ATLAS OF THE STATELESS

Facts and figures about
exclusion and displacement

ROSA LUXEMBURG STIFTUNG

IMPRINT

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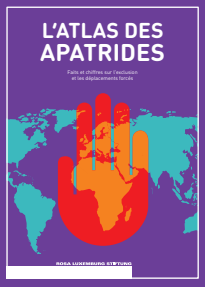

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2020

INTRODUCTION

THE STATELESS NEED RIGHTS, PROTECTION AND A VOICE

Invisible." "Excluded." "Worthless." These are just a few of the words stateless people often use to describe themselves. Invisible – the topic of statelessness and stateless people themselves play virtually no role in public discussion. This means that their problems go unheard and remain unresolved. Excluded – stateless people are regarded as not belonging to the societies they live in. This means that they are seen as different or foreign. Worthless – without education and a livelihood it is often difficult to make a meaningful contribution to society.

It is difficult to determine how many people are stateless worldwide because the data are so incomplete. Germany also has no specific procedure for determining the extent of statelessness. In its October 2019 mid-term report, the IBelong Campaign to end statelessness – launched by the UN Refugee Agency (UNHCR) in November 2014 – called for improvements to the data situation. The campaign aims to identify and protect stateless people by ending their current statelessness status and preventing new cases from arising.

This Atlas of the Stateless not only aims to make this invisible issue more visible, but also to show how solutions are possible for each of the situations and problems it presents. We have not attempted to be comprehensive in our coverage. Rather, we hope to draw attention to the many facets of this diverse topic. People become stateless for many different reasons: deprivation of citizenship, flight or expulsion, religious discrimination, or the consequences of a nomadic way of life. The effects on those affected are as varied as they are far-reaching. Stateless people are especially vulnerable because no state protects them, and they lack access to basic rights.

But measures exist to end statelessness. Children would not have to be born stateless if births were registered where they occur. The elimination of gender discrimination from citizenship laws would make it possible for women to pass on their nationality to their children wherever they are in the world, thus protecting them from statelessness. The plight of stateless migrants could be adequately addressed by easing their naturalization in their countries of residence and revoking their status as stateless.

The basic prerequisite for resolving the problem is more, and better-quality, data about stateless population groups. In addition, self-help organizations of those affected, supported by civil society, should play a much stronger role, along with government institutions and organs of the United Nations. But the most relevant issue is the access of stateless persons to their rights. One approach for this could be the concept of "global social rights" – the same rights for all people, regardless of their origin, place of residence, gender, skin colour or cultural background. This is about human rights to which everyone is entitled. Our society and the international community are far from ensuring that the "right to rights" is a guiding principle in everyday consciousness and political action. The Rosa-Luxemburg-Stiftung has worked intensively on this topic for several years. This Atlas once again reminds us of how important it is.

Dr Dagmar Enkelmann
Chair of the Executive Board, Rosa-Luxemburg-Stiftung

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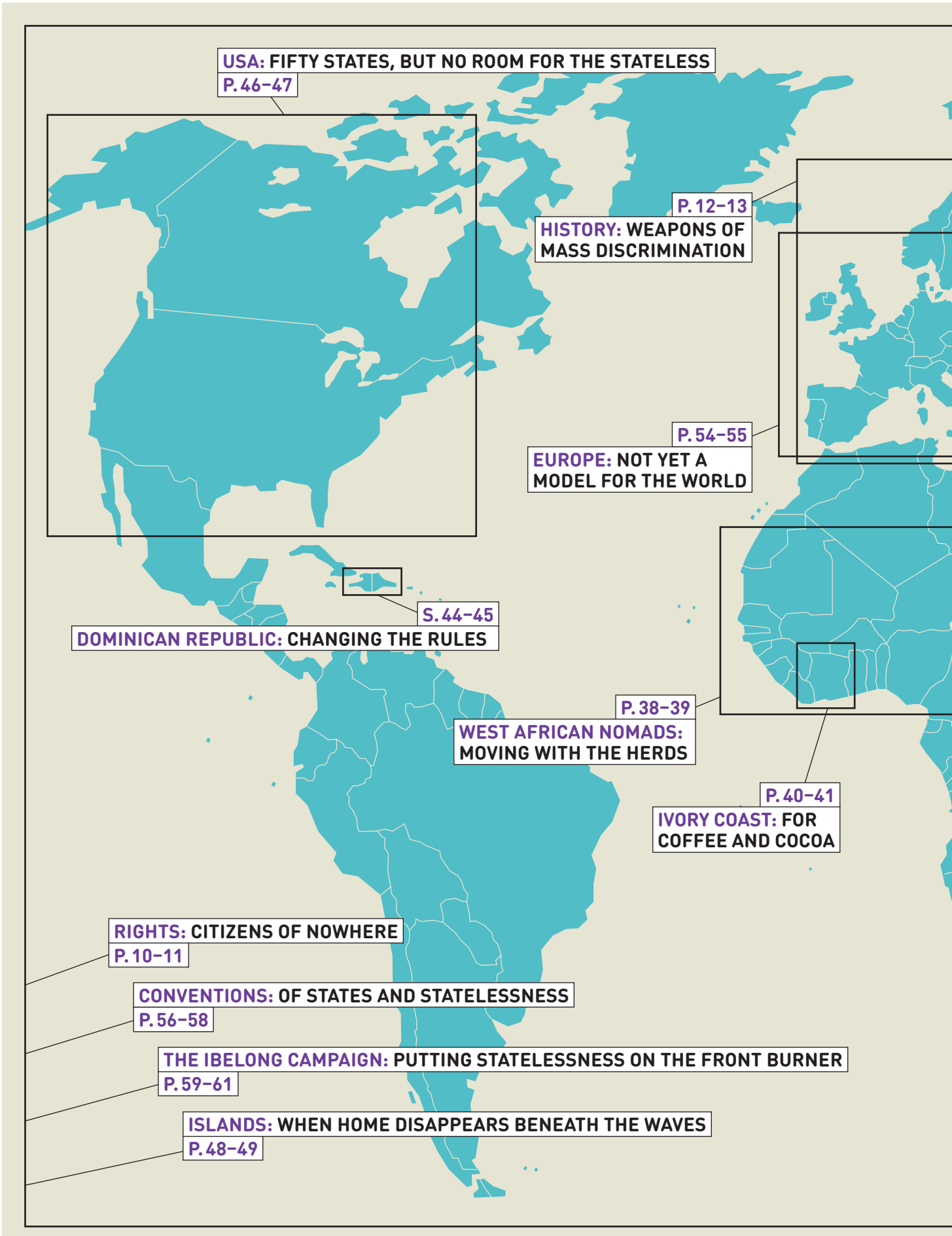
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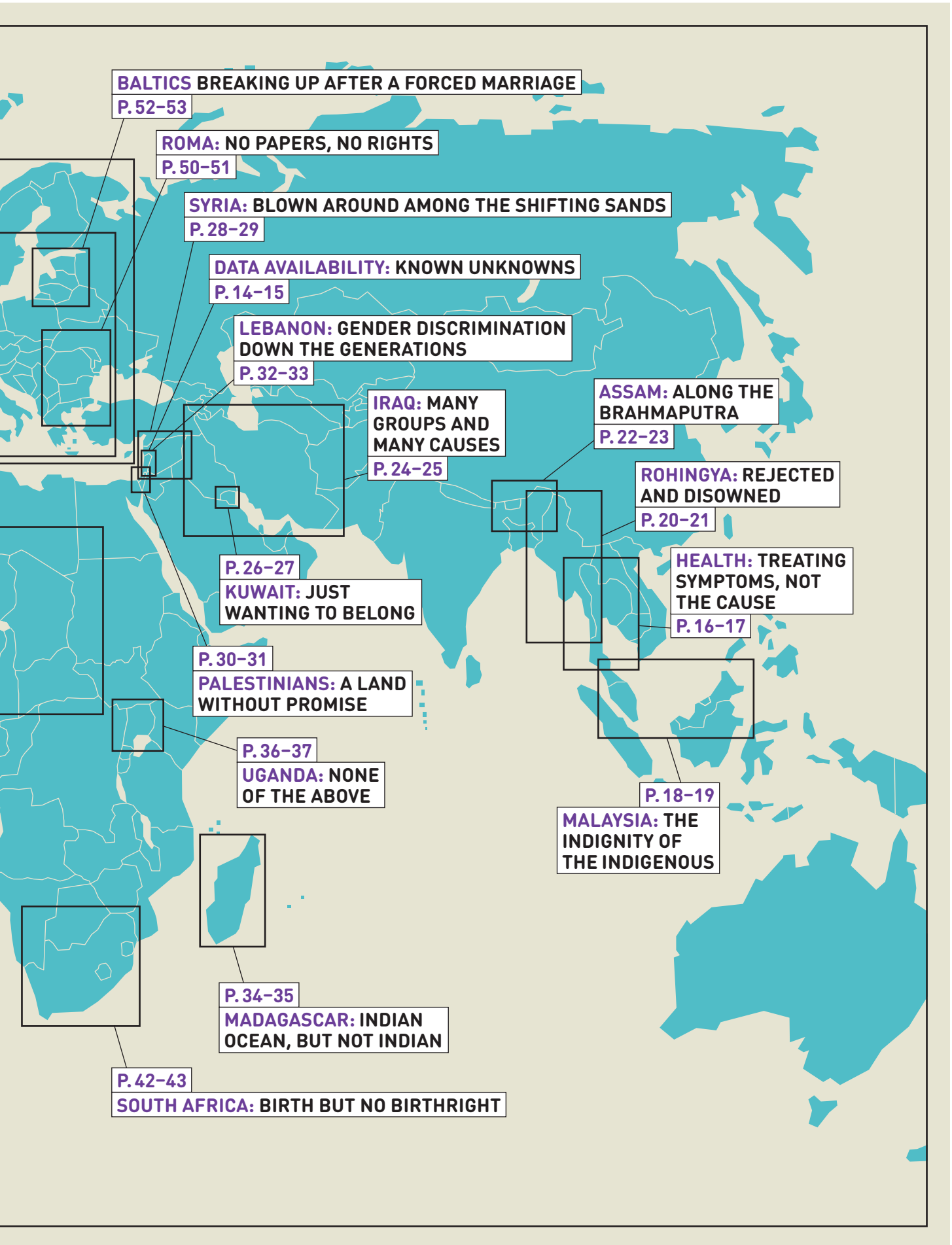
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RIGHTS

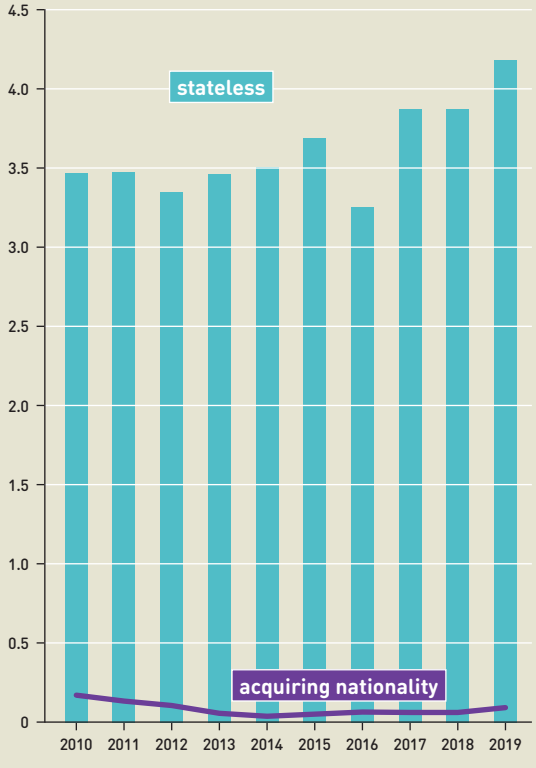
CITIZENS OF NOWHERE

While most readers of this Atlas have the pieces of paper, booklets and plastic cards that permit them to get money from a cash machine, consult a doctor, travel, drive and vote, that is not the case for stateless persons and other marginalized groups.

In 1949, from her exile in New York, the Jewish philosopher Hannah Arendt formulated "the right to have rights". For Arendt, this meant the right to belong to a politically organized community and to be judged by one's actions and opinions. This was the summary of her personal experience of statelessness, which began in 1937 with the Nazi regime and lasted until 1951. She described not only the loss of human rights of the millions of Jews murdered by the Nazis, but also the painful experiences of millions of people in exile.

NOT GETTING ANY BETTER

Number of stateless persons and formerly stateless acquiring nationality, worldwide, millions



The widespread appearance of stateless people in the wake of the two world wars led the idea of human rights to an absurdity. According to Arendt, the "aporia (internal contradiction) of human rights" comes about because only citizens can claim them. As a result, Arendt said that stateless people were "worldless". They had not only lost their home, but also could not find a new one anywhere else. Exclusion from the social fabric and the functional systems of society throws such people into the inhuman status of "superfluousness".

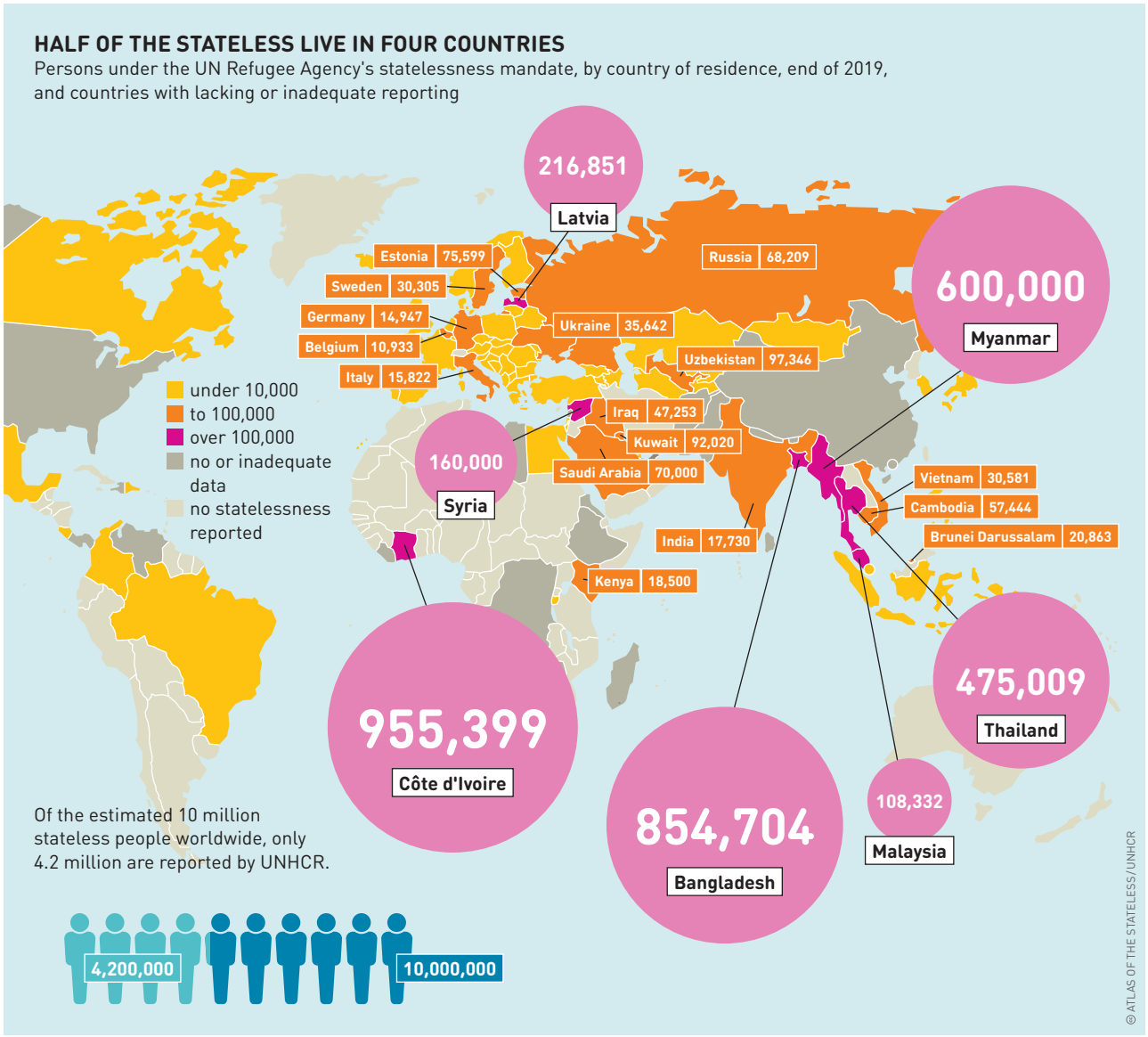
The horrors of the Second World War led to the creation of the United Nations and to a redefinition of human rights in the Universal Declaration of Human Rights of 1948. The experience of stateless persons also resonated here. Article 13 of the Declaration affirms the right to move freely within a state, to leave a country, and to return to one's own country. Article 14 grants the right to asylum from persecution. Article 15 provides that everyone has the right to a nationality.

But, according to Seyla Benhabib of Yale University, the articles in the Declaration of Human Rights do not guarantee a right to naturalization or membership in a political community. International law is based solely on the agreement of sovereign nation-states, and are enforceable only against them. For Arendt, the contradictions between sovereign rights, transnational legal claims and human rights norms pointed to the conclusion that the number of refugees actually covered by human rights was too low. Therefore the proclamation of human rights had, for Arendt, little to do with the fate of genuine political refugees. She called for the right to be a member of a political community for everyone.

Without the right to have rights and to belong to a political and social community, other human rights are void. This is true for stateless persons and for all of those who have been disenfranchized: people without papers, minorities without access to rights, refugees without residence status, the homeless, unemployed and exploited. According to Arendt, people are not born as equals, but are made equals as members of a group by virtue of the decision to guarantee equal rights to each other.

Human rights are not in themselves just or inclusive. Human rights are rights of resistance against all forms of injustice and oppression. These have been constantly renegotiated and fought over for centuries. This was true

The good news: over 750,000 people acquired citizenship in the last ten years. The bad news: more than four million people are still waiting



especially for the labour movement, which has always linked its political struggle with the demand for legal rights. In view of the current danger that governments and political parties are instrumentalizing human rights in order to demand exclusivity and even to justify war, the "right to rights" is about renegotiating rights.

For Stephanie DeGooyer of Harvard University, the struggle is above all about the right to be a member of a community that offers justice. Human rights must be regarded and employed as a political practice. Nationalist movements and parties try to link human rights to the nation-state, selectively reserving rights for a particular ethnic group, thereby creating an artificial sense of community that is based on exclusion. Arendt argues that true democracy can exist only where the centralized power of the nation-state is broken. Democracy is the active participation in, and the co-determination of societal and political decisions. This participation presupposes the right to have rights, and so the entitlement to a place in society.

The UN Refugee Agency suspects that many more people around the world are stateless

The current situation of stateless persons and people without rights around the world brings new relevance to Arendt's demand for "the only right". The issues at stake here are the social and political options for action and participation that enable the "worldless" to escape from their situation and regain their ability to act, their identity and their human dignity. Governments and social movements are jointly responsible for refuelling the concept of human rights for self-empowerment of the disenfranchized with emancipatory and political energy. That involves showing solidarity with the "worldless" and the disenfranchized, as well as giving up their own privileges and power. The commitment to a just society, the solidary responsibility of the community for the individual, requires a redefinition of human rights as rights of resistance.

HISTORY

WEAPONS OF MASS DISCRIMINATION

The emergence of nation-states in the nineteenth century led to the practice of denying citizenship to people living in those states. The First World War saw the start of actively depriving nationals of their citizenship. This was used both to punish individuals and to repress groups. The Nazis employed it as part of the Holocaust.

In historical terms, the Jewish population of Romania was an early victim of statelessness. In 1868, Carol I, the elected Prince of Romania, whose original name was Karl of Hohenzollern-Sigmaringen, reacted to serious antisemitic disturbances by introducing an addendum to the country's constitution. This stipulated that only Christians could be naturalized as Romanian citizens and was in stark contrast to the policies of equality in many other countries at the time. To protect the rights of the Romanian Jews, various European states undertook diplomatic advances, as did the Ottoman Empire, under whose suzerainty Romania still formally lay. Their efforts were fruitless.

Nevertheless, at the end of the nineteenth century, statelessness was more of a curiosity in European international law than a serious legal problem. The globe had been carved up into nation-states and their colonies. The land was under the control of governments that were responsible for the people who lived in their territories. But this approach proved unrealistic, and not only in the Balkans. Borders shifted to and fro, and citizenship, which had been a matter of course, became a political weapon. Its counterpart, statelessness, was a problem for people crossing those borders, and was used as a domestic policy instrument.

Even before the outbreak of the First World War, exceptions were well known. In many countries, anyone who joined a foreign army or refused domestic military service had to reckon with losing their citizenship because of disloyalty. Today, mercenaries continue to take great care to stay in irregular units – those that are not integrated into the regular army or other state structures.

Presumed disloyalty, as applied to soldiers, was the channel used for widespread "denaturalization" (as it was called) during the First World War. The process was no longer an exception. From 1915 on, France revoked the citizenship of hundreds of former German nationals who had acquired French nationality, especially because of their suspected close ties to the enemy. A similar law adopted in 1918 in the United Kingdom cited specific conditions and a vague lack of "good character" as reasons for stripping someone of their citizenship. By 1926, 163 individuals had been denaturalized, most of them, however, due to long periods of absence. The reasons for denaturalization varied: in 1922 in Belgium it was "antinational" behaviour; in 1926 in Italy, "unworthy" activities; and in Austria from 1933 on, "hostile acts". These provisions were generally aimed at men; those for women and children could differ, especially if the women possessed the citizenship of the family's country of residence.

An opposite tendency took hold in the United States. The Indian Citizenship Act of 1924 granted citizenship and voting rights to indigenous people. Before this, they were not officially subject to the US legal system. This also had a military background: President Coolidge wanted to recognize the many members of the indigenous nations who fought for the United States in the First World War. Their tribal nationality was not affected by becoming US citizens; this was determined separately.

The young Soviet Union, on the other hand, used denaturalization to rid itself of large numbers of political emigres, about one million people in all. In 1921, a decree was published declaring that individuals who had remained abroad for more than five years or had left the country without official permission after the 1917 October Revolution would lose their nationality. Survivors of the 1915/16 genocide against the Armenian people were also made stateless by Turkey, as were later other groups of refugees.

After the end of the First World War, the problem took on such dimensions that in 1922, Fritjof Nansen, High Commissioner for Refugees of the League of Nations, introduced the "Nansen passport". This document acted as a passport for stateless refugees and emigrants, especially for Russians and Armenians. It was initially recognized by 31 states, and later by 53. In 1951, it was finally replaced by documents issued under the Geneva Refugee Convention.

In 1933, Nazi Germany began publishing lists with the names of people who had been stripped of their German citizenship. These included over 39,000 Jews and non-Jews. In 1941, another 250,000 emigrants who had left Germany were added to the list. The Third Reich confiscated their tangible assets, along with those of the last

The fates of individual prominent people reflect the types of exclusion, repression and harrassment that mar the lives of millions of others

150,000 German Jews who were deported between 1941 and 1943. Because the extermination camps were located outside Germany, the arrivals sometimes received a notification that they had lost their citizenship. The concentration camp at Auschwitz, in an area of occupied Poland that Germany had annexed, was even declared to be foreign territory. These Jews died stateless.

The victims remained stateless even after the war. In 1968, the German Federal Constitutional Court finally put an end to this Nazi policy. The court stated that in such cases of deprivation of citizenship, the "contradiction to justice had reached such an unbearable level" that it was null and void from the outset. In stating a guiding principle, the court even placed the Nazi "legal" provisions in inverted commas: the individuals who had been denaturalized had never lost their citizenship.

DATA AVAILABILITY

KNOWN UNKNOWNS

"If you can't measure it, it doesn't exist." Stateless people often do not appear in official data. The state may be aware of their existence, but does not know how many there are, where they are, or what they need. They are invisible, and thus are easily overlooked or deliberately ignored. Lebanon is a prime example of this problem.

Quantifying statelessness in a country is a shared responsibility. While the state has the primary duty of identifying stateless people so it can meet its international commitments, the United Nations Refugee Agency (UNHCR), together with other UN agencies, non-government organisations and academia, has the task of conducting research on statelessness, including providing evidence of the scale of the problem. It is important to obtain comprehensive data on statelessness – its characteristics, the number of people affected, their needs – so the state can design policies that address the issue and eliminate statelessness. Research is also crucial for civil society – and groups of stateless people themselves – to advocate for their interests.

