalls prohibiting the exchange of information between health and immigration authorities, and in some countries public officials must mandatorily report certain immigration matters to the enforcement authorities. These measures may deter mothers with irregular residence status, which is often the case for stateless women, from registering their child or attending a public health institution to give birth.

In **Belgium**, public servants including civil registrars are required by law to report undocumented migrants to the immigration authorities.¹² In the **UK**, public health services are required to report certain immigration matters to the authorities and some undocumented migrants are subject to charging for healthcare, which may deter them from accessing services and could discourage birth registration (though no recent cases have been reported).¹³ In **Germany**, there are reports of refugees and undocumented migrants facing barriers to birth registration due to missing documents or fear of being deported.¹⁴

In other European countries, while there are no mandatory reporting requirements, there is no firewall prohibiting sharing of information between health or civil registration services and immigration authorities, which can constitute a barrier to civil registration, for example in **Ukraine**,¹⁵ **Albania**,¹⁶ and **Romania**.¹⁷ Due to the absence of a clear firewall, there is evidence that some information is shared in practice in **Bulgaria**,¹⁸ **North Macedonia**,¹⁹ and **Montenegro**.²⁰ In **Serbia**, a non-legally binding instruction issued in 2020 requires health institutions to inform the nearest police station about the birth of a child whose mother is undocumented, although so far there are no known cases of undocumented mothers who have been reported.²¹

II. Effects of gender discriminatory laws for children in Europe

Children are still born stateless in Europe, often to mothers who cannot pass on their nationality according to discriminatory nationality laws of their country.²² This is mostly due to the lack of safeguards in the nationality laws of European countries for children born in their territory who would otherwise be stateless to acquire the nationality of that country. Where such safeguards exist, they are sometimes only partial or inadequately implemented. In **Bulgaria**, in 2019 a protection gap was reported regarding children born to foreign mothers whose country of nationality does not allow women to pass nationality to children, as civil registry officials often register the child as having the mother's nationality without identifying the potential risk of statelessness.²³ In **Germany**, if there is no marriage certificate,

¹² ENS, [Statelessness Index: Belgium](#).

¹³ ENS, [Statelessness Index: United Kingdom](#).

¹⁴ ENS, [Statelessness Index: Germany](#).

¹⁵ ENS, [Statelessness Index: Ukraine](#).

¹⁶ ENS, [Statelessness Index: Albania](#).

¹⁷ ENS, [Statelessness Index: Romania](#).

¹⁸ ENS, [Statelessness Index: Bulgaria](#).

¹⁹ ENS, [Statelessness Index: North Macedonia](#).

²⁰ ENS, [Statelessness Index: Montenegro](#).

²¹ ENS, [Statelessness Index: Serbia](#).

²² For more information on gender equality in nationality laws regarding conferral of nationality on children globally, see UNHCR, [Background Note on Gender Equality, Nationality Laws and Statelessness 2023](#).

²³ ENS, [Statelessness Index: Bulgaria](#); [Foundation for Access to Rights: FAR](#) practice.

which is required for birth registration, German officials may only register the name of the mother, which can lead to a risk of statelessness if the laws of her country of origin do not allow women to confer their nationality to their children (and the child does not acquire German or any other nationality).²⁴

A specific context where gender discriminatory laws impact children with links to European countries concerns **children associated with alleged 'foreign fighters' in Iraq and Syria**. For example, in the Netherlands, children born in these countries to a Dutch father and a Syrian or Iraqi mother will face significant challenges in obtaining a nationality, as Syria and Iraq do not allow women to pass on their nationality to their children, and a Dutch father must be married to the foreign mother to pass on his nationality automatically. A religious marriage or one celebrated under the authority of non-State actors in Iraq or Syria may be difficult to have recognised in the Netherlands and could require a judicial establishment of paternity in the Netherlands. When parents do not share a common nationality or habitual residence, the court applies the law of the place of residence of the child, and in Iraq or Syria the law does not allow a judicial establishment of paternity, which prevents the child from obtaining Dutch nationality. The Court of The Hague has nevertheless accepted that Dutch law should be applied to establish paternity in this case in 2018, which prevents statelessness. This shows that a broad application of domestic law is necessary to fulfil international obligations to prevent statelessness and counter the effects of nationality gender discriminatory laws.²⁵

In **Malta**, there are discriminatory limitations in the nationality law that create distinctions between children born in and out of wedlock and children who are and are not recognised by their father. A child born in Malta on or after 1 August 1989 to unmarried parents and not recognised shall only become Maltese if the mother is a Maltese national, which leaves a risk of statelessness if only the father is Maltese and the mother cannot confer her nationality to the child, as long as the safeguard against children born stateless on the territory is not implemented in practice. Under these same limitations, children born abroad to a Maltese father and foreign mother out of wedlock on or after 1 August 1989 would also fail to acquire Maltese nationality, even if rendered stateless. Despite being ruled discriminatory by the European Court of Human Rights in 2011, the law still contains these limitations. Unmarried Maltese fathers are required to undergo paternity testing for their child's Maltese nationality to be recognised, as Malta endorses the principle *mater semper certa est*.²⁶

III. Intersectional effects of statelessness on women and girls' access to rights

The fact that nationality enables access to rights, combined with patriarchal and gendered social norms, often means that stateless women or women at risk of statelessness have limited economic independence, access to information, language and literacy rates, and access to social security, and are therefore prevented from fulfilling other rights, such as education, employment, healthcare, housing, and access to justice. Access to rights can further be prevented for Romani women because of

²⁴ ENS, [Thematic briefing: Birth registration and the prevention of statelessness in Europe: Identifying good practices and remaining barriers](#) (2020), p.8-10.