But accurate, comprehensive data are hard to find. This is particularly true in Lebanon. UNHCR says it is difficult to count the number of stateless persons in Lebanon for two reasons: the last census was carried out in 1932, and official records such as civil status, registered births, hospital and midwife archives, and court archives are not digitalized.

It is important to go back into the past, to the creation of Lebanon after the breakup of the Ottoman Empire in the 1920s, as decisions made then (for example, opting for Lebanese or some other nationality) relate to statelessness today. But the official records and historical data are inaccessible, as is the census of 1932. Without this information, data collection and analysis of statelessness is complicated. There are no official records on statelessness or comprehensive surveys of the stateless population, and the Lebanese state does not submit figures to UNHCR's annual global data collection on statelessness. The information that is available is limited, scattered, incomplete, and based on various methods and approaches. Procedures to identify, register and document stateless persons are nonexistant – except for those known as *qayd ad-dars* ("under study"), who appear in a specific register as foreigners of unidentified nationality.

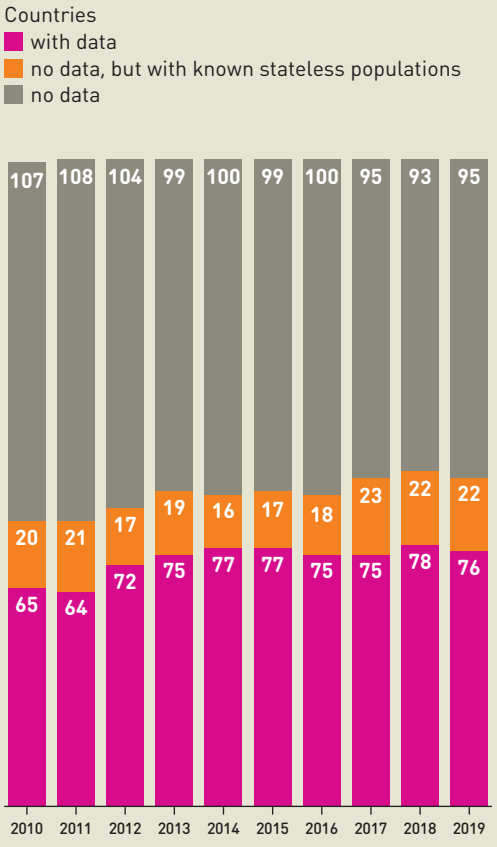
In Lebanon, many people are unwilling to identify themselves as being stateless, or are not aware that they need to do so. They do not necessarily see themselves as stateless since they have Lebanese origins or ancestors, so consider themselves Lebanese and entitled to the same protection as recognized citizens. The data collected by non-government organizations or researchers that rely on people identifying themselves as stateless is negligible and may thus not be accurate. Plus, those responsible for groups such as institutionalized children have not necessarily performed the administrative and judicial procedures needed to register those who are stateless.

Lebanese law is complex and lacks a definition of a "stateless person". There is no legal framework to deal with stateless people. It still has to be decided whether

Many governments seem to think that if they do not submit reports to the UNHCR, the problem of statelessness will simply disappear

THE SILENT HALF

Number of countries reporting on stateless populations



members of the United Nations since 2011: 193

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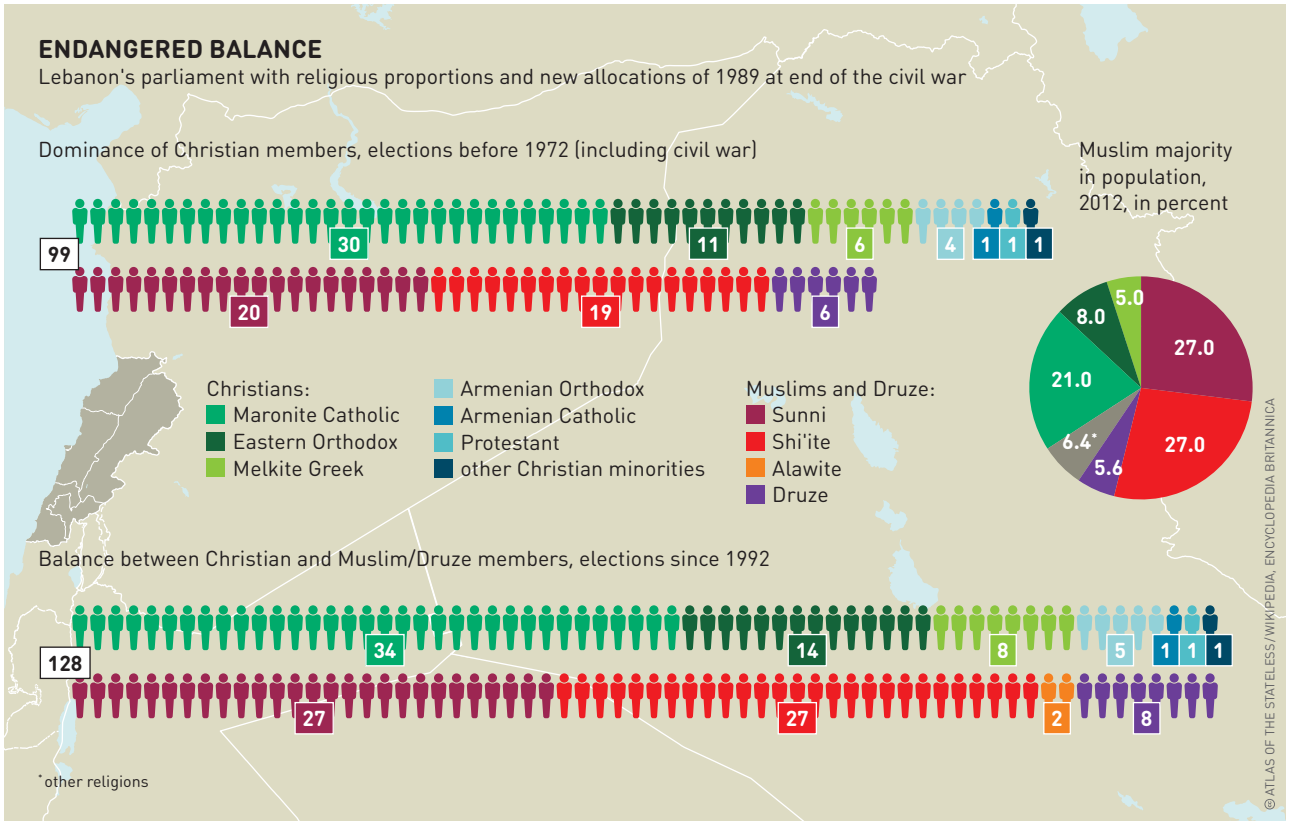


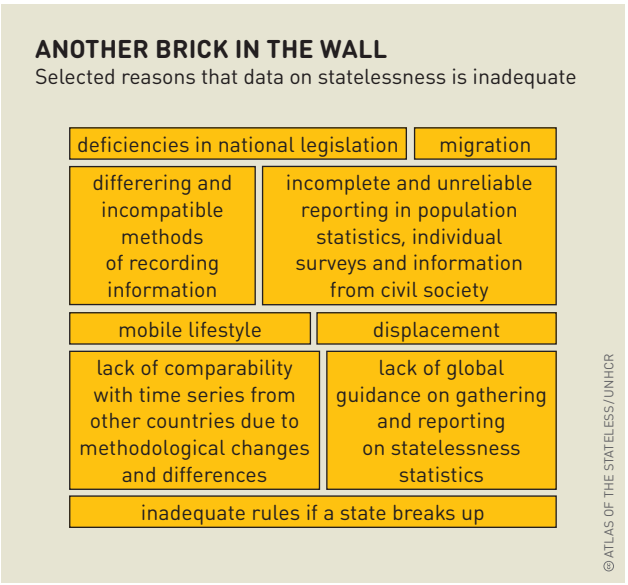
people under the mandate of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) or migrants and asylum seekers should be counted as stateless.

This is coupled with a deliberate strategy to keep real demographic figures hidden for political reasons. Lebanon is composed of many religious communities. Its political system is built on power sharing among them based on a delicate, fictitious sectarian balance. This does not allow for changes that might exacerbate the demographic imbalance between the two main religions (Islam and Christianity). For example, a naturalization decree in 1994 granted citizenship to tens of thousands of people who were already quasi-citizens. But groups such as the Maronite League (Christians) considered this a dangerous process of demographic and social change and pushed for it to be annulled. The State Council denied fundamental rights to the new citizens throughout the review period, until 2003. Another fear is that recognizing statelessness would force the state to include Palestinian stateless refugees among other stateless communities, thereby terminating the agreement between the Arab states on the treatment of Palestinians.

The lack of data, the difficulty of accessing the data that do exist, and problems in registering and documenting stateless people all contribute to keeping people stateless, invisible and marginalized. The Lebanese state does not give high priority to identifying and measuring statelessness. By denying the prevalence of statelessness, it can avoid its obligations under international law to reduce this phenomenon and protect stateless persons.

Granting Palestinians citizenship would make 10 percent more Sunnis eligible to vote – upsetting an already fragile balance of religious power

Even if they try to collect and report accurate numbers, official agencies face formidable social, political, legal and technical barriers



HEALTH

TREATING SYMPTOMS, NOT THE CAUSE

Health and human rights are inextricably intertwined. Without the right papers, people may be denied government health services. They may be forced to pay for more expensive private doctors and clinics, or have to do without healthcare altogether. As a result they tend to be less healthy than the general population. That is bad for everyone: sick people are less productive, and society has to pick up the bill.

Thailand is home to around 500,000 stateless people, especially along the border with Myanmar. Many of them belong to ethnic minorities who have lived in the country for generations. As a result of various geographical, economic and educational barriers, the stateless individuals do not possess a birth-registration document indicating that they are Thai citizens.

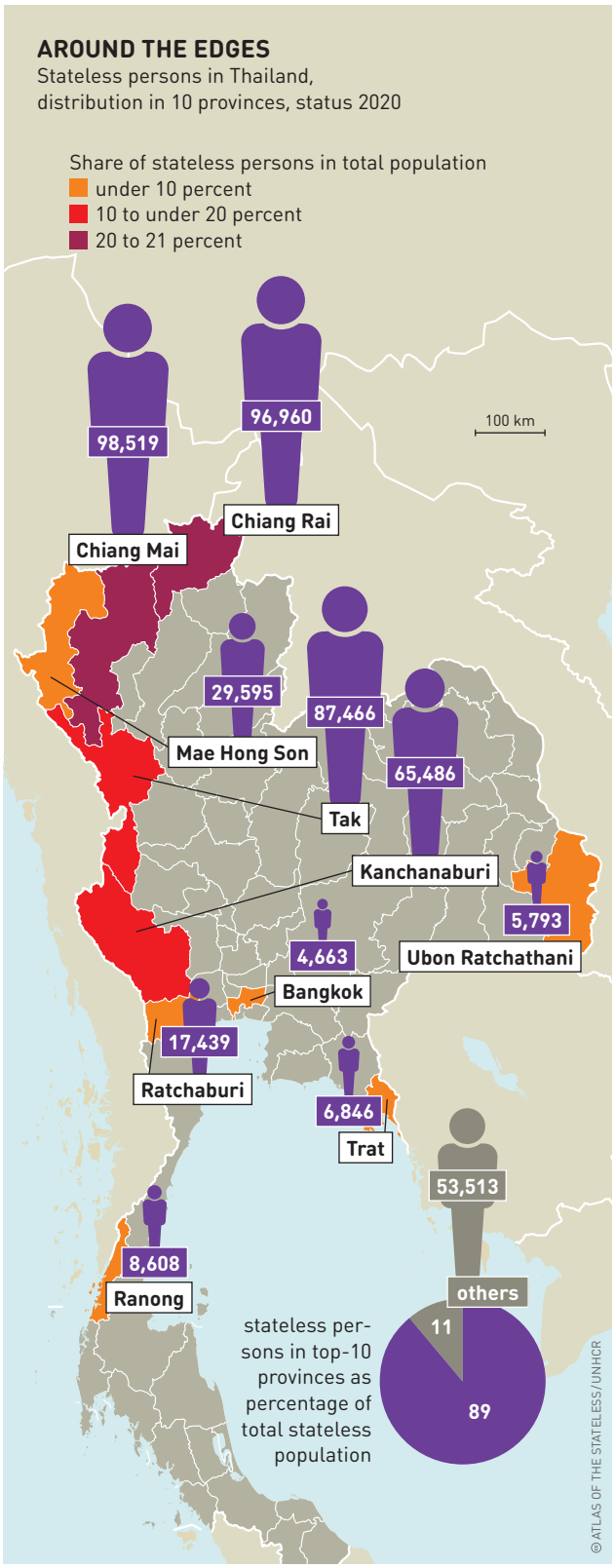
In 2002, Thailand introduced universal health coverage for the whole population. Health protection is provided through three main public schemes: a civil-servant medical-benefit scheme for government employees and their dependants, a social security scheme for employees in the formal private sector, and a universal coverage scheme for everyone else.

The universal coverage scheme replaced a "Low Income Card Scheme", which covered stateless people. But the Office of the Council of State of Thailand construed the 2002 National Health Act as meaning that the beneficiaries of the universal scheme must hold Thai nationality.

That left stateless people without health coverage, forcing them to pay out-of-pocket for their healthcare. They made less use of health services; many were saddled with huge medical bills. Some hospitals went into debt because they provided subsidized services to stateless patients who were unable to pay their medical bills in full.

In 2010, after pressure from civil society, the Cabinet launched a new scheme called the Health Insurance for People with Citizenship Problems (HIPCP). This aimed to alleviate the financial difficulties of public hospitals in

Thailand is trying to improve the health situation for refugees and stateless people, but many problems remain



border areas and to increase access to healthcare among stateless people. The HIPCP provides similarly comprehensive benefits to the universal scheme: outpatient care, inpatient care, accident and emergency treatment, high-cost care, and health promotion services.

Stateless individuals must follow several steps to qualify for HIPCP insurance and access to healthcare services. They must first register with the Ministry of Interior, which confirms their nationality and assigns them a 13-digit identification number. They must then register with a health facility near their place of residence. The healthcare budget is set according to the number of people registered. Hospitals receive a fixed amount each year for each stateless person they have enrolled. Stateless patients who bypass their registered facility must cover the full cost of treatment, especially if they do not have an official referral letter.

Despite the comprehensive benefit package of free care, the HIPCP has failed to achieve its objectives of facilitating access to healthcare for its beneficiaries. This is due to operational problems at the local level, delays in the process of registering stateless people, insufficient collaboration between the ministries of public health and interior, and the lack of guidelines on budgeting as well as the scope of service provision for stateless patients.

Stateless children insured with the HIPCP use outpatient services 25 percent less often than their Thai counterparts insured with the universal scheme. But they use inpatient services 29 percent more, and are 34 percent more likely to stay in hospital. They are also more likely to fall ill with infectious diseases such as malaria, dengue, tuberculosis and diarrhoea. Overall, they seem to be in a poorer state of health.

In principle, there is no user fee at the point of service. But non-financial factors hinder stateless people from using outpatient services, especially in remote and rural areas. Primary healthcare posts in such areas are often hard to reach, which results in higher indirect costs: stateless people must on average travel over 30 minutes to get to the nearest primary healthcare post, and over two hours to reach the nearest hospital. The rainy season makes things worse.

While early diagnosis and treatment have cut the transmission of malaria in Thailand, most (79 percent) stateless people delay treatment or attempt to treat it themselves. In addition, many are infected with drug-resistant strains of the disease. Low vaccination coverage and a lack of routine immunization add to the fact that relatively few stateless children are vaccinated, thus putting stateless children at greater risk of preventable diseases than their Thai counterparts.

Along with the poor and migrants, stateless persons are particularly hard-hit by the effects of the Covid-19 pandemic

CORONA AND STATELESSNESS

Effects of fighting the pandemic on stateless people, from reports by aid organizations

Stateless persons who belong to minorities or who have migrated often do not receive **information** about the virus and its control in their language.

Stateless persons and migrants generally face high **risks of an outbreak** due to inadequate sanitation facilities, lack of running water and overcrowded shelters.

Stateless people who have no access to healthcare cannot be **tested**.

Stateless elderly people, the chronically ill and the disabled are at risk of delayed **diagnosis** due to poor medical care.

With the pandemic there is a growing **fear** that hospitals will pass on data on unregistered stateless patients to the authorities.

Because stateless people are often poor, they have no money to pay for **care or medication** for follow-up treatment.

If borders are completely closed, normal opportunities for **escape and asylum** are lost.

Stateless persons are denied **entry** at borders on suspicion of corona – or this reason is presented as an excuse.

Many stateless persons work in the informal labour market and become **unemployed** when disease-control measures are introduced.

Those forced to continue to work may not be able to avoid crowded workplaces where **social distancing** is impossible.

Stateless women and girls with no other source of income as a result of the pandemic risk being forced into **prostitution and child marriage**.

Due to restrictions on going out, stateless women and girls are particularly vulnerable in accommodation that is known to be **unsafe**.

Authoritarian regimes may use the pandemic to increase **surveillance** of stateless persons.

If stateless persons are thought to be particularly vulnerable to infection, the risk of **xenophobia and discrimination** increases.

In many countries, including Jordan, Malaysia and Nepal, stateless persons are excluded from **government aid and economic support**.

MALAYSIA

THE INDIGNITY OF THE INDIGENOUS

The Malaysian term *bumiputera*, or "son of the soil" refers to people whose ancestors are native to Malaysia. But a large number of *bumiputera* – especially non-Malay indigenous people – are in fact stateless, because the state fails to recognize their marriage and other customs.

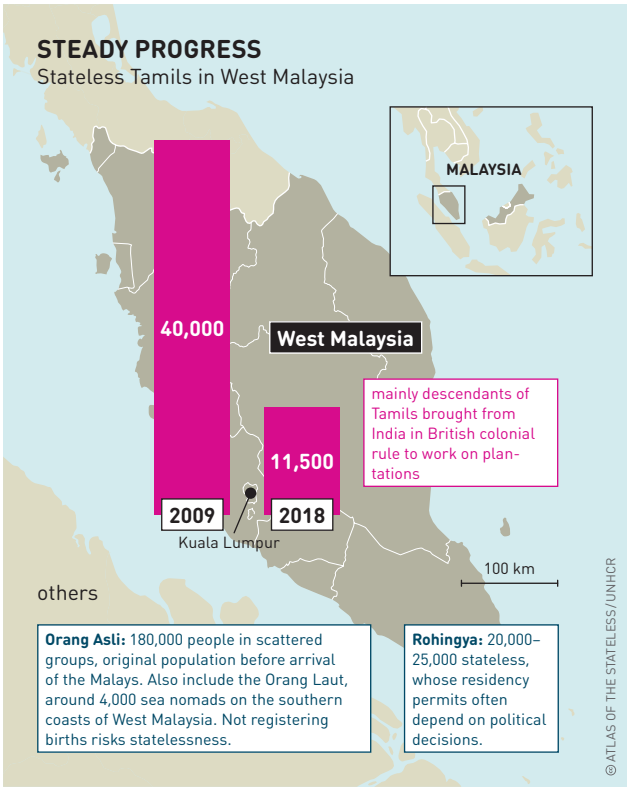
A multi-ethnic and culturally diverse country, Malaysia is home to some 32.4 million people (in 2018), of whom 3.2 million, or 9.8 percent, are classed as non-citizens. These include two types of stateless persons: native stateless indigenous people, and non-citizens who entered Malaysia after independence from British rule in 1957. The latter were mainly refugees from the Philippines and Indonesia who were initially granted refugee status but later became stateless.

Systematic data disaggregated by age, gender, ethnic group and nationality status are scarce. However, in Sarawak, a mainly indigenous region in Borneo, an estimated 66,000 persons of a total population of 2.6 million were considered stateless or undocumented by the National Registration Department in 2010. In all of Malaysia, about 200,000 persons applied for citizenship in 2018, but there is no indication of how many applications were made by members of the indigenous community.

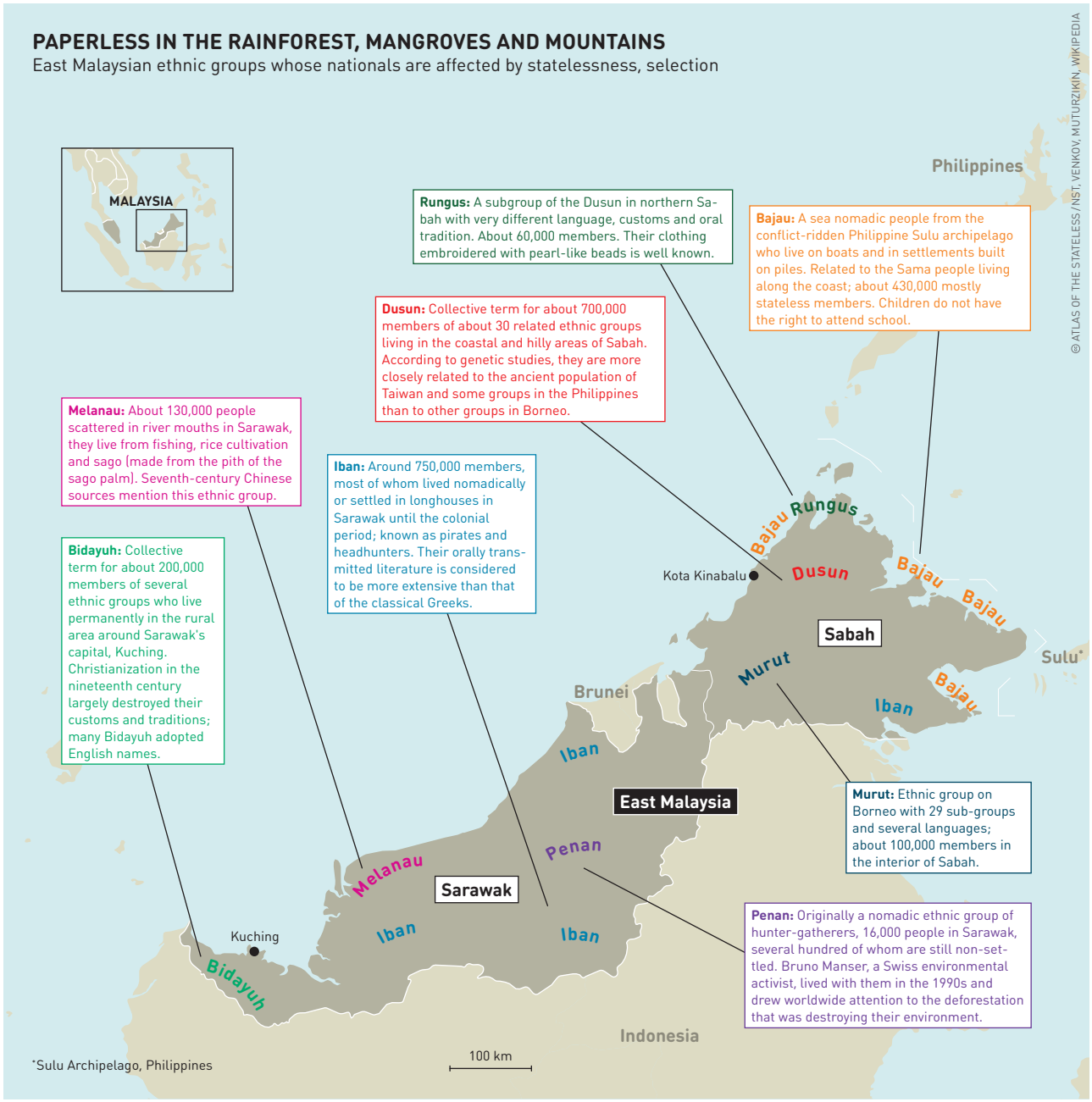
Indigenous groups account for 11.8 percent of the combined population of the two parts of Malaysia: the peninsula, and the states of Sabah and Sarawak on Borneo. Though they now live in the federal state of Malaysia, indigenous peoples have had distinct colonial and postcolonial historical experiences. The state structures that were established failed to understand the role of the customs *(adat)* of native peoples – not just regarding their rules and regulations, but their whole way of life: childbirth, harvesting, feasts, funerals, marriage ceremonies and rituals, land use and others, of which marriage is the most specific.

In the native peoples' *adat*, marriage is a community affair, usually celebrated in the longhouse, in the presence of family members, relatives and friends. Traditionally, marriage certificates were not issued, as the ceremony witnessed by the community was sufficient. This was particularly true in the highlands, where access to government institutions would take time, money and familiarity with the idea of processing papers. A special case is child marriage: under native customary law, marriage of children as young as 12 years old is acceptable. Under civil law this is prohibited, so the custom may lead to an irregular situation.

Children of couples who married according to customary law and who did not register their marriage with the National Registration Department encounter problems applying for an identity card, or "IC". So do their descendants. Without such a card, these children miss out on a range of rights to health, education and access to work, as well as the ability to marry and open a bank account. There are also other problems. An indigenous man cannot legally transfer his nationality to his child if the mother is a foreign national. A Malaysian woman (indigenous included) cannot transfer her nationality to a child born outside of Malaysia.



DHRRA, a regional legal-aid initiative, has already helped thousands of people through the three-year naturalization process



No documents, no citizenship: a fatal rule, especially for members of groups without a tradition of writing

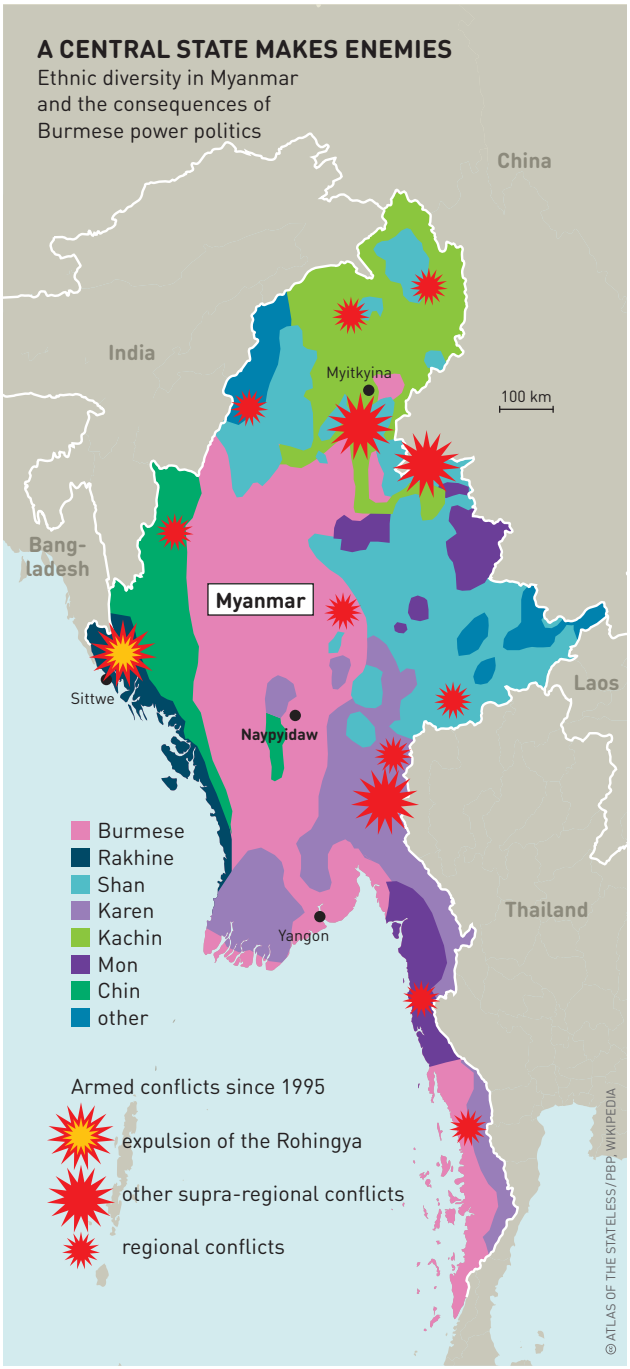
In the 1990s, government attempts to provide some form of documentation (but not necessarily citizenship) in Sabah and Sarawak became highly politicized, and eventually failed to benefit indigenous communities. The Prime Minister at the time, Mahathir Mohamad, allegedly designed the so-called "Project IC" to provide citizenship to Filipino refugees. By enabling them to vote for his ruling coalition he hoped to win the election in Sabah, which was ruled by an opposing party. The local indigenous community strongly opposed such moves. Their resistance continues, even though the law would benefit indigenous people by ending their stateless or undocumented status. In 2016, the Malaysian Home Ministry created the Special Committee on Citizenship for Sarawak and Sabah, later replaced by a federal-level body, to speed up the process of legitimizing applications for Malaysian citizenship. This has not begun its work as yet.

Statelessness in the indigenous communities results directly from a failure to respect and protect the rights of peoples and their traditional practices. It deprives them of their dignity. Young indigenous and stateless people, especially teenagers who migrate to towns in Sarawak, are marginalized as they cannot attend schools or get a formal job. Their problems multiply when they become parents: civil law does not allow them to get married because they lack the necessary documents. As long as this continues, indigenous peoples will automatically be socially excluded and invisible.

ROHINGYA

REJECTED AND DISOWNED

Myanmar, or Burma, is home to a multitude of ethnic groups, dominated by the majority Burmese, or Bamar. The Muslim Rohingya are not officially recognized and are regarded as foreigners. The result: crimes against humanity.



The case of the Rohingya of Myanmar illustrates how ethnic discrimination and statelessness can lead to atrocities such as crimes against humanity and genocide. While such crimes have yet to be adjudicated in a court of law, consensus has grown in the last few years that strong evidence exists for these allegations. Legal proceedings were initiated in 2019 in the International Criminal Court, Argentinian courts, and the International Court of Justice based in The Hague, Netherlands, to consider claims of atrocity crimes, including genocide, committed by Myanmar state officials against the Rohingya.

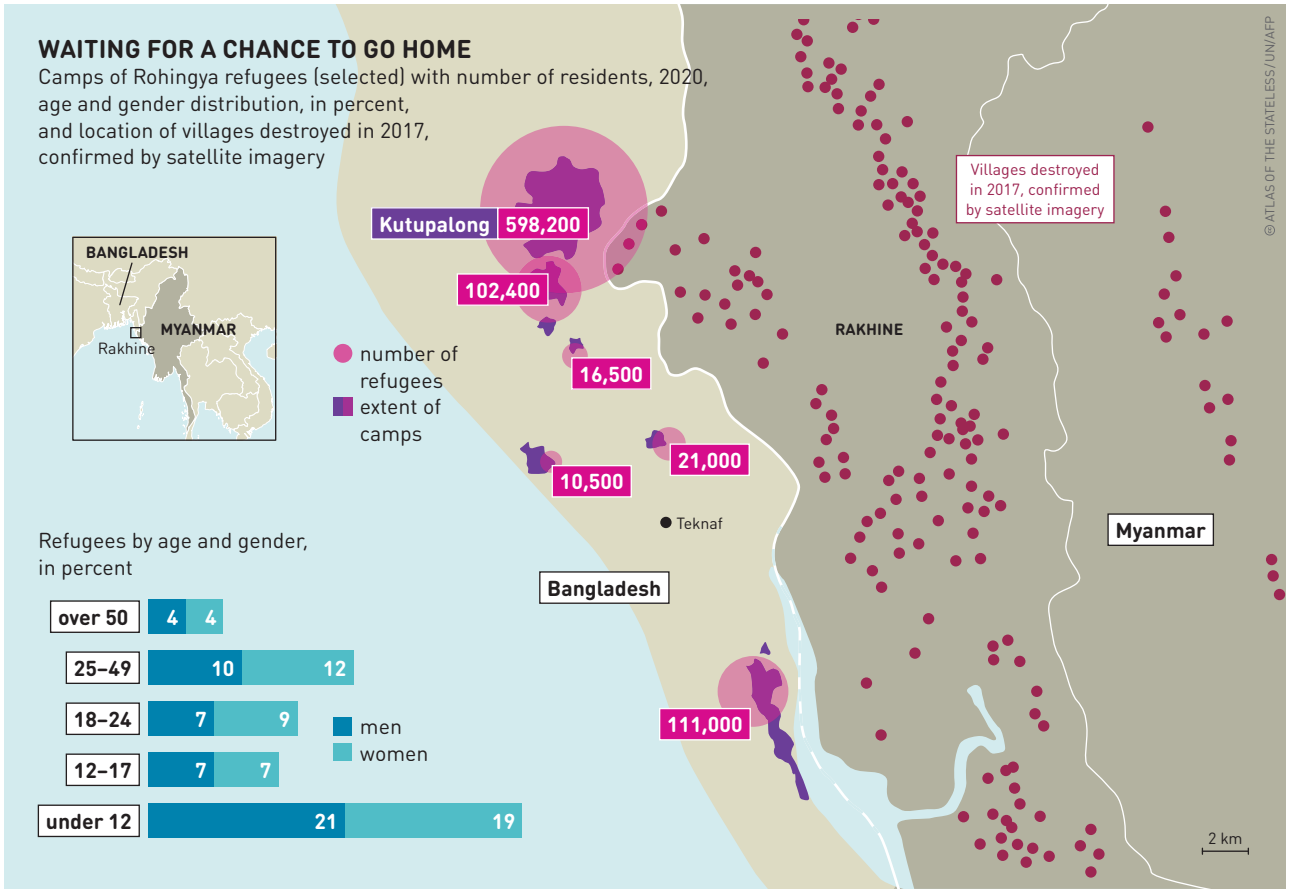
While the Rohingya's plight has reached the institutions of international law, the roots of the Rohingya's statelessness and humanitarian crisis are unique to their historical, social, and geographic context. As in many cases of statelessness, ethnic discrimination is a cause and a consequence of the Rohingya's lack of access to citizenship and other rights. In turn, ethnic discrimination results in part from how ethnic identity has historically been constructed in Myanmar, particularly in the past half-century.

While accounts vary, the Rohingya, who are predominantly Muslim, are generally understood to have some origins in Myanmar's precolonial history, as well as in extensive Muslim migration to what is now Rakhine State in western Myanmar during British colonial rule in the nineteenth century. Through the late colonial period, Buddhist and ethnically Rakhine groups coexisted relatively peacefully with Rohingya and other Muslims in Rakhine State.

Inter-communal tensions arose during the Second World War, when Buddhist nationalist movements sided with the Japanese in order to end British colonial rule. Muslims in Rakhine State, uneasy about a future Buddhist-dominated regime and seeking greater political autonomy, sided with the British government. At independence in 1948, the Constitution generally sought to uphold principles of equality and certain levels of autonomy for major ethnic groups. Most Rohingya were recognized as citizens.

During the military coup of 1962, General Ne Win elevated the concept of *taing yin tha* ("national races"), invoking a notion of unity and belonging based on indigeneity. Scholars observe that over time, *taing yin tha*

For decades, Myanmar's military and the parties they control have practised oppression and disenfranchizement – and have even gone as far as genocide



In 2017/18, over 740,000 people fled to Bangladesh, joining 200,000 other victims of previous displacements

evolved to create a framework of racial hierarchy with Burmans at the top, coercing some groups to accept Burman-dominated rule and eventually excluding others, particularly the Rohingya, from national membership as citizens.

This exclusion developed in the 1960s and 1970s when, against a backdrop of scapegoating, the military regime made the ethnic Chinese and Indians responsible for the country's economic challenges and gave rise to the misperception that many Chinese and Bangladeshis (from then East Pakistan) were residing in the country illegally. In 1978, close to 200,000 Rohingya fled to Bangladesh in the course of a nationwide operation to check immigration and residence status. Some officials reportedly confiscated residence cards in the course of the check, complicating some efforts to prove citizenship after most were repatriated later that year. Subsequent episodes of mass displacement amidst racist military sentiment occurred in 1991–92, 2012, 2013, and 2017.

Many organizations point to the 1982 Citizenship Law as creating the basis upon which Rohingya were subsequently denied citizenship, because, for instance, Rohingya are not listed among the 135 ethnic groups who qualify for citizenship on the basis of having made their permanent homes in Myanmar from before 1823. While the law has discriminatory provisions that violate international human rights standards, other scholars find that the statelessness of the Rohingya results from the state's failure to implement the law along with official efforts to blur the Rohingya's legal status by means of various discriminatory and exclusive administrative documentation practices.

Regardless of whether the Rohingya's statelessness is de jure or de facto, the Rohingya's lack of status as citizens has led to laws and policies that discriminate against and seek to control them in the name of state security. These include restrictions to their freedom of movement and livelihoods, as well as the right to marry and have children. Since the exodus of 700,000 Rohingya to Bangladesh in 2017 and 2018, media and humanitarian access to Rakhine State is severely constrained, raising concerns about the conditions for vulnerable populations caught up in the midst of ongoing counter-insurgency operations against ethnic Rakhine and Rohingya militant groups. Anti-Muslim discrimination and violence has also grown in other parts of the country. Resolving the Rohingya's statelessness therefore rests not only on changing the ways in which citizenship laws are applied with respect to this particular group, but also on the resolution of armed conflict and fundamental political reform toward a national identity based on equality and inclusion.

ASSAM

ALONG THE BRAHMAPUTRA

Anti-Muslim politicians in the northeast Indian state of Assam wanted to use a new register of citizens to trigger the mass deportation of Muslims to neighbouring Bangladesh. But most of the people affected turned out to be Hindus.

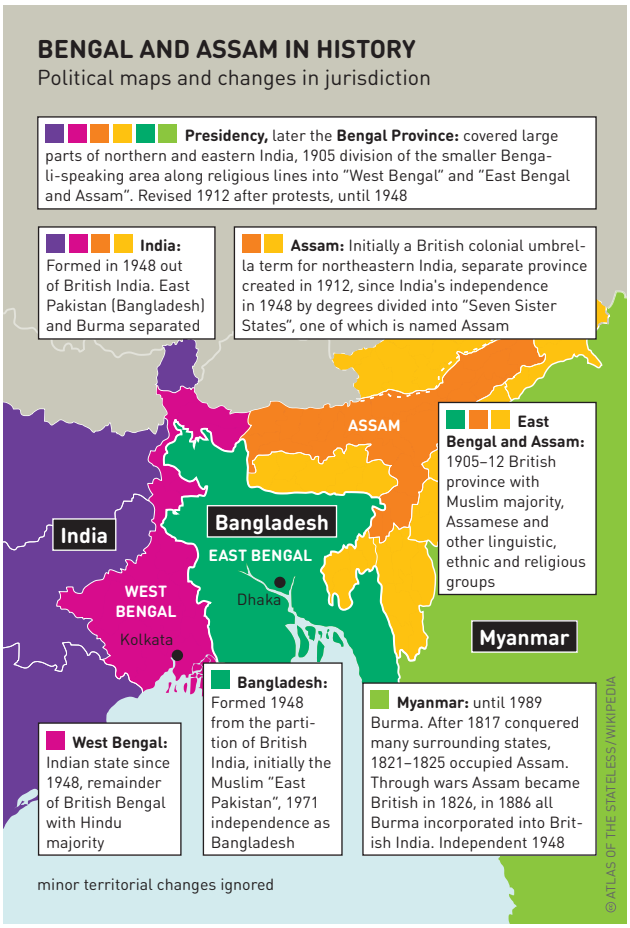
Nearly two million people in Assam in northeastern India, mostly Bengali Hindus and Muslims, are currently at risk of losing their Indian citizenship because their names do not appear in the updated National Register of Citizens. This comprehensive register for Indian citizens in Assam, was launched in 1951 when Assamese leaders refused large-scale settlement for Hindu refugees fleeing East Pakistan after the partition of India. The Register was updated in 2015 following an order from the Supreme Court of India to the federal and Assam state governments.

The trigger for this process was a Public Interest Litigation filed by Abhijeet Sharma, director of Assam Public Works, with India's Supreme Court. The aim was to mandate the government of Assam to update the Register in view of the "enormity" of illegal migration from Bangladesh into Assam, thus facilitating the identification and deportation of such migrants who did not "qualify as citizens". Ranjan Gogoi, an ethnic Assamese who later became India's Chief Justice, was on the Supreme Court bench that issued the order.

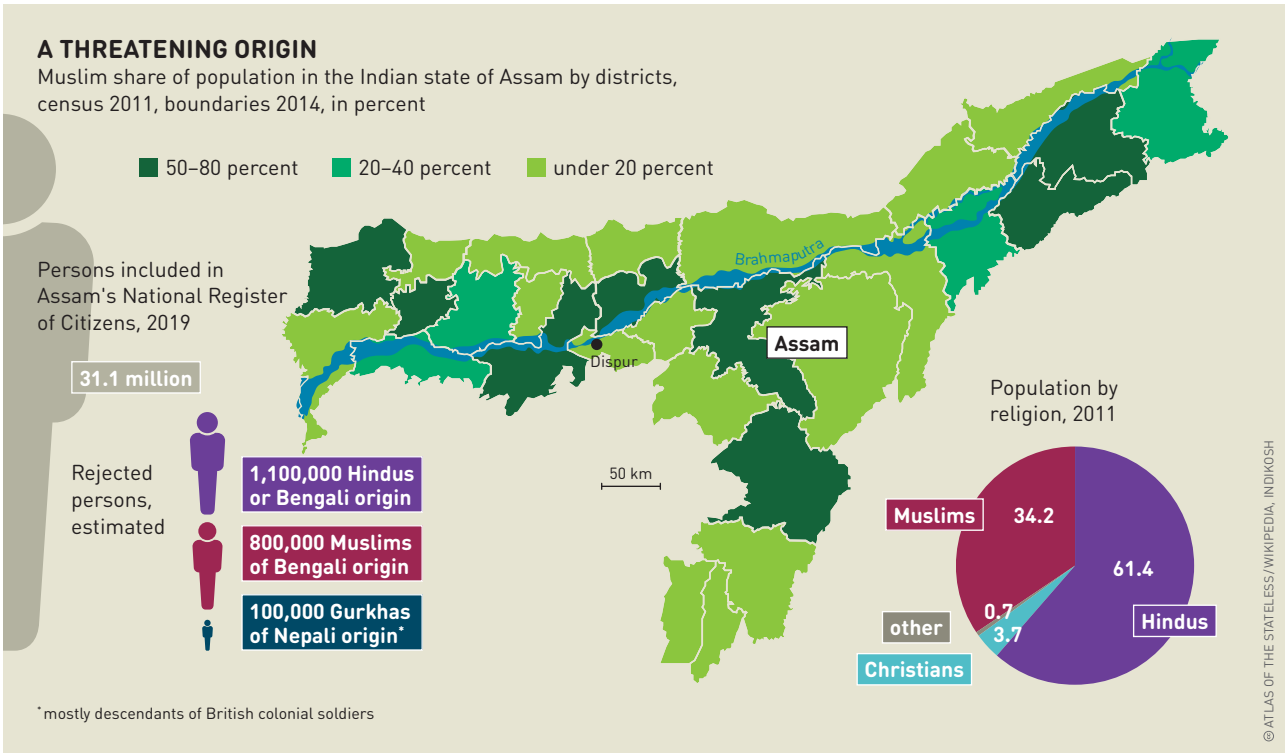
The problem was and is not only about Muslim migrants. Some ethnic Assamese groups and the local Assam bureaucracy want all migrants and descendants of migrants from Bangladesh and Nepal, whether Hindu or Muslim, to be excluded, because they are afraid of being reduced to a minority in the state. Of the 32.9 million residents of Assam who applied for inclusion in the Register, nearly two million were excluded: more than one million Bengali Hindus, half a million Muslims of Bengali origin, and 100,000 Nepali-speaking Gurkhas, mostly Hindus and Buddhists. The "cut-off date" for decisions on the citizenship status in Assam for immigrants from Nepal and present-day Bangladesh was 25 March 1971, the day the Bangladesh Liberation War began. This date was determined in the Assam Accord of 1985, which was signed between the Indian government and ethnic Assamese student groups, following violent protests in 1979–85 demanding the expulsion of all illegal migrants.

If someone is excluded from the Register, this is not the end of the road. Excluded individuals can appeal to Foreigners' Tribunals that have existed in the state since 1985. If the Tribunal decides that they fail to qualify for inclusion in the Register, they risk losing their citizenship and becoming stateless. However, judicial processes in India are long and drawn out, and people who are not on the Register complain that they are harassed by the police and Assamese vigilantes because of their unclear status.

The construction of several new large detention centres in Assam and elsewhere in India has raised fears that those identified as illegal migrants will end up in prison. Nearly 60 Bengali Hindus and Muslims have already committed suicide after they were excluded from the Register; nearly 30 have died of trauma and diseases in the detention centres. Analysts compare the situation in Assam with that in Myanmar's Rakhine state, where more than a million Rohingya Muslims suffer statelessness and face state-sponsored violence.



In northeastern India, many of the constant conflicts over citizenship and migration are rooted in borders drawn along religious lines by the British colonial administration

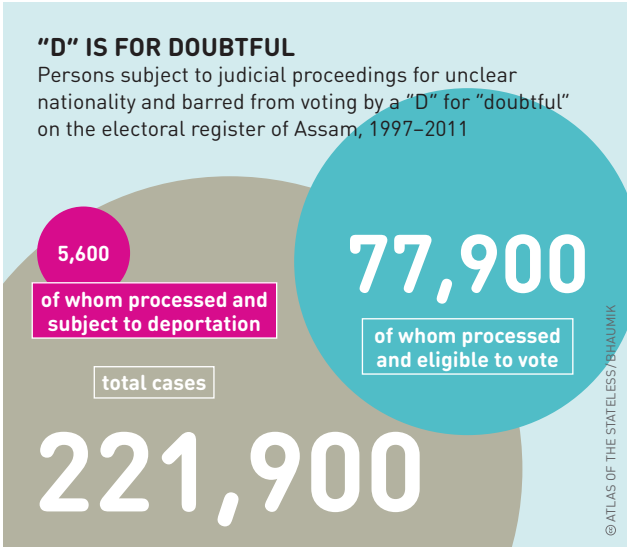


Once they came from Bengal to grow tea and rice. Nationalist groups in Assam now want as many of their descendants as possible to leave

The updating of the Register in Assam has attracted widespread criticism, albeit for different reasons. Ethnic minorities such as Bengali – both Hindus and Muslims – are critical because they feel the process was discriminatory and high-handed. Assamese regional groups are upset because they feel more people should have been excluded and that many illegals have made their way onto the Register using fake documents. India's Hindu nationalist Bharatiya Janata Party (BJP) government welcomed the updating implemented by the Supreme Court as a pilot project to be replicated all over India to "rid the country of illegal migrants". However, it says the process was faulty because it excluded more Bengali Hindus than Muslims. Since the BJP is committed to protecting Hindus, it has passed a bill that amends the Indian Citizenship Act of 1955 seeking to provide Indian citizenship to all non-Muslim migrants from Pakistan, Bangladesh and Afghanistan if they entered the country before 31 December 2014.

After the amendment to the Indian Citizenship Act in December 2019, angry Assamese mobs protested against granting citizenship to Hindu migrants "through the back door". Indian opposition parties oppose both the new citizenship law and the BJP's plans for a pan-India Register. Backed by student groups at nearly 40 universities, they allege the new citizenship law undermines the "secular edifice" of Indian polity as it privileges certain religious identities in awarding citizenship. They describe the plans for a pan-India Register as part of the BJP's anti-Muslim agenda to deprive all Muslims of citizenship. Violent protests have erupted across the country, especially in Delhi and West Bengal. Altogether, the update of the Register threatens to create a huge problem of statelessness that could undermine India's image as a vibrant democracy. If the government extends this exercise to other parts of India, it could also threaten the country's relations with friendly neighbours like Bangladesh.

After 14 years, tribunals had dealt with just one-third of the cases. Result: 93.5 percent of the people processed should have been eligible to vote



IRAQ

MANY GROUPS AND MANY CAUSES

In Iraq, people have been left stateless because of successive waves of conflicts and injustices. Some groups have suffered a long history of discrimination; others have been rendered stateless by more recent events. Laws that discriminate against women are a special problem – but would be easy to fix.

Since its independence from Britain in 1932, Iraq has been home to large stateless communities. This is mainly due to legal inequities, displacement that has persisted over several generations, and a series of conflicts, creating an environment that makes it difficult to address the issue. The UN Refugee Agency (UNHCR) records 47,515 stateless individuals in the country. The actual number could be considerably higher and may even rise further as a result of recent events.