²⁵ René de Groot & al., [Expert opinion: How the Netherlands, France and the UK are leaving children stranded at risk of statelessness in Iraq and Syria](#) (2021); [Court of The Hague, 3 December 2018, ECLI:NL:RBDHA:2018:16305](#).

²⁶ ENS, Statelessness Index: Malta; *Genovese v Malta*.

marginalisation, discriminatory attitudes, and a lack of trust in public authorities due to historic deep-rooted antigypsyism.²⁷

Statelessness may exacerbate women's experience of gender-based violence, and vice-versa.²⁸ Lack of documentation can be used against them as a form of coercion,²⁹ and having no nationality or being undocumented means that women may face significant obstacles to leave abusive relationships and seek assistance from public officials.³⁰ Stateless women may also face increased difficulties in regularising their status if they are unable to access legal advice due to other compounding issues, for example if they have caring responsibilities, an abusive partner, or limited economic means.³¹ This may also limit their ability to meet the income requirements or pass language and citizenship tests often required for naturalisation, as they may struggle to learn the local language and culture.³² Not having a nationality often results in a perceived lack of identity and sense of belonging, which may lead to psychological harm.³³

The nexus between statelessness and gender-based violence has not been paid sufficient attention and the current focus of the UN Special Rapporteur on Violence against Women and Girls on this topic is very welcome.³⁴

In light of the above, we recommend that the Special Rapporteur encourages national governments to:³⁵

²⁷ Nina Murray, [Join the feminist revolution in work to address statelessness](#) (2019); 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).

²⁸ 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).

²⁹ 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).

³⁰ UN Human Rights Council, [Discrimination against women on nationality related matters, including the impact on children : Report of the Office of the United Nations High Commissioner for Human Rights](#), 15 March 2013, A/HRC/23/23, paragraph 53.

³¹ Nina Murray, [Join the feminist revolution in work to address statelessness](#) (2019); ENS & Rosa Luxemburg Stiftung, in collaboration with Romani women activists, [Briefing: Romani women's activism and role in addressing statelessness in Europe](#) (2021).

³² UN Human Rights Council, [Discrimination against women on nationality related matters, including the impact on children : Report of the Office of the United Nations High Commissioner for Human Rights](#), 15 March 2013, A/HRC/23/23, paragraph 23.

³³ 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).

³⁴ ENS & Rosa Luxemburg Stiftung, in collaboration with Romani women activists, [Briefing: Romani women's activism and role in addressing statelessness in Europe](#) (2021).

³⁵ For more detailed recommendations, see ENS & Rosa Luxemburg Stiftung, in collaboration with Romani women activists, [Briefing: Romani women's activism and role in addressing statelessness in Europe](#) (2021); UN Human Rights Council, [Discrimination against women on nationality related matters, including the impact on children: Report of the Office of the United Nations High Commissioner for Human Rights](#), 15 March 2013, A/HRC/23/23,

- Take measures to improve access to reproductive healthcare for women, in particular from minoritized communities, and improve and simplify birth registration procedures and access to birth certificates.
- Increase and improve training for public authorities, frontline officials, NGOs, and legal practitioners on the nexus between statelessness and gender discrimination, to take a gendered and intersectional approach in decision-making and in the support and advice provided.
- Ensure that women and girls can access expert legal assistance to address their residence status and acquire a nationality.
- Collaborate with international organisations and civil society to ensure that statelessness is identified, that stateless people are protected, and that measures are taken to prevent and reduce statelessness, in particular with regards to women and girls from minoritized communities.
- Take measures to exempt stateless people and people at risk of statelessness from requirements such as nationality or integration tests, language testing, application fees, or minimum income requirements for naturalisation, which is important to address gender-based discrimination as women are often more penalised by these requirements.
- Take measures to eliminate gender-based discrimination, to ensure that nationality laws and practices do not discriminate directly or indirectly against women, eliminate antigypsyism, and ensure that stateless women do not face additional obstacles by being subject to intersectional forms of discrimination.
- Improve data collection as well as research, awareness raising and engagement with affected communities on women and girls' right to a nationality.

paragraph 72; recommendations from the Committee on the Elimination of Discrimination Against Women (CEDAW), for example [Concluding observations on the sixth periodic report of the former Yugoslav Republic of Macedonia, 14 November 2018, CEDAW/C/MKD/CO/6](#), paragraph 32; recommendations during the Universal Periodic Review (UPR), for example [Report of the Working Group on the Universal Periodic Review, Bosnia and Herzegovina, 4 December 2014, A/HRC/28/17](#), paragraph 107.