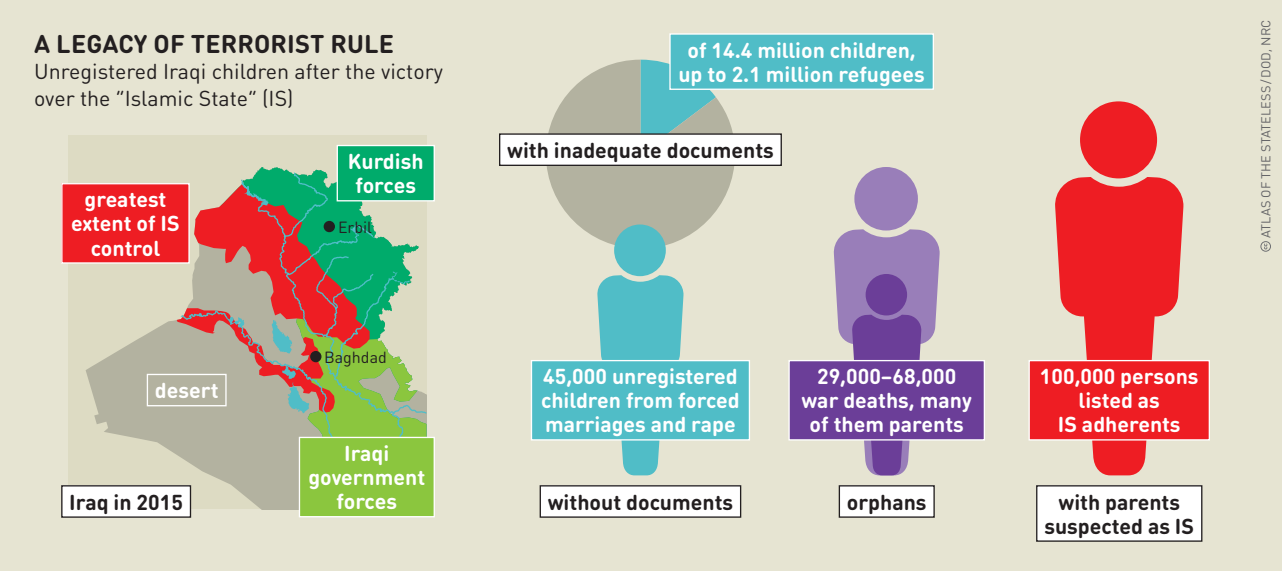
Reasons for statelessness in Iraq include flaws in the 2006 Nationality Law, predominantly Article 4, which does not allow Iraqi mothers to transfer their nationality to children who were born outside the country. This means that female emigrants and refugees must prove their children are descended from an Iraqi man if they are to be granted citizenship. Obtaining such proof can be very difficult.

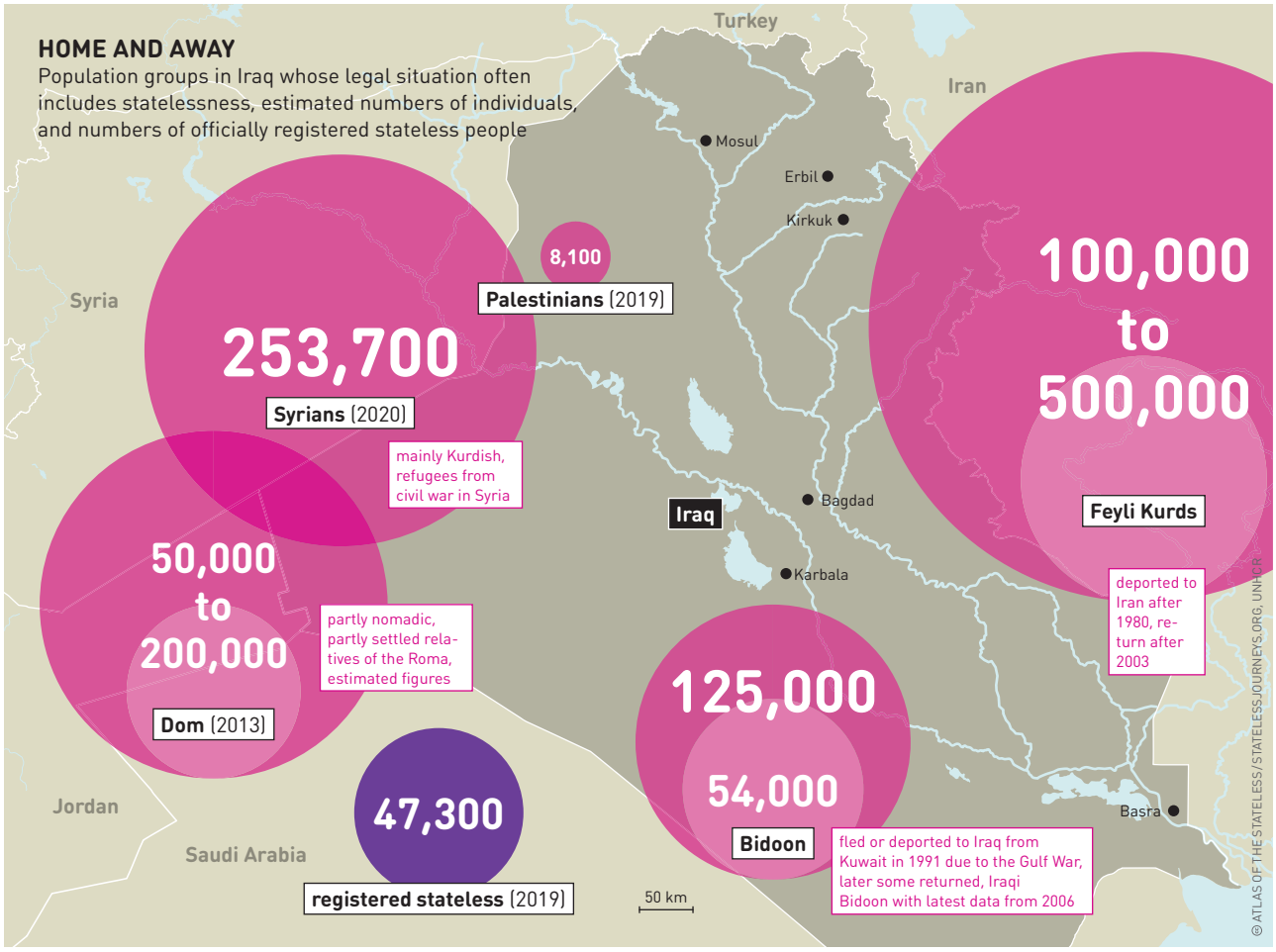
In addition, civil registration poses legal and practical challenges. Every Iraqi governorate has its own civil registration system, and these are complicated to navigate, especially for displaced people. As a result, many displaced Iraqis have not been able to access procedures such as birth and marriage registration; this puts children at risk of not being able to establish their legal identity. It is believed that over 45,000 children living in camps in Iraq do not have birth certificates issued by the Iraqi authorities.

Some people with Iraqi nationality hold documents that are no longer valid or that are not recognized by the authorities. This is particularly true for documents issued in areas previously controlled by Daesh, the so-called Islamic State. Children of Iraqi mothers, including Yazidi women, who were either married to or raped by men connected to Daesh are at risk of being left stateless. So too are children born under Daesh control. Attempts have been made to regularize their situation, such as exchanging Daesh-issued birth certificates for government equivalents. But challenges remain: fathers, for instance, need security clearances before birth certificates can be issued.

Historically, displacement has contributed to statelessness in Iraq. The Faili Kurds, an ethnic group inhabiting both sides of the Zagros mountains along the Iraq–Iran border, were denied Iraqi nationality. In 1980, in the spirit of pan-Arab nationalism as well as anti-Kurd and anti-Shia ideological waves, the government of Saddam Hussein implemented Resolution 666. This stipulated that Iraqi nationality would be dropped for any Iraqi of

Their parents dead, imprisoned or stigmatized – years after the demise of the "Islamic State", many children are still not safe





How many people are stateless, have lost their citizenship or regained it, especially in the border regions of Iraq? No one knows

foreign origin if it appeared that he or she was not loyal to the Iraqi homeland and people, and the objectives of the revolution. As a result, hundreds of thousands of Faili Kurds were denaturalized, arrested and deported to Iran, where they were equally unable to acquire nationality. After the fall of Saddam Hussein's regime in 2003, most of these Faili Kurds returned to Iraq since its new Nationality Law of 2006 contained a provision that allowed them to reacquire Iraqi nationality. However, many have not been able to benefit from this, as reacquiring nationality is complicated and burdensome.

Besides the Faili Kurds, groups from the Dom community, a nomadic Romani people originally from the Indian subcontinent, were denied nationality. The Dom have lived in Iraq for centuries, all the while maintaining their historic culture and language. As a result, many have never integrated into formal Iraqi structures, nor have they benefited from any kind of state protection. Stigmatized and marginalized, generations have lived without any form of documentation, including Iraqi nationality.

Other displaced communities that are stateless, or at risk of statelessness, are refugee populations living in Iraq – most notably Palestinians and Syrians. There are over 8,000 Palestinian refugees registered with UNHCR in Iraq; the true figure is probably higher. According to the 2006 Nationality Law and the Protocol for the Treatment of Palestinians in Arab States (the Casablanca Protocol), Palestinian refugees are excluded from naturalization and are therefore left stateless. In addition, there are over 250,000 Syrian refugees in Iraq, mostly residing in the Kurdistan Region. An unknown number of them are stateless Syrian Kurds who lack a nationality or cannot substantiate their link to Syria. Syria's Nationality Law discriminates against women transferring their nationality to their children, and Iraqi civil registration procedures are complicated. As a result, many children of Syrian refugees lack registration.

The challenges facing stateless people in Iraq are manifold. Two big problems are that the very status of "stateless" is not recognized, and that it is hereditary. Iraq does not have safeguards for children born without nationality. Displacement that lasts over generations exacerbates families' struggles to obtain documents. The solution must include resolving the cases of displacement, ending discrimination against communities, ending gender discrimination under the law, and harmonizing and simplifying access to civil registration for everyone in the country, regardless of their status.

KUWAIT

JUST WANTING TO BELONG

The drawing of boundaries early in the last century left bitter legacies. Thousands of people who were born in Kuwait and have lived there all their lives cannot claim Kuwaiti nationality. They are deprived of basic rights – to vote, enrol in a public school, or travel. And they are fated to pass on their statelessness to their children and children's children.

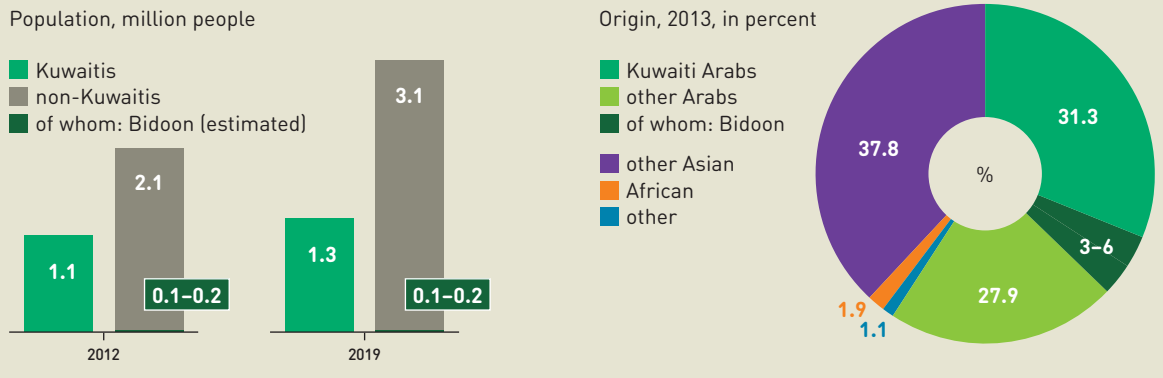
When the 2011 Arab Spring shook up capital cities in North Africa and the Middle East, people also took to the streets in Kuwait. In February 2011, about 1,000 people gathered to demand more rights. But unlike Cairo or Tunis it was not about the disposal of a ruler the people did not want, it was about becoming a citizen of the country. The government sent security forces to confront protestors who were not considered citizens of Kuwait. Several protesters were jailed; dozens were injured.

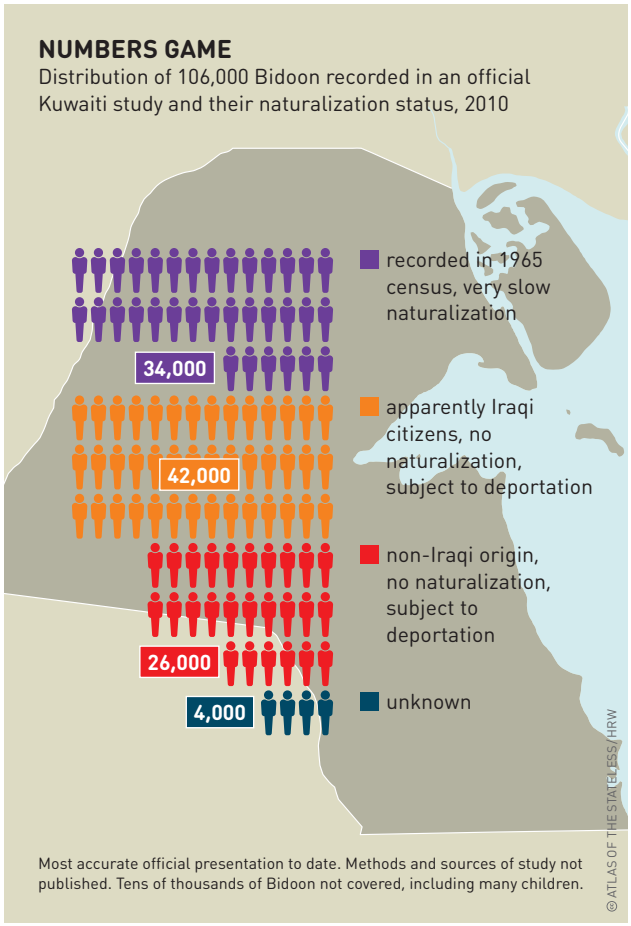
The protesters were Bidoon, a group of people who have for nearly 60 years suffered from a particular form of statelessness. There are no official figures, but an estimated 100,000 to 200,000 Bidoon are believed to live in the Gulf region. According to the Kuwaiti government, the Bidoon are not really Kuwaiti, but foreigners who entered the country without authorization. The ancestors of the Bidoon were nomadic Bedouins who did not register with the Citizenship Committees when Kuwait became independent in 1961. The reasons for this were manifold – illiteracy, homelessness, poverty or lack of access to authorities – and the fact that the borders of the new Gulf sheikdoms were hardly secured or even marked at that time. Apart from Kuwait, the Bidoon also live in the United Arab Emirates and Bahrain.

The consequences of exclusion by Kuwaiti authorities are serious. The Bidoon have no civil rights, are not allowed to vote, and are excluded from most social benefits. According to the Lebanon-based Gulf Centre for Human Rights, the situation is particularly discriminatory for Bidoon children and women. Amnesty International says that despite a legislative reform in 2015, the Bidoon continue to face "severe restrictions on their ability to access documentation, employment, healthcare, education and state support enjoyed by Kuwaiti citizens". In February 2019, the Kuwaiti Minister of Education rejected a parliamentary proposal to enrol the children of Bidoon in public schools. Registration was permitted only for those Bidoon children whose mothers were Kuwaiti citizens, or children and grandchildren of Bidoon who were classified as "martyrs" after the 1990 Iraqi invasion. Bidoon women and women married to Bidoon men are subject to sexual harassment at the hands of the authorities. Women harassed when applying for documents were unaware of any

Official Kuwaiti statistics do not give the numbers of stateless Bidoon because they are considered tolerated illegal residents

RICH LAND, POOR HEART
Composition of population of Kuwait by nationality and origin





avenues to complain, according to a British Home Office report in 2016.

In a 2017 report, the Swedish Immigration Service described the system of registration in Kuwait as complicated. Instead of a passport, the Bidoon receive a "review" or a "security card". This is necessary to apply for a birth certificate, withdraw money from a bank, drive a car or consult a doctor. Bidoon whom the authorities believe to have a different nationality, such as Iraqi, Iranian, Saudi or Syrian, are issued with a card with a blue stripe, valid for six months and extendible for another six. During this time, the person's nationality is examined and may be determined. Certain advantages are envisaged for holders of such cards, such as the possibility of a five-year residence permit. Bidoon are also be subject to travel restrictions: they must apply for an "Article 17 Passport", issued on a case-by-case basis allowing them to travel; Kuwait reserves the right to refuse their re-entry.

The manner in which the Kuwaiti authorities determine that a Bidoon may have a different citizenship is questionable. According to a December 2018 report by Al

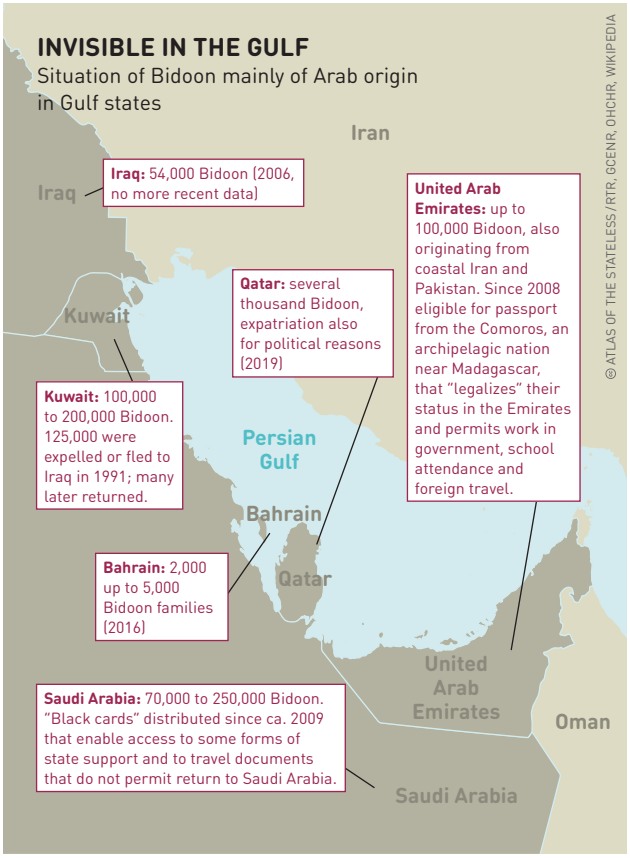
A lack of openness in the Gulf monarchies means that little is known about the location of many Bidoon

The Kuwaiti authorities operate in an opaque manner, leaving the people affected in the dark

Jazeera, a Bidoon named Ahmed applied for a "security" card. When he received the card, he found that it stated that his father was an Iraqi citizen – even though he had documents showing he was Kuwaiti. The authorities refused to clarify the matter, despite Ahmed's repeated requests.

The Emir of Kuwait, Sheikh Jaber al-Ahmad al-Sabah, issued a decree in 1999 that makes the naturalization of 2,000 Bidoon per year possible. However, research by the portal Inside Arabia shows that only three percent of the Bidoon in Kuwait had received citizenship by 2019. "By continuing to deny the Bidoon citizenship, the authorities are denying these long-term residents a range of basic rights, which in effect exclude them from being part and parcel of and contributing to a vibrant Kuwaiti society," says Amnesty International.

When a bomb attack on a mosque was carried out in 2015, the judiciary indicted 29 people and stated that 13 "illegal residents" were also on trial. They were Bidoon. In summer 2019, 15 Bidoon were arrested during a demonstration held after the suicide of a 20-year-old Bidoon, Ayed Hamad Moudath. The state had refused to issue him with identity papers, whereupon he had lost his job.

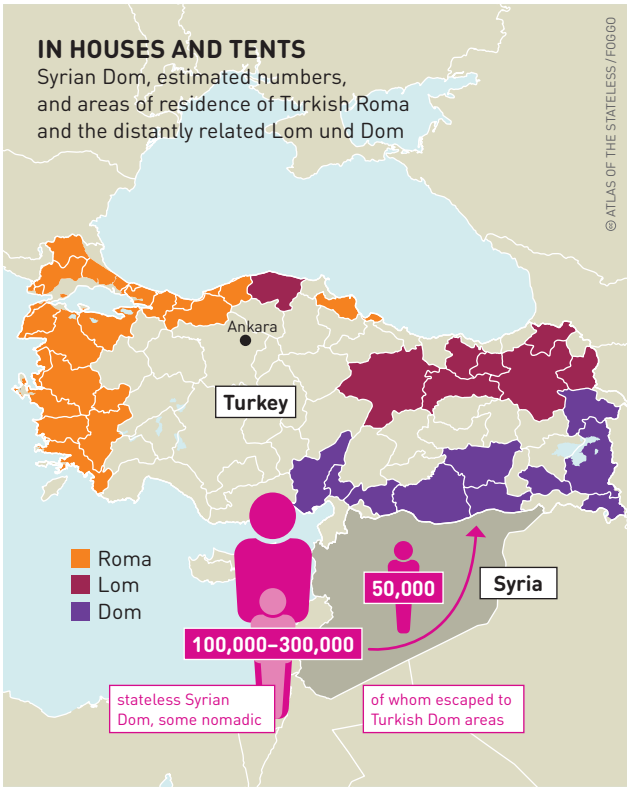


SYRIA

BLOWN AROUND AMONG THE SHIFTING SANDS

Stateless people can be especially vulnerable when they are involved in an armed conflict, because they are suspected and persecuted from all sides. Refugees fleeing conflicts create yet more stateless people. But paradoxically, a conflict may also reduce the number of stateless people as governments try to appease certain groups.

Syria had several historic statelessness problems prior to the conflicts that began with the Arab Spring of 2011. Some 300,000 Kurds living in the northeast of the country were deprived of citizenship. More than 500,000 Palestinian refugees living in Syria could also be considered as stateless – though the UN High Commissioner for Refugees (UNHCR) does not include Palestinian refugees in its statistics of stateless persons. Discriminatory laws and practices meant women could not confer their Syrian nationality to their children in the same way as men.



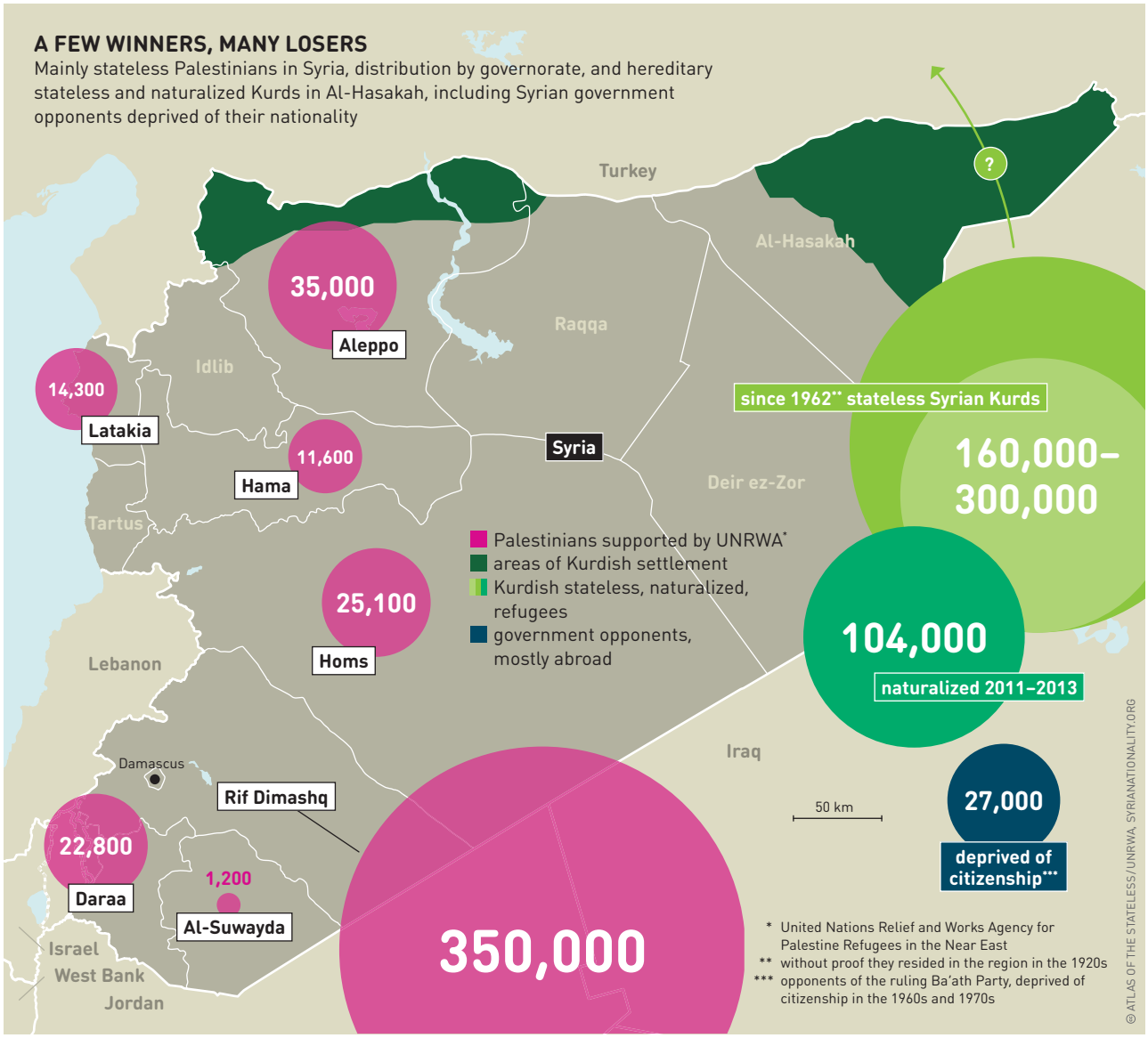
Syrian Palestinians trace their lack of citizenship back to the formation of Israel in 1948. The Protocol for the Treatment of Palestinians in Arab States excluded Palestinian refugees from naturalization as Syrian citizens. This "Casablanca Protocol" was intended to protect their right to return to Palestine. But it has led to a multi-generational limbo, where the Palestinians lack both a state of their own and citizenship of any state at all. The Kurds attribute their statelessness to discrimination at the hands of the Syrian state and its ideology of Arab nationalism, which excluded them. In 1962, many Kurds became stateless almost overnight when a population census was combined with a campaign of ethnic-based persecution.

Since 2011, war has affected the situation of statelessness in various ways. Under pressure from opposition movements, the Syrian government sought to appease the historically restive Kurdish community by granting citizenship to some stateless Kurds in an attempt to deter them from joining the uprising. While they welcomed the chance to receive citizenship, many Kurds rejected the naturalization process. In their opinion, it was a politically calculated move rather than a recognition of their legitimate rights. The UNHCR estimates that 160,000 stateless Kurds still live in Syria. But it is not clear how accurate this figure is as it relies on Syrian government statistics, and does not include stateless Kurds who live outside Syria – including many refugees.

The conflict has made life even more difficult for stateless Kurds and Palestinians who have been displaced within and outside Syria. At checkpoints within the country, many stateless people do not have documents to present. They face yet more difficulties when they cross international borders, seek recognition in other countries, and reunite their families outside Syria. Travel documents or temporary residency cards are only available to people who are registered with the General Authority for Palestinian and Arab Refugees – meaning those who entered Syria in 1948. When seeking asylum outside Syria, many find it impossible to prove that they are stateless.

The conflict has triggered new instances and risks of

The Dom live in several countries in the Middle East. They are mainly known as informal dental technicians



Syria: Not covered are stateless children who were conceived from rapes and marriages with now-dead adherents of the Islamic State

statelessness, particularly for children born to displaced parents. Under Syria's nationality law, mothers can pass on their citizenship only if their child is born on Syrian territory. Given the large numbers of children born to Syrian refugee families over the last decade, many of these children may be left stateless.

Daesh (the so-called Islamic State) and other armed groups set up their own systems of government in the areas they controlled. That created new questions about the legal nationality of children born in these areas, including children born to (Iraqi) Yezidi mothers who were captured and raped by Daesh fighters. Because their own society stigmatizes them as "terrorist children", they and their mothers may need extra protection. But being stateless prevents them from being resettled or benefiting from other humanitarian schemes.

While millions have fled Syria, smaller numbers of people have travelled in the opposite direction – some of them to join armed groups. Around the world, countries strip citizenship from their nationals to punish them for disloyalty or for reasons of "national security". Syria has become a laboratory for statelessness with regard to those associated with Daesh. This situation is setting a dangerous precedent for the arbitrary deprivation of citizenship worldwide.

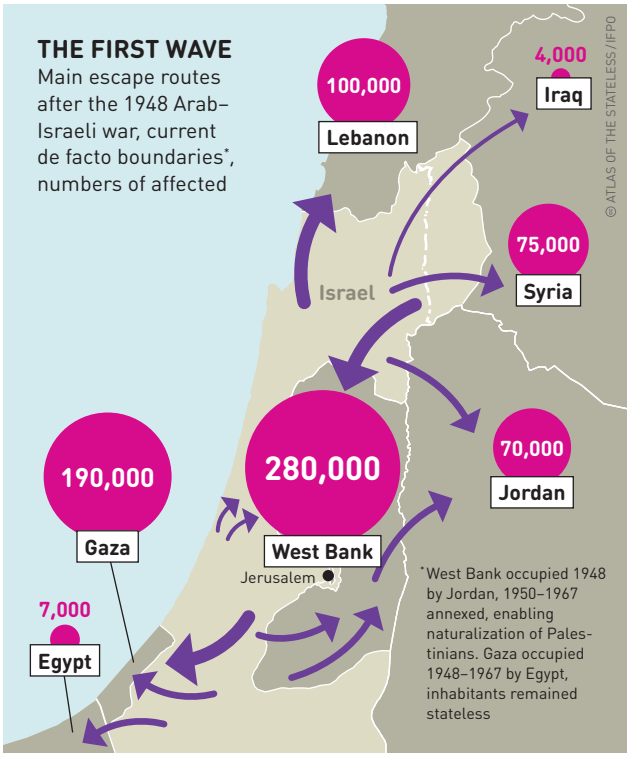
Since 2011, the overall picture in Syria has shifted. The risks and causes of statelessness have changed. With the naturalization of Kurds and the displacement of stateless people, the number of stateless persons may actually have decreased. But the number of stateless people coming from Syria has increased. Statelessness and displacement are interrelated: being stateless makes people more vulnerable and so more likely to flee, and displacements in turn cause some people to become stateless. For Syrian children born abroad, statelessness may prove to be a huge problem for decades to come.

A LAND WITHOUT PROMISE

One sequence of historical wrongs – antisemitism in Europe, culminating in the horrors of the Holocaust – led to the creation of Israel. But that gave birth to another set of wrongs: the displacement of Palestinians from their homes and their homeland. The Palestinian diaspora still has no hope of return, and many are still not accepted in the places where they live.

Large numbers of Palestinians were forced out of their homes when the state of Israel was created during the first Arab–Israeli war in 1948. While the founding of Israel provided a Jewish homeland for victimized Jews in Europe, much of the Palestinian population was dispersed from its homeland – in what Robin Cohen of the University of Oxford calls a "victim diaspora".

The number of Palestinians originally displaced from Mandatory Palestine is unclear: estimates range from 726,000 (according to the United Nations) to 810,000 (the British government). Since then, their number has grown as a result of natural increase and subsequent wars. By the end of 2018, roughly 8.7 million (66.7 percent) of the 13.05 million Palestinians worldwide counted as forcibly displaced persons: 6.7 million refugees from 1948 and their descendants (this includes the 5.5 million registered with the UN Relief and Works Agency for Palestine Refugees in the Near East, UNRWA), plus another 1.24 million 1967 refugees and their descendants, 416,000 internally displaced Palestinians in Israel, and 345,000 internally displaced in the Occupied Palestinian Territories. Together, they make up one of the largest and most protracted refugee cases in the world.

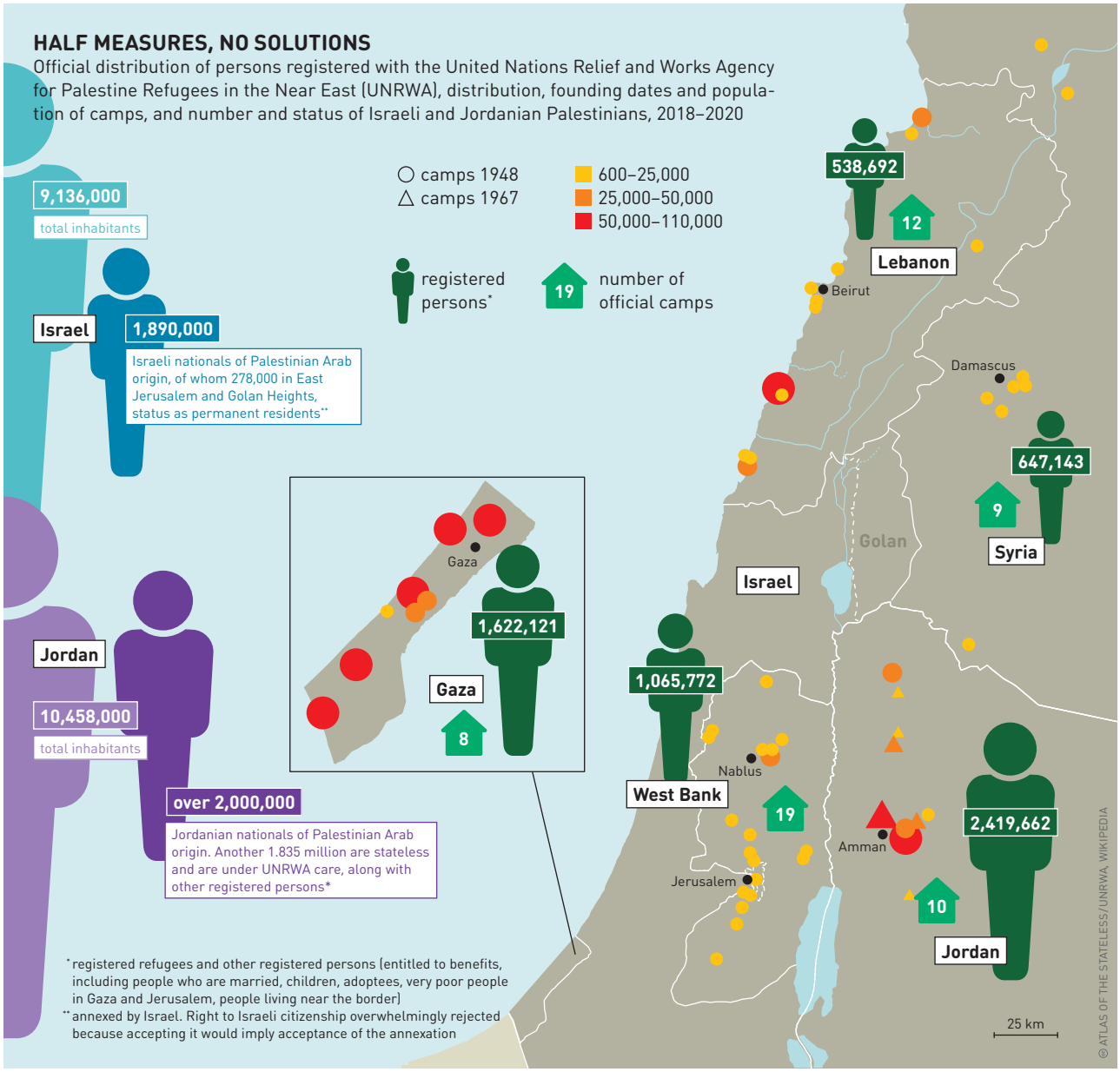


The World Refugee Survey, issued by the U.S. Committee for Refugees and Immigrants, designates protracted refugees as "camp refugees" or "warehoused refugees" who are often deprived of basic human rights in their countries of refuge. Palestinian refugees living in Arab host countries have different legal statuses and living conditions. While Palestinians in Jordan are granted full citizenship rights, those in Syria enjoy basic, but not full, citizenship rights. In Lebanon, Palestinians are deprived of most basic human rights, including their rights as refugees under international conventions. In Iraq, Kuwait, Libya and the Arab Gulf states, political vicissitudes determine the rights they are granted.

The Arab legal system for managing the Palestinian refugees' situation consists of three instruments. Firstly, classification of the Palestinian refugees as stateless persons, regarding this as "positive discrimination"so as to prevent their permanent resettlement and preserve their right of return. Secondly, linkage between UNRWA's mandate of continued assistance for the relief of the Palestine refugees to further conditions of peace and stability (UN Resolution 302 of 1949) and the implementation of a Conciliation Commission to facilitate peace between Israel and Arab states (Resolution 194 of 1948). Thirdly, measures and standards adopted by the Arab League to ensure temporary protection of the Palestinian refugees, most importantly the Casablanca Protocol of 1965 – an instrument that has never been fully implemented.

The majority of the Arab states, and especially Lebanon, have discriminated against Palestinian refugees because of fears that they would de facto be resettled permanently in their territories. But outside the region, Palestinian communities are not always included in measures to protect the stateless. This is partly because their unique situation is not acknowledged, and partly because some countries recognize the state of Palestine while others do not. Even with regard to international protection,

The war of 1948 forced over 700,000 Palestinians to flee. Many became stateless. Seventy years later, they and their descendants are still stateless



Millions of Palestinians are stateless. Some host countries, such as Lebanon, do not want the option of naturalization

Palestinians are distinct from other refugees under the mandate of the UN High Commissioner for Refugees. The UN Conciliation Commission for Palestine was created to find a solution to the Palestinian refugee problem and to safeguard their right to return. But it failed to carry out its mandate, and by the early 1950s its operations were restricted to property identification and documentation and it was wound down. Since then, the UNRWA has delivered "relief protection" in the form of education, health and social services. But this does not meet generally applicable standards for the support of refugees.

The absence of adequate protection for Palestinian refugees by most of Arab states, the collapse of protection by the Conciliation Commission, and the limited protection provided by UNRWA have led to severe gaps in the international protection of Palestinian refugees. The Palestine Citizenship Order 1925–41, which regulated the Palestinian citizenship in Mandatory Palestine, terminated with the end of the British mandate and the proclamation of the state of Israel in 1948. The Nationality Law (5712/1952) established in Israel in 1952, imposed a new set of rules. Given the deadlock that the Oslo peace process has reached and the erosion of the two-state solution, legal experts and international law scholars argue that the current Palestinian "entity" does not fully satisfy the international criteria of statehood according to the Montevideo Agreement: a permanent population, a defined territory, government and the capacity to enter into relations with other states. If no state exists, the Palestinian nationality does not exist, and Palestinians who have not acquired the nationality of a third state continue to be legally stateless.

LEBANON

GENDER DISCRIMINATION DOWN THE GENERATIONS

Laws in many countries discriminate against women in numerous ways: in health, education, marriage, employment, parenthood, inheritance and property rights. Citizenship is no exception: women often cannot pass on their citizenship to their children. The situation is particularly acute in Lebanon, where the Nationality Law of 1925 condems many people to statelessness today. It would be easy to solve such problems, but the country's delicate religious and political balance prevents this.

There are no official data on the exact number and demographic characteristics of stateless persons in Lebanon. A 2011 survey conducted by Frontiers Ruwad Association, a nongovernment organization, found that 30 percent of stateless men are married to Lebanese women, and more than 45 percent of stateless children are born to Lebanese mothers. According to Article 1(1) of the Lebanese Nationality Law of 1925, only persons who are descended from a Lebanese father (by paternal *jus sanguinis)* are considered Lebanese. A Lebanese woman cannot pass her Lebanese nationality on to her husband or children. There are only two exceptions: for single mothers (Article 2) if the father has officially recognized and registered the child, or if the father of a minor child has died (Article 4).

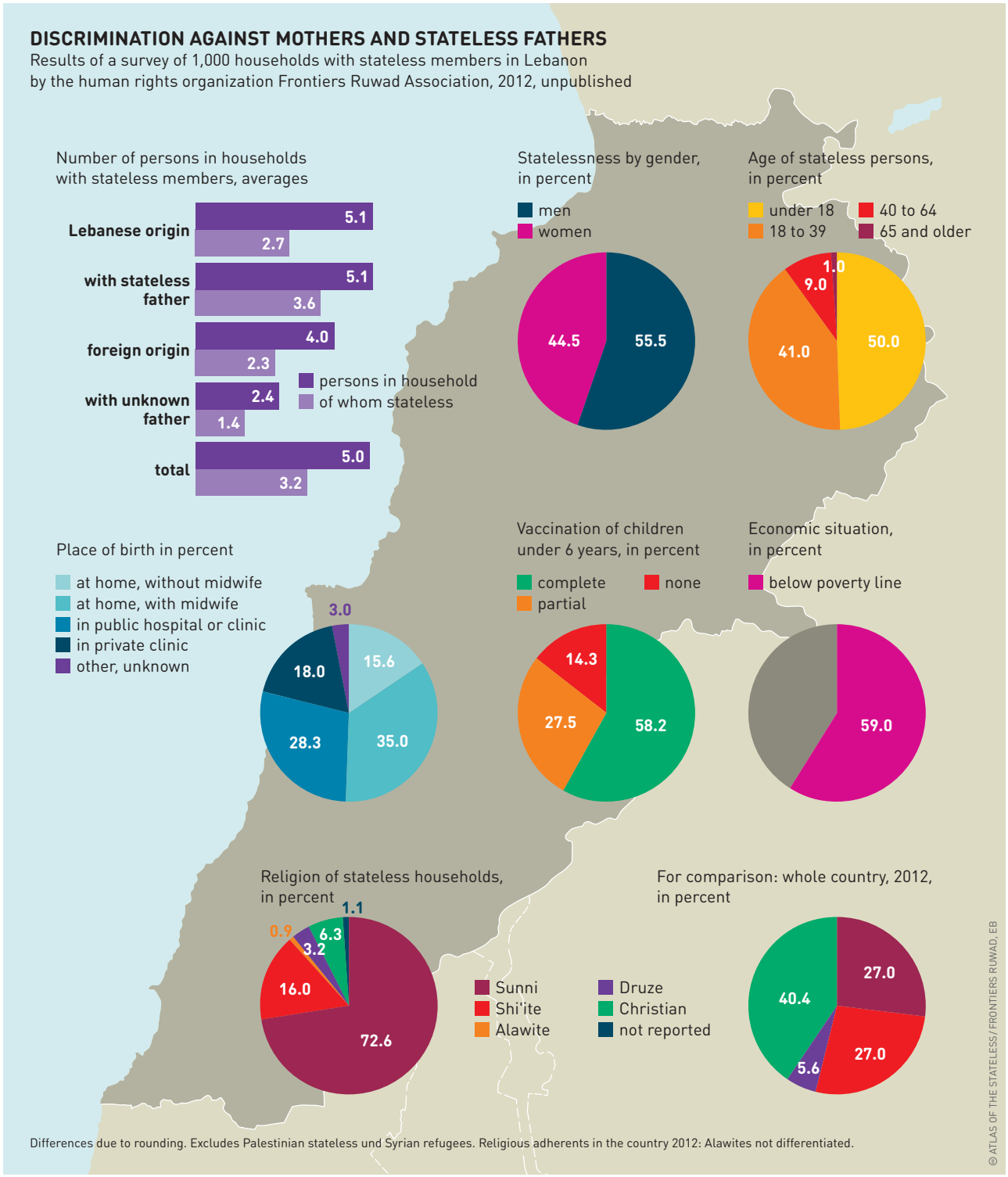
The Frontiers Ruwad study focused on persons with long-term residency in Lebanon or Lebanese ancestors. According to the study, an estimated 60,000 stateless persons are living in Lebanon. It found that stateless persons in Lebanon fall into two main categories: those whose parents or grandparents never registered in the census of 1932 (the country's last official census) and hence did not obtain the nationality, and those whose progenitors obtained Lebanese nationality but failed to register their marriages or the birth of their children. In both categories, statelessness has been passed on from generation to generation.

Lebanon has signed the core international human rights conventions that establish the principle of non-discrimination on any grounds. But in ratifying the Convention on the Elimination of All Forms of Discrimination against Women, it objected to Article 9(2), which guarantees women's equality with respect to their ability to pass their nationality on to their children, and to Article 16(1), items c, d, f and g, with regard to equality within marriage. The gender discrimination in the Lebanese Nationality Law prevents cases of children born to Lebanese women and stateless men from being resolved, so perpetuating statelessness. This affects thousands of children who have inherited their father's stateless status instead of their mother's Lebanese nationality.

The Frontiers Ruwad Association's caseload includes 3,218 stateless individuals who were born to a mother who was Lebanese at the time of their birth. In one case, despite the mother being Lebanese-born and the father being naturalized Lebanese, their seven children remained stateless, because the father was registered as "qayd ad-dars", a category of people regarded as foreigners of "unidentified nationality." Here too the problem was that the mother could not pass on her nationality, and the father did not register the marriage and the birth of the children, even after he had acquired Lebanese citizenship. When he died, he was officially still single. The Lebanese mother is still unmarried, according to officialdom. As a result, the couple's seven children could not benefit from their father's naturalization; they are stateless.

Lebanon has 15 separate personal status laws, one for each of its recognized religions. Under all of these laws, the father is automatically recognized as the guardian of the child. He alone has the legal capacity to represent his minor children. However, if the father is dead or has disappeared, the religious court appoints a legal guardian for the minor children. This is usually a male family member such as the uncle or grandfather. This was the case of the seven stateless children. The mother first had to prove that her father-in-law had died before she could submit a lawsuit on behalf of her children. Three years later, the lawsuit was successful, but it is still in the execution stage and the children are still technically stateless.

This case shows that the gender discrimination enshrined in the Lebanese legal system does not only lead to statelessness; it also makes it hard to find a solution. Amending the Nationality Law and the Personal Status Laws to lift this discrimination would help prevent and reduce statelessness. Members of Parliament, ministers and the National Commission for Lebanese Women have proposed draft laws, but none have been debated in Par-



The problems are growing: some 60,000 Lebanese are reported to be stateless, half of them under 18 years of age

liament. Although a significant number of politicians support a woman's right to pass on her nationality, the issue has not been discussed at the legislative level.

In 2013, the Cabinet assigned a ministerial committee to discuss a proposal to lift gender discrimination in the nationality laws. This committee argued against doing so – ironically, on Mother's Day – under the pretext of demographic and sectarian balance. It referred to "the Constitutional Principle of Equality": the balance between Christians and Muslims, the country's two main religious groups. Since most stateless people are Muslim, the committee feared that modernizing the constitution would increase the number of Muslim citizens, upsetting the religious equilibrium. But no formal statement was made, and the proposals seem to have been dropped.

MADAGASCAR

INDIAN OCEAN, BUT NOT INDIAN

The end of colonialism led to the independence of many countries and a new nationality for many of their inhabitants. But not all. Some people were left stranded: immigrants in the newly independent countries had no state that would accept them. That is the case of the Karana, a minority group in Madagascar.

In Madagascar, people of South Asian origin are known as "Karana". Most of them trace their ancestry to the Kathiawar Peninsula in Gujarat, which they left long before India and Pakistan gained their independence in 1947. The largest wave of migration occurred in the second half of the nineteenth century. In 1999 their population was 20,000; today it is an estimated 25,000.

The term "Karana" derives from the word Koran, or Qur'an, since the majority of the Karana people are Muslim. The Karana are divided into five nationalities: Indian, Pakistani, French, British, and Malagasy. But approximately 5,000 are stateless, according to Karana community leaders and studies by Focus Development Association on behalf of UNHCR.

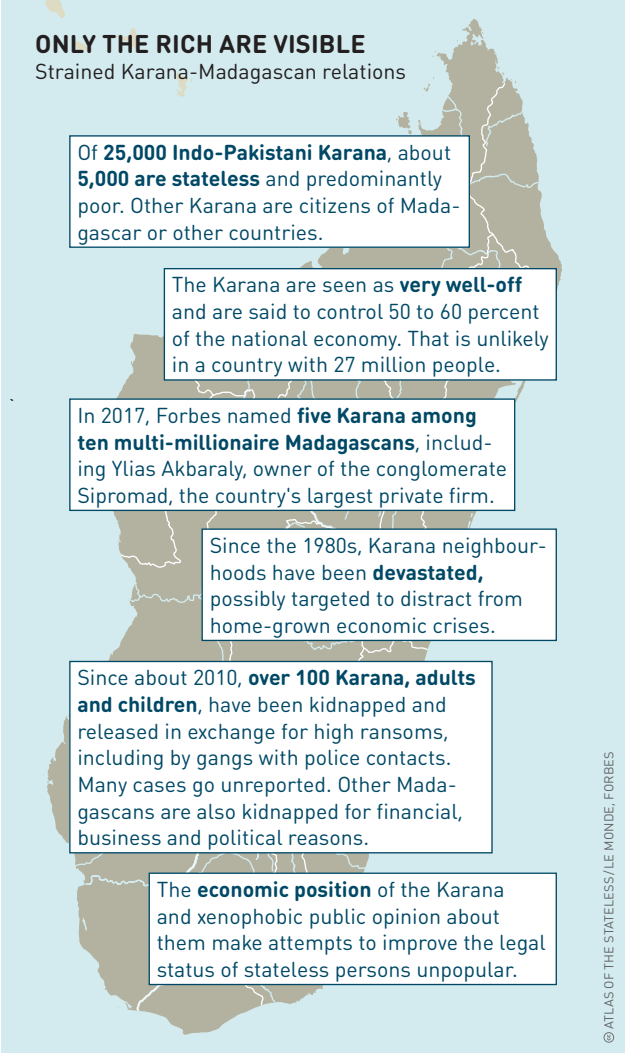
Madagascar's Nationality Code, drafted after independence in 1960, established Malagasy nationality as determined by "filiation" – the legal relationship between parents and children. Hence, a Malagasy blood relationship was required for Malagasy nationality. According to René Bilbao, a Malagasy magistrate, the purpose of the code was to exclude persons of European and Asian ethnicity from Malagasy nationhood.

As a result, Karana people born on Malagasy territory prior to 1960 were not able to keep their Indian nationality unless they could prove their distant Indian ancestry. In addition, the Indian Citizenship Act stipulated that residence outside India for seven years would lead to the loss of Indian nationality. Nor could they become French citizens because the nationality law in the French colonies and subsequently in the overseas territories was complex. Before 1908, nationality was transmitted according to the right of blood; after 1908 by birthright. But decrees in 1933 and 1953 abolished birthright citizenship *(jus solis)*. As a result, it was difficult for South Asian immigrants to acquire the French nationality. Between 1935 and 1949, fewer than 15 "French subjects" a year were naturalized as French in France's West African territories. Many immigrants to Madagascar remained without nationality, and statelessness was transmitted from generation to generation.

Today, naturalization is entirely at the discretion of the Madagascar government. Paradoxically, naturalization is even less accessible for stateless Karana persons than for foreigners who came to Madagascar later. The Malagasy state's fear of giving citizenship to the Karana stems mainly from the fact that doing so would allow them to buy land, something only granted to nationals. This is a very sensitive issue because the Malagasy are very attached to the land, which they regard as the land of their ancestors, and so to land ownership. Since other economic and social factors also play a role, even naturalized Karana cannot occupy higher political offices or positions.

Without a reform of the Nationality Code, the issue of statelessness of the Karana people cannot be resolved. Unlike the Chinese, who have integrated more easily, the Karana people are considered unassimilable. Their marriages tend to be endogamous and take place between

While the wealthy Karana took care of their nationality status, many of the poor did not manage to be naturalized by colonial France



members of the same religious group, and often the same caste.

Although they speak Malagasy, the Karana have retained their own language, traditions, way of life and customs. The wealth of a few Karana people gives rise to feelings of rejection, mistrust and sometimes hatred towards the larger Karana community. Some Karana families are indeed wealthy and control swathes of the Malagasy economy: real estate, banking, energy, cars and industrial equipment. This sparks xenophobic protests, sporadic riots and the looting, and burning of their property – known as OPKs *(opérations karanas)*. More recently, the Karana have been the preferred target of kidnappings.

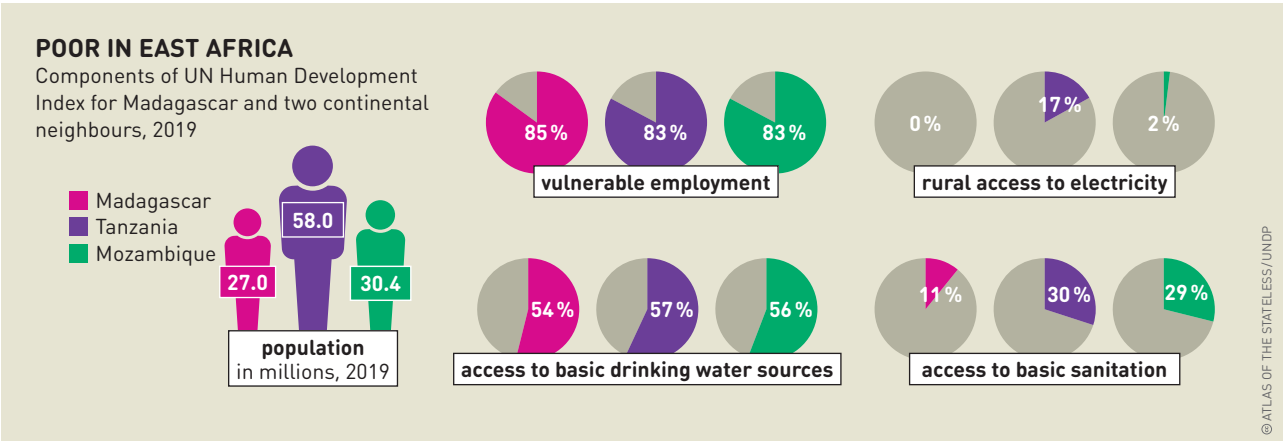
Violence and abductions hamper efforts to find a solution for a relatively small group of stateless persons

The stateless Karana, however, are generally poor and have neither the money nor the influence to acquire documentation. Stateless Karana are considered foreigners in Madagascar: they must regularly renew their visas and are required to obtain residence permits. With the introduction of biometric identification, the fees for documents have become prohibitive for people with low incomes. Renewing a residence permit has become psychologically and financially exhausting, and may be a humiliating experience. Many Karana therefore live in illegality, without papers, and so lack fundamental rights to decent formal employment, education, training, medical care and travel.

Officially, Karana people have no status in Madagascar. The Stateless Persons Office, provided for by Decree No. 62-001, has still not been established – 58 years after independence. Despite UNHCR lobbying, Madagascar has not acceded to the UN Convention on the Reduction of Statelessness of 1961 or the UN Convention relating to the Status of Stateless Persons of 1954, and there is no indication that it intends to do so.

Nevertheless, the authorities are increasingly aware of the issue of statelessness. In December 2019, Senator Mourad Abdirassoul presented a bill to modify provisions of the Nationality Code in order to resolve statelessness by 2024. This bill is currently under consideration.

The Malagasy state is not in a position to guarantee basic services for large sections of the population



UGANDA

NONE OF THE ABOVE

Having a proof of identity is useful for many reasons: to access services, to enable people to exercise their rights, and to prevent fraud. But even the best-designed identity systems may have gaps – through which people who do not fit the criteria may fall. And once they have fallen through the gap, it is difficult to climb back up.

Following the introduction of national identity documents in Uganda, minority communities there have been caught in limbo between cultural identity and legal belonging. In 2014, the government launched the National Security Information System project to provide identity documents as a unique identifier for the 2016 general election. However, the new documents became a requirement not just to vote, but also to access public services such as birth registration, healthcare, education and financial services. This increased the risk of statelessness for several minority communities.

Uganda's 1995 Constitution provides for citizenship at birth to children whose parents or grandparents are members of the indigenous communities listed in the Constitution's Third Schedule, namely those who resided within the borders as of 1 February 1926. Following a constitutional amendment in 2005, which added nine communities, the list now includes 65 indigenous communities. But it still excludes several minorities, even though they were in Uganda before the cut-off date and have no other nationality and no other legal pathways to acquire citizenship at birth.

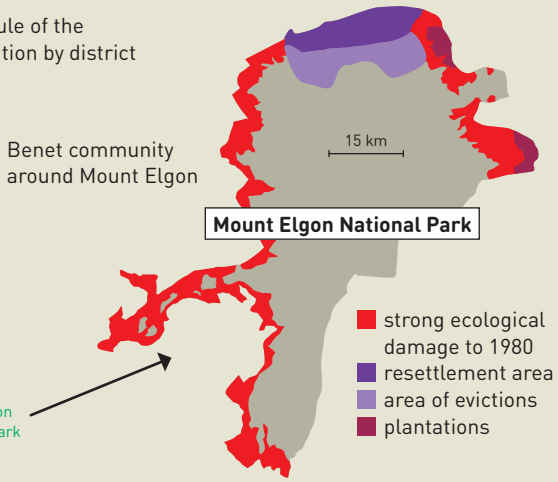
Discussions on introducing identity documents started in the late 1990s, but it was only in 2015 that the Registration of Persons Act established the National Identification and Registration Authority to issue them. During a mass registration exercise in 2014/15, many members of minority groups found themselves turned away because the Constitution did not recognize them as indigenous communities. Excluded from essential services, many felt compelled to sacrifice their cultural identity to establish their legal status. They registered as members of other local indigenous communities with whom they had close cultural and linguistic ties.

Experiences from neighbouring countries like Kenya tell a similar story in that the global push for "identity for all" did not bring about the hoped-for outcome of uni-

Only members of the 65 indigenous communities that lived in the country before 1926 are considered Ugandans. Over 30,000 people are still excluded

UGANDA'S DISPOSSESSED

Indigenous communities demanding inclusion in the Third Schedule of the Ugandan Constitution and rights to citizenship (selected), distribution by district

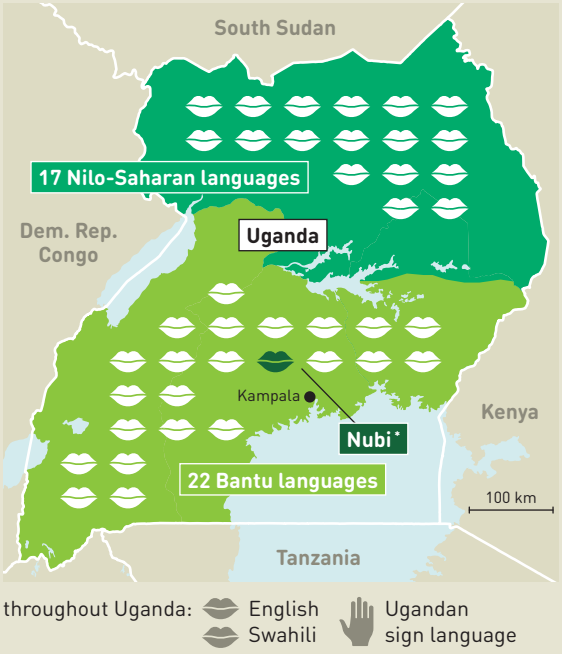


When the British colonial government placed Mount Elgon under nature protection in 1938, the Benet people who had settled on the forest slopes were disregarded. Due to heavy deforestation, they were resettled in 1983 on 6,000 hectares on the northern edge of the area. Allocated too few land parcels because of corruption, they brought into cultivation another 1,500 hectares belonging to the National Park. Some 6,000 Benet were evicted from this area. A court ordered compensation in 2005, but the conflict has not yet been resolved.

DIVERSITY BY THE GREAT LAKES

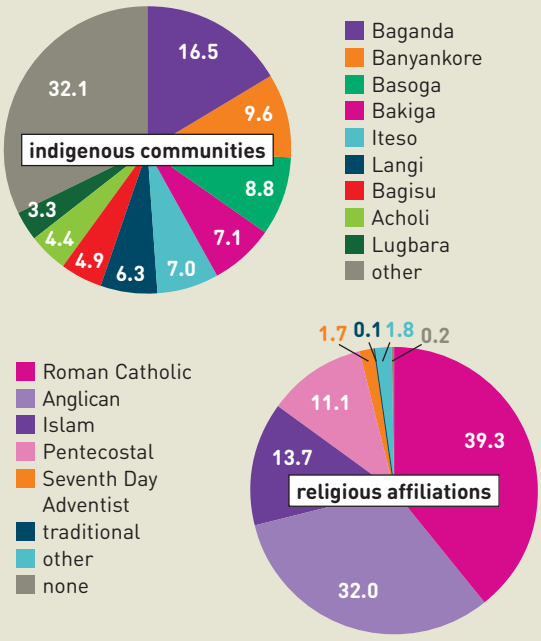
Languages, ethnic groups and religions in Uganda

Approximate distribution of 43 recognized languages, 2020



*based on Arabic, originated with a garrison of British colonial soldiers

Census 2014, percent



differences due to rounding

In 2014, Uganda had a population of 34.6 million. They are strikingly diverse in language, ethnicity and religion

versal access to services, but instead excluded minorities even further. In Uganda, minority communities are at risk of falling further behind by a move that aimed at inclusion; they also face the loss of their cultural identity as they try to navigate around the obstacles placed before them.

For the Maragoli community, the introduction of identity documents compounded concerns over their exclusion. While their historical movements are not documented in detail, they are believed to have arrived in Uganda in three migration waves in the eighteenth and nineteenth centuries, and have since lived in Uganda's western region of Bunyoro. Realizing they were excluded from the Third Schedule in the late 1990s, the mass registration of 2014/15 prompted them to intensify their advocacy. They filed petitions with several government bodies, which confirmed that they indeed met the 1926 cut-off criteria and should be included in the Third Schedule. But the petition was left to be dealt with by a Constitutional Review Commission, which has not begun its work as yet.

Another community excluded from the Third Schedule are the Benet in Uganda's eastern region. Like the Maragoli, they felt forced to register as members of a different indigenous community so as to obtain essential services. In addition, the Benet face problems in accessing their historical lands. The area where they live is today part of Mt Elgon National Park, a protected wildlife area. A resettlement exercise by the government in 1983 to the lower slopes of Mt. Elgon saw a large proportion of the Benet become landless or under threat of eviction. In 2005, the High Court ruled that the Benet are the historical and indigenous inhabitants of the area and should be accorded access to their land. Although it has still not been implemented, the judgement confirmed that they should also be listed in the Constitution.

In October 2019, the Ugandan government made commitments at the High Level Segment on Statelessness in Geneva to include communities that had been living in the country since before 1926. In January 2020, a member of parliament was granted leave to draft a Constitutional Amendment Bill to include the Maragoli community in the Third Schedule. These developments created renewed momentum among both the Maragoli and other communities and spurred hope that they would finally be able to exercise their right to nationality without having to deny their cultural identity.

Statelessness is both a reason that minorities are marginalized and reinforces their exclusion. The question remains whether a nationality framework that is based on membership in a particular ethnic group, with no alternative criteria to granting nationality at birth, can ever be fully inclusive.

WEST AFRICAN NOMADS

MOVING WITH THE HERDS

The concept of the modern state, and the rules of nationality, are based on the idea of residency within fixed boundaries. But millions of people, especially in the drier areas of Africa and Asia, move with their herds from place to place in search of water and pasture. Their lifestyle is far older than the new, artificial boundaries that cut across their traditional grazing grounds.

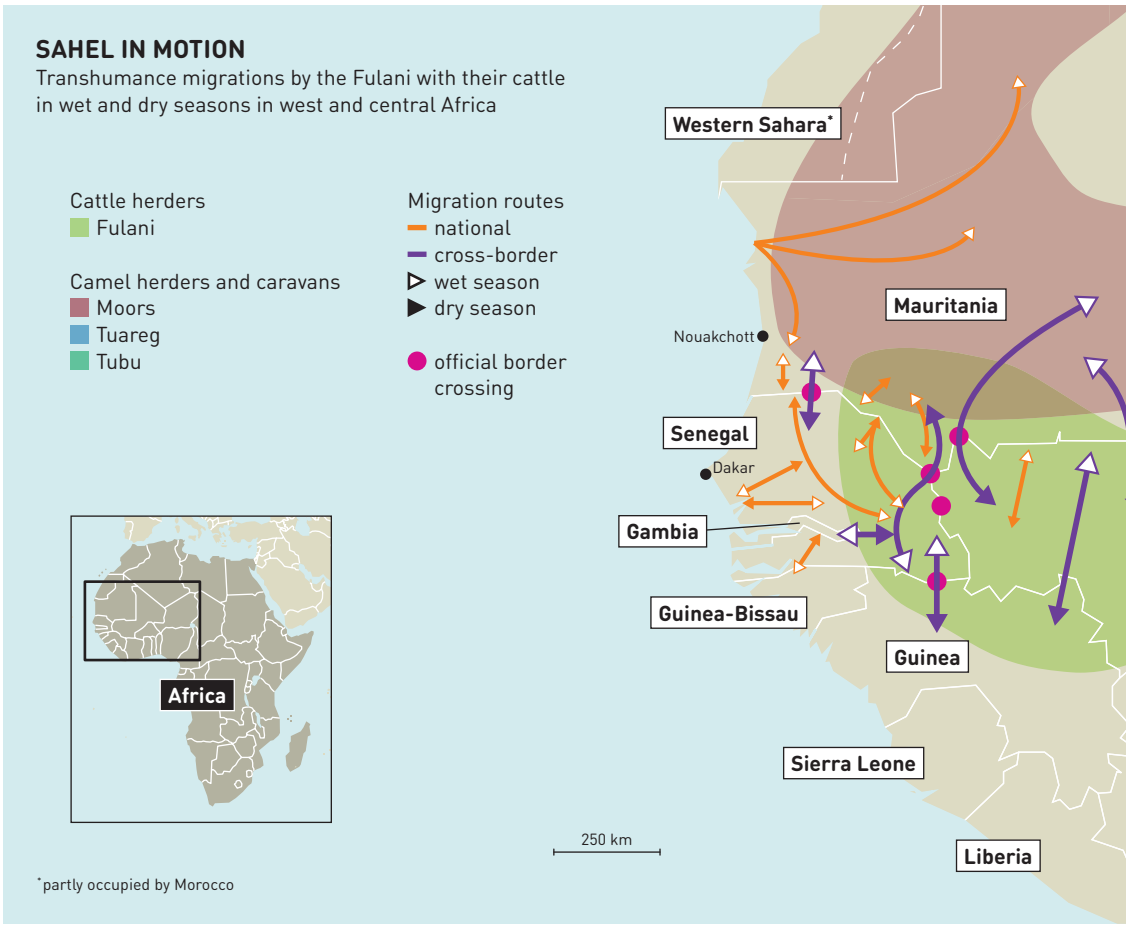
Amongst those most at risk of statelessness are people belonging to ethnic groups that have traditionally followed a nomadic or pastoralist way of life – a population of many millions in Africa. Although many pastoralists are settled or semi-settled, or move only within one country, others have no fixed place of settlement and move across multiple borders with their livestock and belongings.

Nationality laws everywhere are poorly adapted to deal with the situation of those who have no fixed home. In most cases, to gain recognition of nationality a person must prove either their place of birth or descent from a person who has been resident in the country as of a certain date – in Africa, this is usually the date the nation regained its independence. There is a lack of national or international law relating to the determination of the nationality of those who are – or were – not "habitually resident" in any particular state.

In West Africa, the right to a nationality often depends on proving that two generations were born in the country. Yet very few births were registered during the colonial period, and registration rates still remain below 50 percent of all children in many states. A lack of birth registration may create problems for members of any community in establishing their nationality, but is less likely to be an obstacle for a child born to parents from an ethnic group that is known to be settled in the country.

The status of those who belong to nomadic communities, however, is always likely to be questioned.

Members of the 25-million-strong Fulani ethnic group (known as *Peul* in French), traditionally cattle-herders



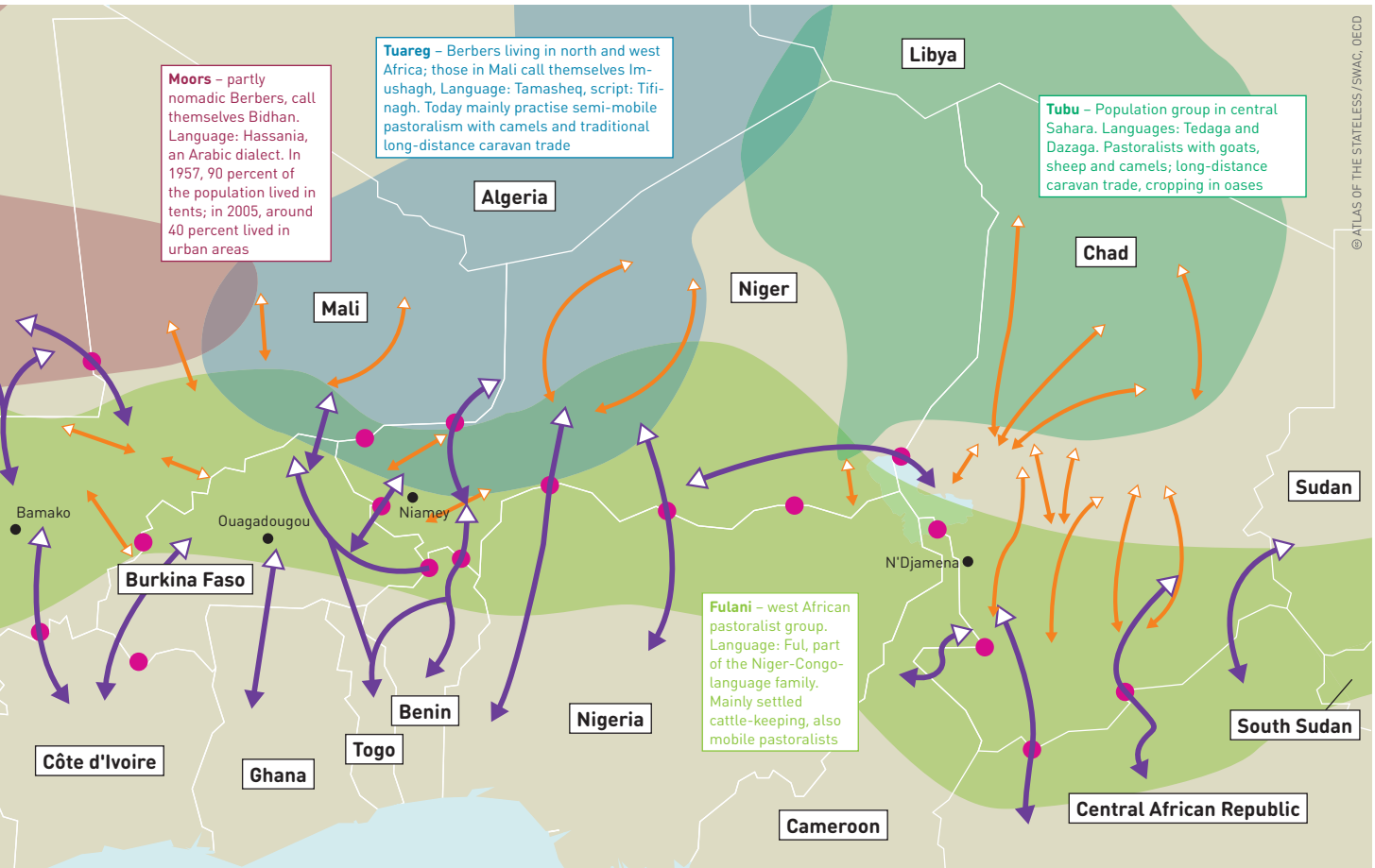
The many national borders in the Sahel hardly match the nomadic economy, and make it easier for governments to keep itinerant herders out

with a pastoralist way of life, are found across West Africa and as far east as Sudan. They are often considered "foreign" in the states where they are present, especially where clashes over land use between agriculturalists and pastoralists prevail. At its most extreme, Fulani have been caught up in mass expulsions of alleged non-citizens. In 1982, Sierra Leone expelled Fulani who allegedly originated from Guinea. In 1988/89, Ghana expelled Fulani pastoralists, and did so again in 1999/2000. Of the 70,000 people driven out by the Mauritanian government in 1989/90 on the grounds that they were not citizens, the majority were cattle herders of Fulani ethnicity from the Senegal River Valley.

Even those Fulani who have lived for several generations in the same location, or migrate only within the borders of one country, may face resistance to the idea that they are nationals of that state, simply because they have a Fulani last name. Some victims of discrimination can obtain identity documents with the assistance of intermediaries who vouch for them (or by paying bribes). But the poorest and most marginalized may be unable to do so and remain unrecognized as nationals of any state. As a consequence, they are unable to access public services, including healthcare and education for their children, are excluded from the formal economy, and cannot exercise the right to vote or stand for public office.

The Tuareg, the nomadic camel herders and traders of the Sahara who speak a dialect of the Berber language (Tamasheq), are also at risk of statelessness in West Africa. Demands for Tuareg self-determination date back to the 1950s, but no state was created for them when the colonial powers withdrew, and today they are spread among Algeria, Libya, Mali and Niger. Resentment at repression and marginalization of the desert regions were among the factors in the eruption of rebellions in Niger and Mali in the 1960s and again the 1990s, and in Mali in 2011. Lack of access to documents confirming their nationality remains a critical problem for many Tuareg. Other groups with a traditionally nomadic lifestyle face similar problems, such as the Mahamid Arabs settled in Niger, who are believed to originate from neighbouring Chad.

Historically, West African nomads have been able to survive or even thrive without identity documents confirming a nationality. State institutions may barely exist in remote rural or desert regions, meaning that they have little incentive or opportunity to register births and obtain identity documents in order to access public services. However, both security concerns and the desire to strengthen services have made identity documents more essential, even for those who do not wish to leave their own communities. If parents do not have documents, it is harder to register the births of children. The risk of statelessness increases with each undocumented generation.



IVORY COAST

FOR COFFEE AND COCOA

Statelessness in Côte d'Ivoire is the result of immigration by large numbers of workers during and since the colonial era. The country's citizenship law is restrictive and arbitrarily enforced, but the government has said it will resolve the problem of statelessness by 2024.

The largest group of stateless people in Côte d'Ivoire consists of migrant workers who came to the country either voluntarily or by force, along with their descendants. During the colonial period, the Ivorian economy was dominated by plantations, and from the 1930s onwards, chiefly coffee and cocoa farms. The workforce needed to run the plantations was recruited both locally and elsewhere in the French colonial empire in West Africa, especially in what was to become Burkina Faso.

In 1960, when the country gained independence, the United Nations Refugee Agency, UNHCR, estimated that around 13 percent of the Ivorian population were immigrants born outside Côte d'Ivoire. These people became stateless overnight. Migrations from neighbouring countries continued until the end of the 1990s. Today, the migrants' children and grandchildren who were born in Côte d'Ivoire make up the biggest group of stateless people.

In the 2014 census, 24 percent of the population stated that they did not hold Ivorian citizenship, even though 59 percent of them were born in the country. The census survey did not ask whether they held the citizenship of another country.

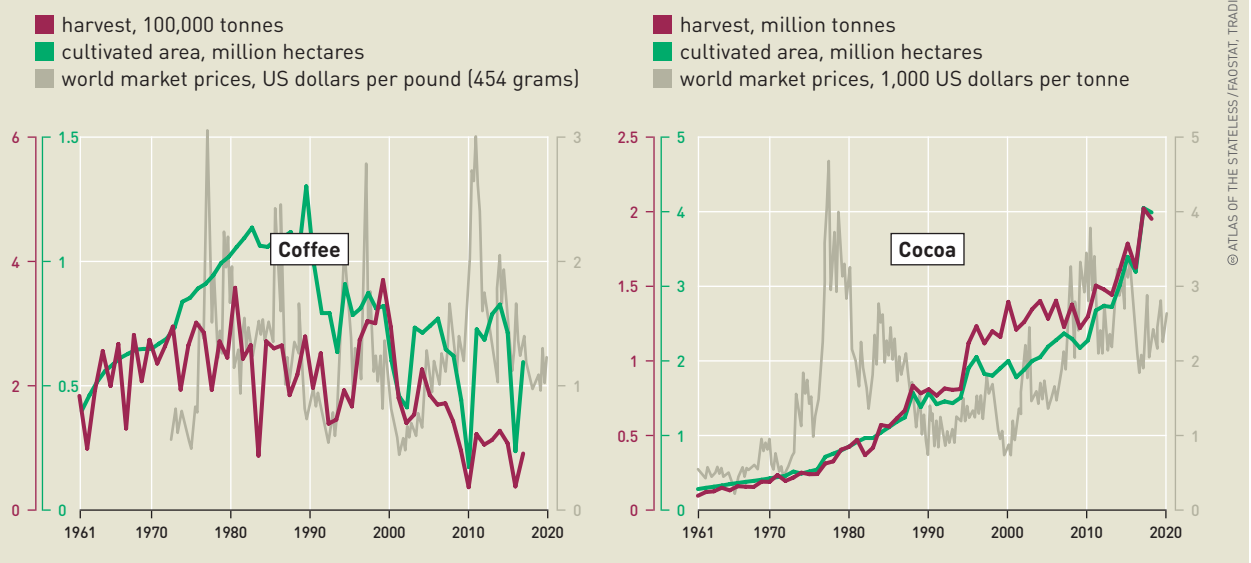
According to the citizenship law of 1961, children must have at least one parent with Ivorian nationality to be automatically eligible for citizenship. For foreigners who were resident in the country at the time of independence from France, the law provided for a one-year-long programme to facilitate naturalization. Prior to 1972, children of parents with immigrant roots could obtain Ivorian nationality "by declaration" if their parents were born in Côte d'Ivoire. But just 36 applicants obtained Ivorian citizenship by submitting such a declaration, and not a single foreigner took advantage of this opportunity.

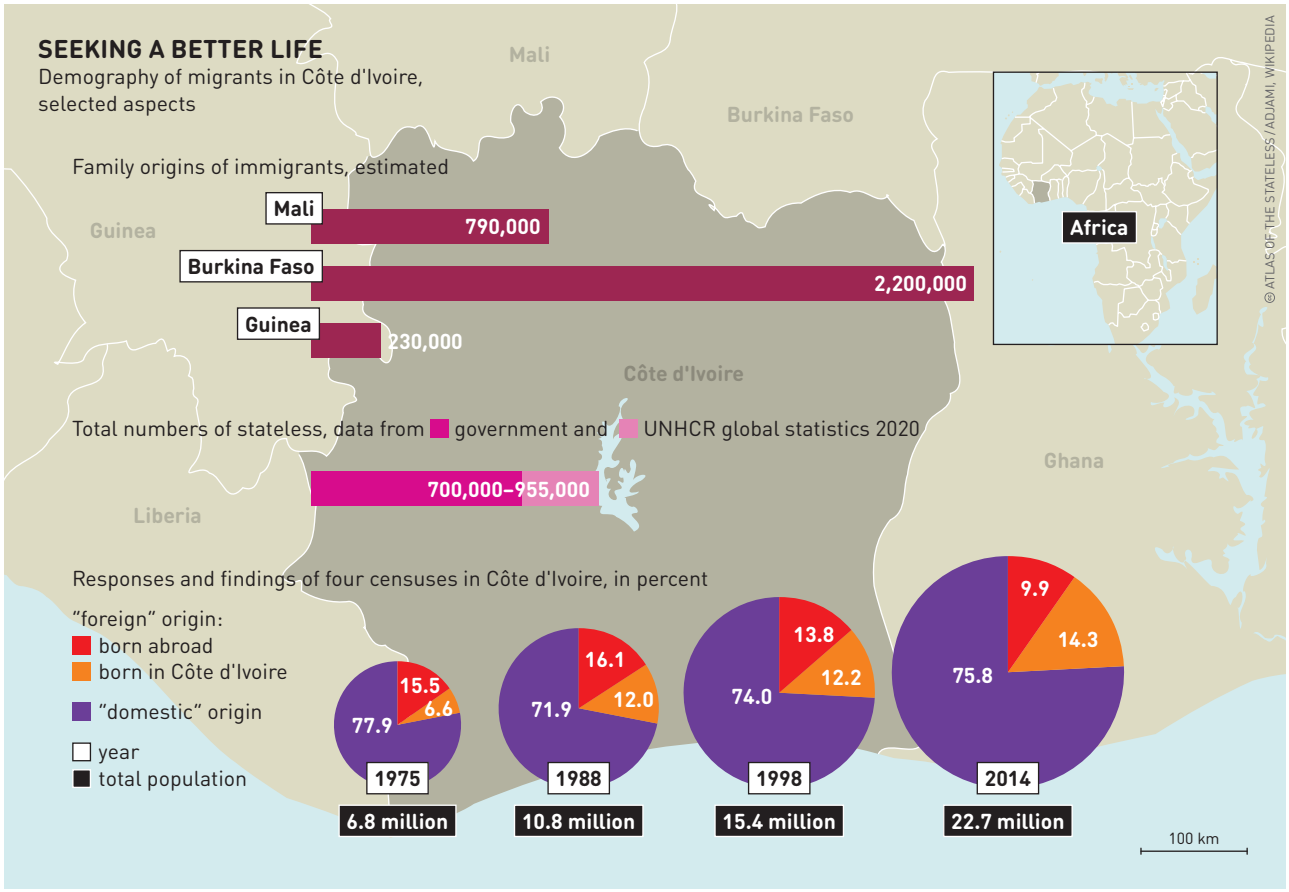
Nevertheless, immigrants and their descendants long enjoyed almost the same rights as Ivorian citizens. This was due to the liberal policies of President Félix Houphouët-Boigny, who ruled from independence until his death in 1993. He believed that foreign workers would benefit the Ivorian economy, especially in producing labour-intensive agricultural products for export. But a decline in the prices of raw commodities and rising economic problems and xenophobia aggravated the situation of stateless people.

While Côte d'Ivoire supplies 40 percent of the world's cocoa beans, the country makes only 5 to 7 percent of global profits from them

COMMODITY ATTRACTIONS

Production and area cultivated for coffee and cocoa in Côte d'Ivoire, world market prices





Reliable data is vital for policymaking, but official statistics in Côte d'Ivoire differ widely from estimates by outsiders

In 1998, a law made Ivorian citizenship a prerequisite for acquiring land. And without identity documents, it is not possible to take entrance exams for secondary schools.

The registration system in Côte d'Ivoire is poorly developed. Many Ivorians do not register the births of their children, partly because information regarding the registration procedure is scarce, and partly because corrupt officials often charge illegal fees. To obtain Ivorian identity documents, one must present a birth certificate and proof of the nationality of one's parents. Many people have never possessed such documents, and many others lost them while fleeing the civil war in the early 2000s. Children whose parents died in the war are especially threatened by statelessness. Discrimination also plays a role: a naturalized woman cannot automatically pass on her nationality to her children unless their father has died.

All this means that the number of stateless people in Côte d'Ivoire remains high. It is difficult to determine the exact number, partly due to gaps in the registration system and partly due to the lack of identification of stateless individuals. One does not know, for example, how many people have taken on the citizenship of their ancestors' country of origin. A further problem is the trafficking of children from neighbouring countries to work in the cocoa plantations – a trade that is almost impossible to detect for official statistics. Such children lack documents, and are at acute risk of becoming stateless.

It is therefore impossible to put an accurate figure to the number of stateless individuals in Côte d'Ivoire. The government speaks of 700,000 people, including 300,000 children whose parents are not known. The United Nations Refugee Agency says that almost one million people are affected.

The problem of statelessness can be resolved by facilitating naturalization and reforming the citizenship law. Doing so would enable children born in the country, whose parents were also born there, to gain Ivorian nationality automatically. But it is equally important to improve the identification of stateless individuals and to strengthen the registration system.

In the meantime, there are positive developments to report. In 2013, Côte d'Ivoire ratified the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Later, the government in Abidjan announced a national action plan to resolve the problem of statelessness by 2024. In September 2020, Côte d'Ivoire adopted Africa's first Statelessness Determination Procedure. Formal recognition of statelessness status will pave the way for people – who until then had no recognized legal existence – to receive identity documents, enroll in school, access health services, seek lawful employment, open a bank account, and buy land.

SOUTH AFRICA

BIRTH BUT NO BIRTHRIGHT

South Africa has one of the most enlightened and liberal constitutions in the world. But even here, thousands of people fall into, or are born into, the limbo of statelessness. Loopholes in laws leave gaps – gaps that large numbers of people can fall through. Children are especially at risk.

Estimates suggest that there are about 10,000 stateless people in South Africa – however, no reliable statistics exist. Among the reasons for statelessness are the administrative and legal hurdles that make it difficult to register a birth. Section 28 of South Africa's Constitution states that every child born within South Africa's borders has the right from birth to a name and a nationality, and should be issued a birth certificate. The country has signed a slew of international agreements. The South African Birth and Death Registration Act (No. 51 of 1992) and the associated Regulations (issued in 2014) govern the issuance of birth certificates and the process and documents required to register a birth.

Despite these regulations, children born in South Africa to foreign nationals do not automatically acquire South African citizenship. The Act requires that foreign parents first produce a valid visa or asylum or refugee permit. But for asylum seekers and refugees, obtaining such documents is fraught with barriers, expenses and delays. People may become undocumented for various reasons: their residence permit has expired, they have not been able to renew their visa outside the country, refugee offices are closed, or immigration laws are restrictive. Births must be registered before the baby is 30 days old. Otherwise, the parents must apply for a late birth registration – a process that is lengthy and onerous, as asylum or refugee documents must be verified.

Foreign nationals who have obtained a birth certificate may continue to face obstacles. The certificates for foreign nationals are handwritten – the birth is not entered into the population register. As the Department of Home Affairs does not reissue handwritten birth certificates, parents who have lost a certificate cannot get it reissued. Their children are denied proof of their nationality. Until recently, a father of a child born out of wedlock was not allowed to register the birth without the mother being present. This changed in July 2018, following a ruling by the Grahamstown High Court stating that the relevant regulation was unconstitutional.

Some separated or unaccompanied foreign minors do not hold legal status and are at risk of statelessness because of restrictive immigration laws. According to the law, first-time visa applications must be made in the country of origin, which is obviously not possible for children who are already within the country. As there is no visa category for unaccompanied children and young people, they cannot be recognized as asylum seekers or refugees.

A survey by the Scalabrini Centre of Cape Town in 2015 found that 80 percent of the foreign children in child and youth care centres had no birth certificates or documents which would enable them to claim a nationality. Because of irregular migration, a lack of birth certificates, passports or other documentation, and lost contact with their families, an estimated 15 percent of the children were at some risk of statelessness. Another study in 2017 on unaccompanied and separated foreign children in the Western Cape found that 55 percent of the surveyed children did not possess birth certificates; 21 percent were at risk of statelessness.

Section 4(3) of the South African Citizenship Act, as amended in 2010, permits foreign children born in South Africa to be granted citizenship when they reach adulthood. But this applies only to children born after January 2013 and for whom births have been registered – which means their parents must have held valid documents. The interpretation of this provision is subject to litigation. Section 2(2) of the same Act provides for the citizenship for those individuals born in South Africa who are not recognized as citizens of any other country. However, these individuals must hold a birth certificate. So section 2(2) appears to be of little help to stateless individuals.

South Africa can reduce the risk of statelessness for children in various ways. It should grant nationality to all children at risk of statelessness. It should review all relevant laws, including those covering birth registration and citizenship, and amend and remove discriminatory sections that inhibit the rights of the child to a nationality. It should systematically identify all undocumented children living in child and youth care centres and make sure they get a birth certificate and a nationality. It should strengthen data collection on refugee children, and streamline their registration and documentation. It should ensure that the Refugees Act is in line with the UN Convention on the Rights of the Child, and it should consider allowing unaccompanied children to settle permanently.

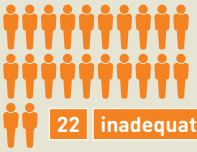
Every child has a different story: orphaned, left by their parents, abandoned in extreme poverty, taken in after abuse, or fleeing from a war zone

109 CHILDREN IN CAPE TOWN

In 2015, the non-profit Scalabrini Centre investigated the background and personal papers of all foreign children placed in Child and Youth Care Centres in Cape Town and the surrounding area. It found that very few can be naturalized without difficulties.

personal documents*

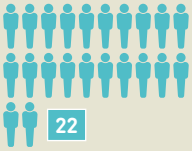
26 none



22 inadequate

56

South African refugee documents, some expired



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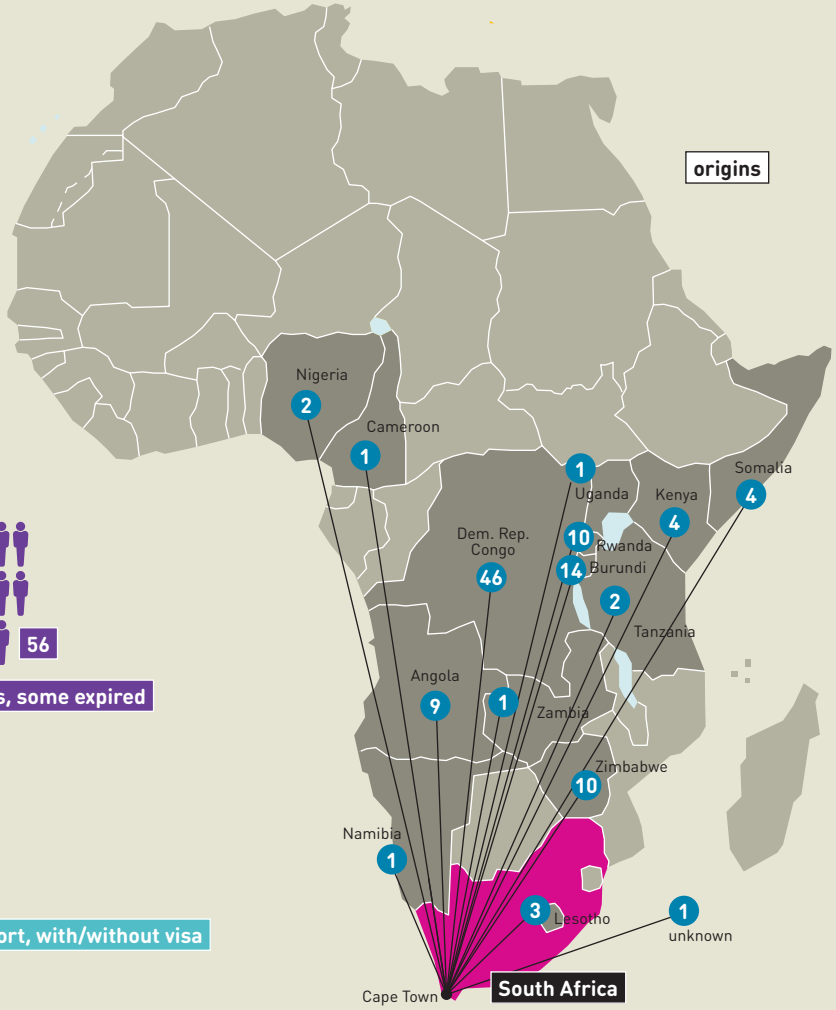
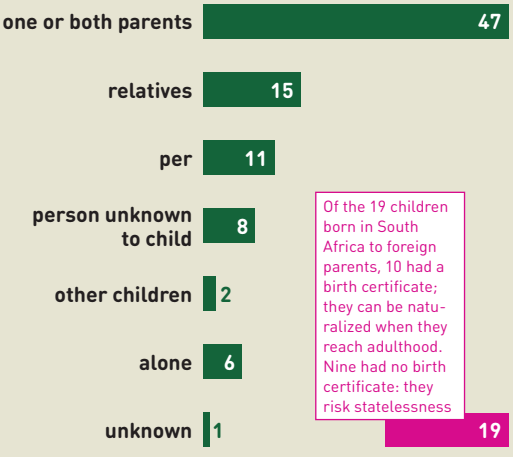
foreign birth certificate or passport, with/without visa

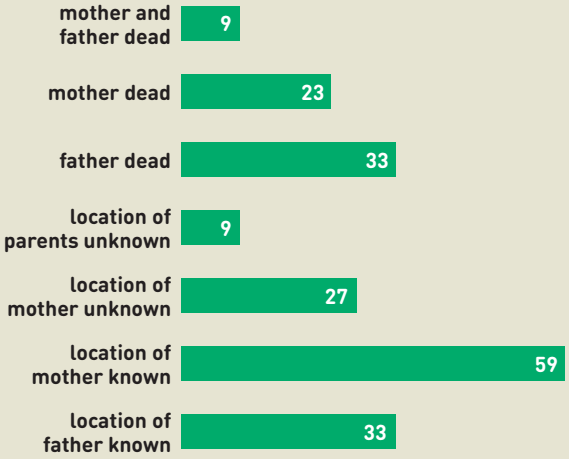


on arrival in South Africa accompanied by



Of the 19 children born in South Africa to foreign parents, 10 had a birth certificate; they can be naturalized when they reach adulthood. Nine had no birth certificate: they risk statelessness

children's knowledge of their parents



*several responses possible

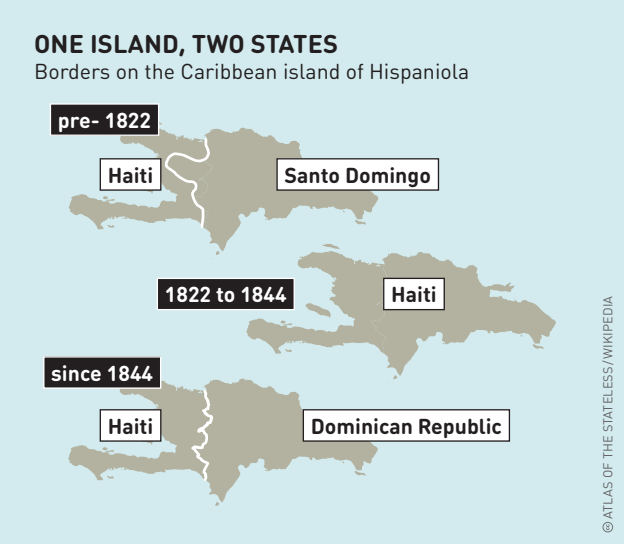
DOMINICAN REPUBLIC

CHANGING THE RULES

The rise of nationalism and xenophobia in some countries is leading governments to consider changes to the rules governing citizenship there. That causes problems for migrants and their descendants. A constitutional change in the Dominican Republic revoked the citizenship of hundreds of thousands people of Haitian origin. Local and international pressure has restored those rights for only half of them.

An amendment to the constitution that came into force in 2010 deprived around 250,000 people in the Dominican Republic of their citizenship. This decision, signed by 209 of the 215 senators and deputies in the legislature, made a quarter of a million people stateless in one fell swoop. The people affected were children born in the Dominican Republic whose parents had immigrated from neighbouring Haiti.

The amendment changed the territorial principle – the rule that had held since the country's founding in 1844 constitutionally entitling anyone born within its borders to Dominican citizenship. In constitutional law, this principle is called *jus soli*, Latin for "right of the land". But in 2010, Article 18 of the constitution switched that to *jus sanguinis*, or the "right of blood". According to this principle, a Dominican is the daughter or son of a Dominican mother or father. This new rule also applied to persons who held Dominican citizenship when the constitutional change came into force. A new paragraph excluded those who were in the country illegally before the deadline, in particular the "Haitianos" from next door.



Colonial heritage of Spain and France: Hispaniola has been centrally governed and split up several times. The Tensions still remain

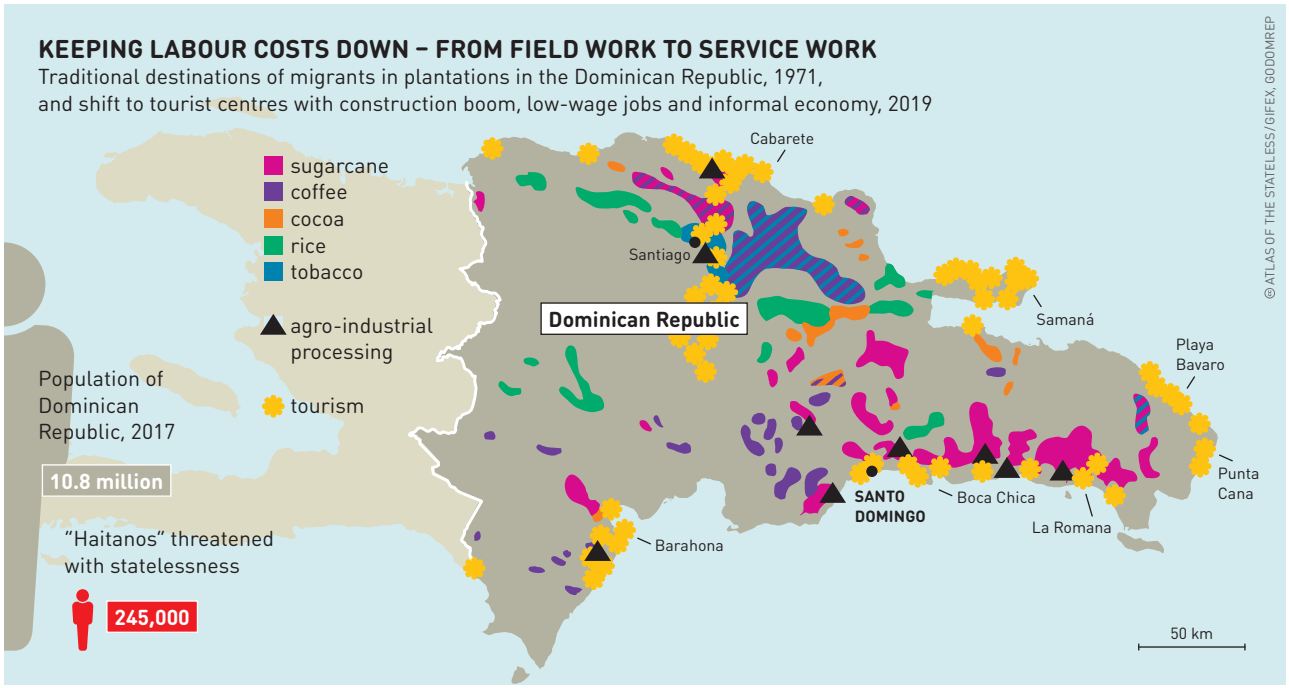
The Dominican Republic and Haiti share the second-largest island in the Caribbean. The western part of the island, Haiti, is linguistically and culturally francophone and is dominated by people of African descent. The east, the Dominican Republic, is Hispanic. The relationship between the two states has been tense since the Dominicans fought for independence from Haiti in 1844. At the same time, Haiti is one of the poorest countries in the Western Hemisphere. Its per-capita income is one-tenth of that in the Dominican Republic. Around one-fifth of its population live below the poverty line.

Such differences have led, and still lead, to people migrating from Haiti into the neighbouring Dominican Republic in search of work, especially in construction and farming. According to the Dominican office of statistics, 87 percent of the 571,000 foreigners living in the country come from Haiti, along with an unrecorded number of illegal and temporary migrant labourers.

The majority of migrants from Haiti who are affected by the new rules arrived after the 1930s on the basis of bilateral agreements. They were employed as *braceros*, or day-labourers, to harvest sugarcane. They were originally permitted to stay for the duration of the harvest season, but the rules were relaxed by the Dominican authorities because of the year-round demand for labour in the sugarcane industry. The workers' families settled near the canefields and processing mills in separate *bateys*, or simple settlements. Despite a certain amount of discrimination as a result of their darker skin or French-sounding names, their descendants were not only tolerated but were registered as Dominican citizens. Under the old constitution, they received the birth certificates and identity documents they needed to enrol in schools, visit hospitals, open bank accounts and conduct financial transactions.

The residency and citizenship of the Haitanos were repeatedly questioned by Dominican nationalists, but their legal status remained untouched. This changed with the arrival of nationalist parties in the government at the start of the 2000s. Local offices of the central election authority began to question the validity of identity documents and started labelling them as "unjustified". Identity documents known as *cedulas* were confiscated or not renewed, and birth certificates were not issued.

Those affected organized themselves and lodged complaints about the denial of Dominican citizenship in the



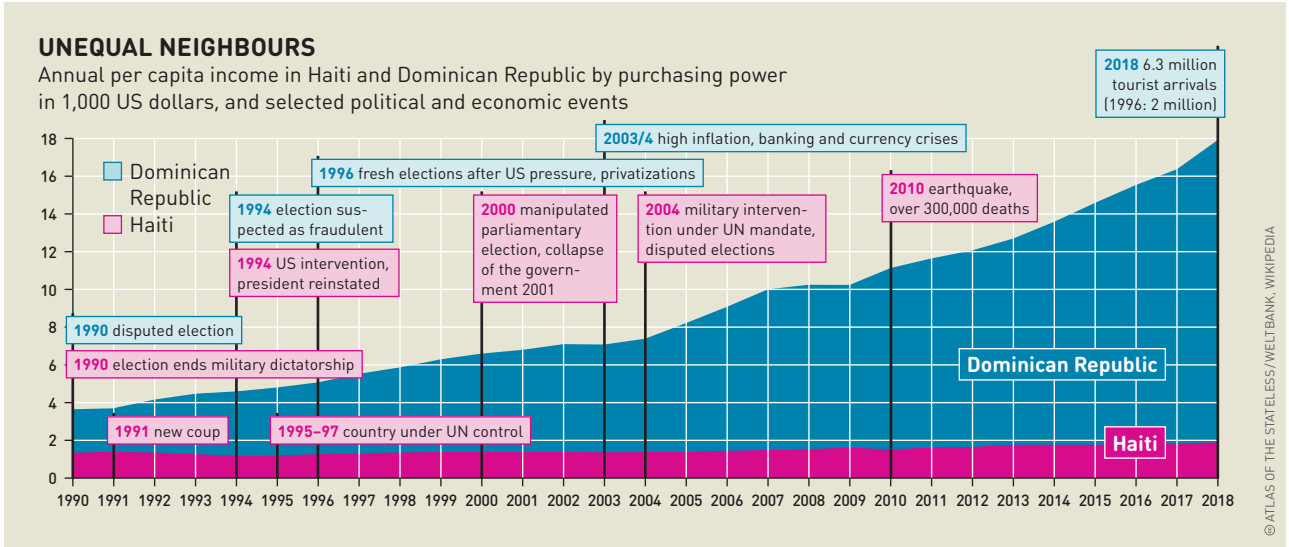
The Dominican Republic used to be an agricultural export powerhouse. Now it is the tourist industry that needs workers

national courts and the Inter-American Court of Human Rights. In 2013, the Supreme Constitutional Court in Santo Domingo tightened the rules again. The Court ruled that the new provisions on citizenship be applied retroactively to 1929 – a clear violation of the globally recognized prohibition against retroactive effects. In response to international protests, the Dominican government and both chambers of parliament passed a modified naturalization law. People whom the new law regarded as "illegal persons" but were registered with the civil registry office could be recognized as Dominican citizens. In addition,

Life is better in the east of the divided island. Here, 20 percent of the population is very poor; in Haiti the figure is 60 percent

Haitanos whose birth was not registered in Haiti and who lacked a connection to the land of their ancestry could be naturalized within two years.

Nevertheless, civil society organizations point out that five years on, around 50 percent of the 245,000 or so people affected still lack birth certificates and identity documents because no final decisions could be made on their cases under the current regulations. These people are still subject to official arbitrariness and bureaucratic trickery – such as the rejection of original documents as forgeries or the refusal to issue residency permits to prevent them from being recognized as Dominican citizens.



USA

FIFTY STATES, BUT NO ROOM FOR THE STATELESS

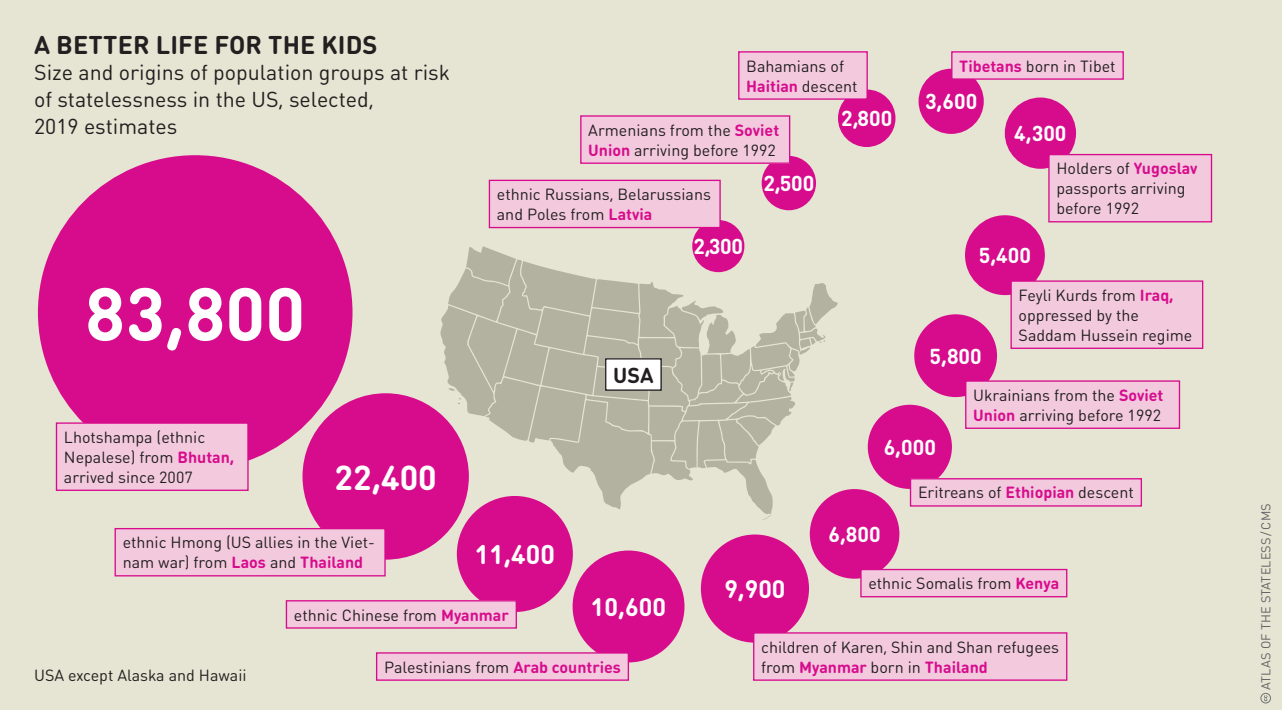
"Give me your tired, your poor / Your huddled masses yearning to breathe free..." says a plaque on the Statue of Liberty in New York. Since its founding, the United States has welcomed immigrants and has granted them citizenship. Their children born on American soil automatically become US nationals. The current US administration is trying to overturn this proud tradition.

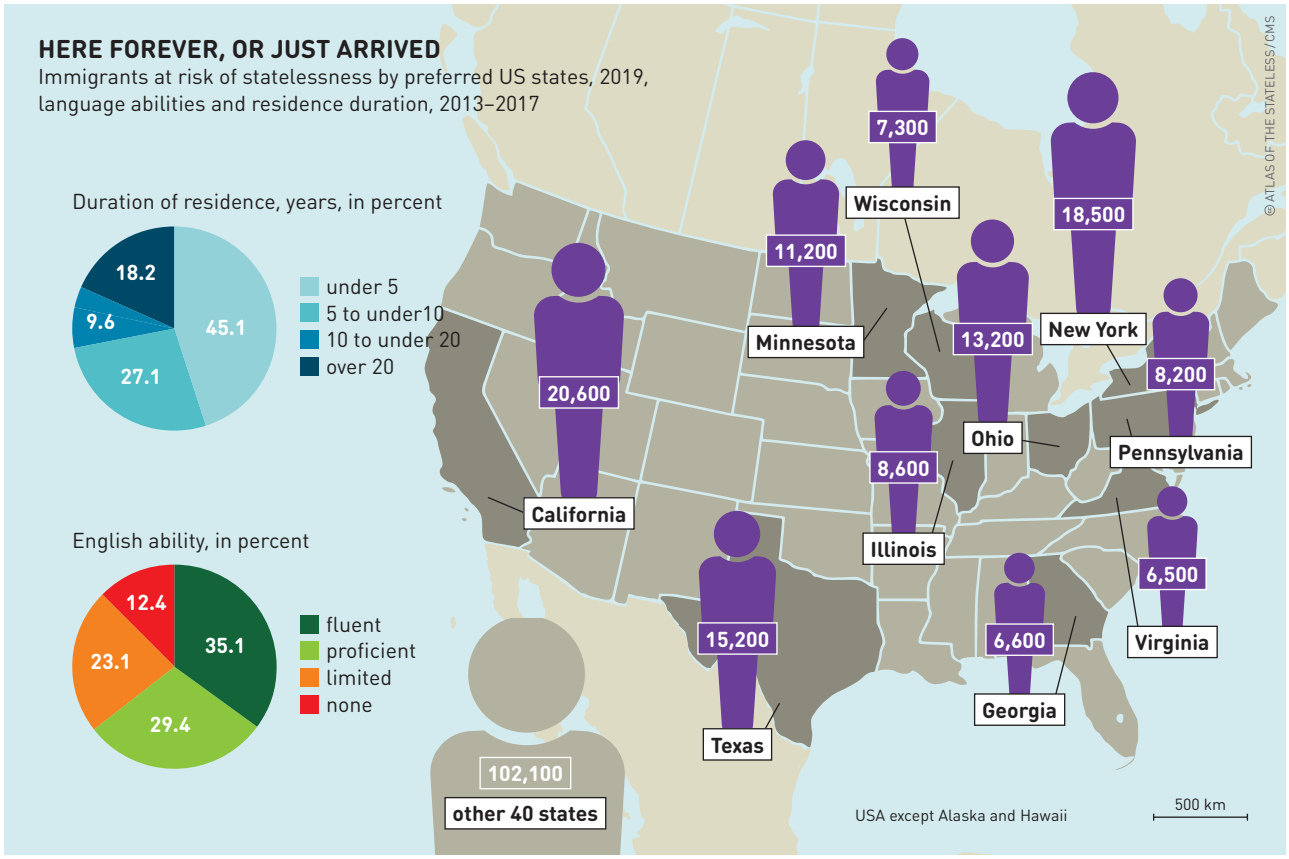
Being born in the United States has long come with the guarantee of automatic US citizenship. Since the passage of the Fourteenth Amendment to the US Constitution in 1868, birthright citizenship has served as a cornerstone of American national identity, and a touchstone of fundamental human rights in the United States. But American democracy is deteriorating. Donald Trump, the current President, argues that the United States should discriminate in its guarantee of birthright citizenship. Indeed, Mr. Trump and his appointees want to reinterpret the birthright citizenship so it excludes children of irregular migrants. The rise of this restrictive view of American identity and fundamental rights makes it necessary to consider the severe consequences that would follow such a drastic reinterpretation of the Fourteenth Amendment.

In 2020, the nonpartisan Center for Migration Studies (CMS) estimated that just over 200,000 people in the United States may be stateless or are at risk of becoming so. This is much higher than the UN Refugee Agency's (UNHCR) estimate of a few thousand stateless persons. Why the difference?

The CMS uses a sophisticated statistical model, and awareness of statelessness has risen, in part because of IBelong, the UNHCR's global campaign to end statelessness. The foreign-born population in the United States is very diverse, and the country may be home to many more resident stateless migrants from the Middle East, Africa and Asia than previously thought. The unauthorized stateless population experiences a particularly intense form of vulnerability. In 2013, a proposal to create a mechanism to protect this vulnerable group nearly passed into

More than 200,000 immigrants in the US may be affected by restrictions on citizenship





The Midwest rustbelt, along with California and Texas, is still a preferred destination for many immigrants. Many learn English quickly

law. But in terms of history the situation was a very different one from the current one.

Whatever the exact size of the stateless population, birthright citizenship has contributed to limit the legal limbo of statelessness. Indeed, the robust *jus soli* (birthright citizenship) regime has provided a perfect guarantee that statelessness cannot be reproduced in the United States. For example, Kuwaiti Bidoons (a group that lacks a nationality in their homeland) who fled the first Gulf War to the United States can count on US citizenship for their children who are born there. Those children would otherwise be stateless. Nationals of some countries cannot transmit their own nationality to children who are born abroad. But if those children are born in the United States, they automatically gain American citizenship.

The Bahamas is perhaps the most pressing example of this phenomenon in the Western hemisphere: Bahamian women are not permitted to pass their nationality to children born abroad. In Haiti and some other Western hemisphere countries, crumbling birth-registration systems make it difficult to substantiate nationality claims for children who are born abroad. Taking these cases into consideration, the potential problem of US statelessness may be ten times larger.

The Trump administration is transforming its rhetoric on restricting immigration into reality. Large numbers of people from the Muslim world have been banned from entering the United States. The wall along the US–Mexico border is growing. This is especially true because of the conservative majority of justices who serve for life in the Supreme Court. On the eve of Mr. Trump's election as President, the Congressional Research Service issued a paper that elevated the "consensual approach" to the citizenship clause of the Fourteenth Amendment; this would limit birthright citizenship to those who owe an undivided allegiance to the United States. Such an interpretation could certainly be used to exclude the children of migrants from birthright citizenship.

The United States currently has a minor statelessness problem, in large part because of the longstanding rule of birthright citizenship. But the issue is now more visible than ever. The threat to birthright citizenship is very real, and hundreds of thousands, perhaps millions, of US residents may be affected.

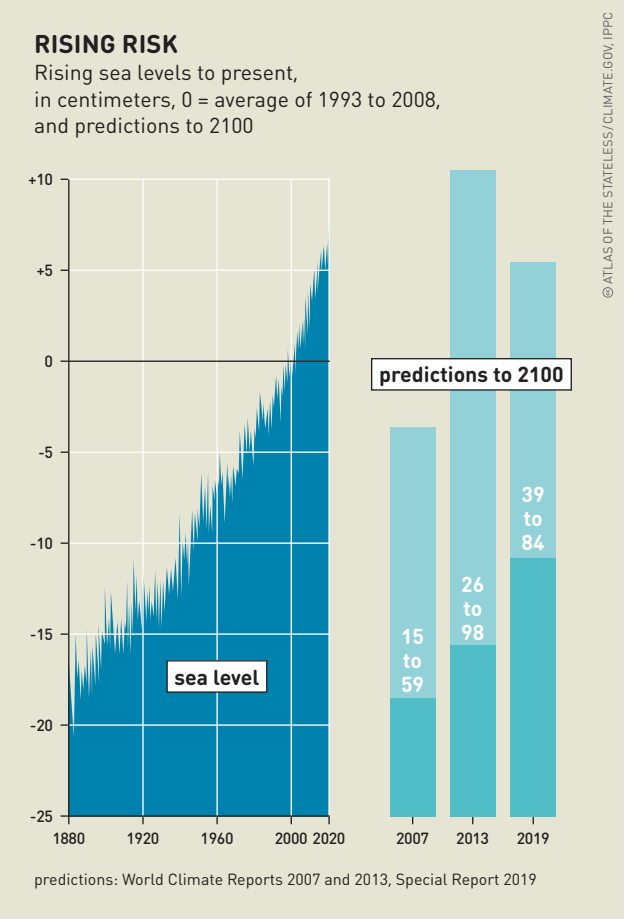
Efforts by the Trump administration to promote denaturalization (the Department of Justice) and to impose passport restrictions on people born on the southern border (Department of State) suggests a willingness to use citizenship as a weapon to advance Mr. Trump's view of national security. His travel ban was recently expanded to prevent immigration from regions he considers undesirable. This suggests that his concept of national security is influenced by racial and religious dogma – the root of virtually every statelessness crisis throughout history.

ISLANDS

WHEN HOME DISAPPEARS BENEATH THE WAVES

As sea levels rise and deserts spread, more and more people are being displaced. Refugees dislodged by climate change risk becoming stateless. Legal frameworks for states with no habitable land must be in place ahead of time.

Rising sea levels are making it impossible to live in some coastal areas. The land is being inundated – or it is saturated with water for such long periods that buildings become uninhabitable and crops die from waterlogging or salinity. Low-lying island states such as Kiribati, Tuvalu and the Marshall Islands are being flooded and may disappear altogether beneath the sea. At the other end of the spectrum, parts of Ethiopia, Eritrea, Somalia and Sudan are becoming too dry to sustain habitation. As climate change displaces people, it also erases their cultures, histories and knowledge. It threatens the very existence of their states.



For a state to exist it must fulfil four requirements under international law: it must have a permanent population, have a government, be independent, and have land. Current international legal and political systems envisage the dissolution of a state only through conquest, succession or amalgamation. There is no provision for a state that faces extinction as a result of climate change. It is therefore important to examine what would happen to states that fail to meet one or more of the four requirements above.

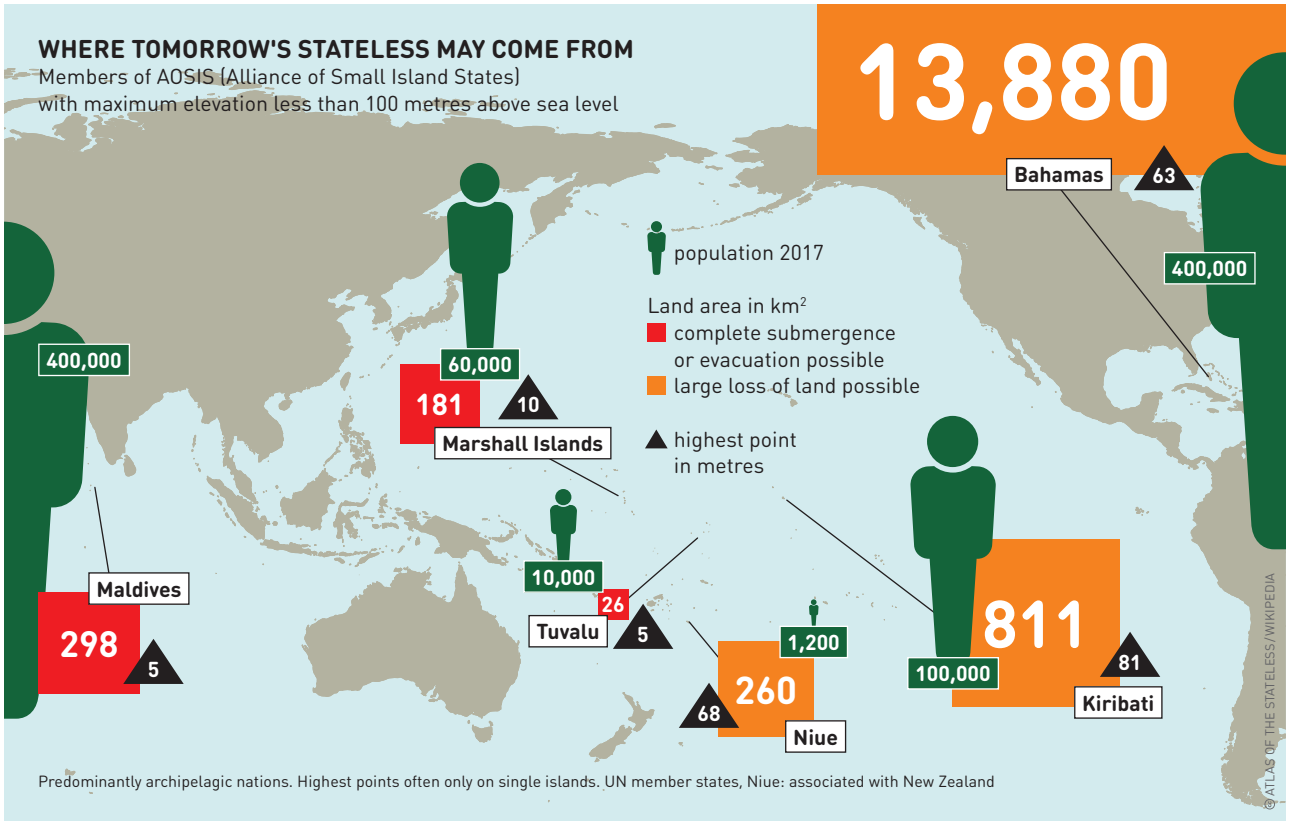
The land question is the most pressing. The Montevideo Convention, which lays down the territory requirement for statehood, states in Article 1 only that the territory must be defined – not that it needs to be permanently habitable. Nor is there a requirement for the population to reside in this specific territory. The land requirement should therefore be ignored in favour of a more relevant assessment – the state's ability to manage the needs and affairs of its population, many of whom will have been displaced.

Can a government serve a dispersed population? Climate change will force many people to migrate well before any state disappears, either politically, through desertification, or beneath the waves. Many inhabitants may insist on remaining in their homeland, but many others will be forced to move if their land becomes uninhabitable.

Those states whose sovereignty and survival are currently threatened have contributed only a tiny fraction of the global emissions that have caused the climate crisis. They are not to blame. The international community must acknowledge this and respond accordingly.

Measuring how much individual states are to blame for their contributions to global emissions is difficult. Besides, states are unlikely to accept any such liability. From a legal perspective, the bulk of global emissions before 1990 did not violate any law: no legal standards for emissions yet existed. But taking 1990 as the point when the impacts and dangers of climate change became reasonably foreseeable, then any failure by polluting states to prevent harm caused to other states and the global commons

New methods are enabling more accurate predictions about the rise in sea level by 2100 – and the forecasts are increasingly alarming



is a clear violation of international law. The so-called "no-harm rule" is a widely recognized principle of customary international law: a state is duty-bound to prevent, reduce and control the risk of environmental harm to other states. Looking forward, the international community has an undeniable duty to act.

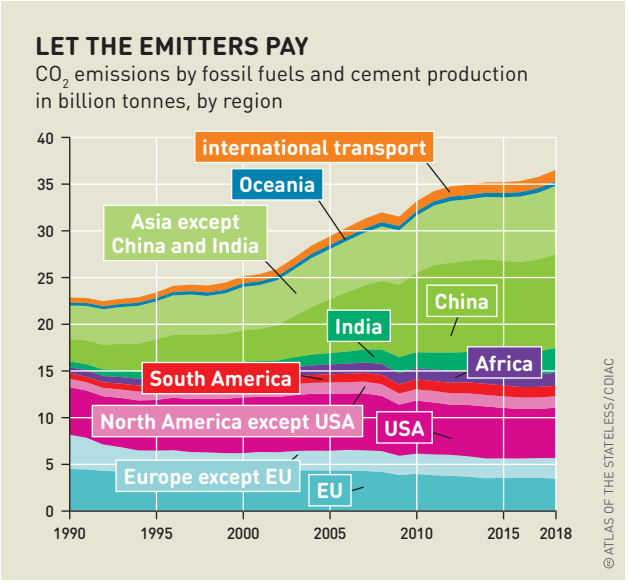
What happens if a state become uninhabitable and its population has fled? The government may be unable to manage a flooded or desertified territory and serve the displaced population. The displaced people are unlikely to qualify as refugees under the legal definition: they are not fleeing violence or persecution. Nor would they qualify as stateless if their home state still legally exists, even if it has no effective government or habitable land. It is therefore important that governments can continue to serve a displaced population to prevent the creation of a new category: people who are "effectively stateless".

A migration crisis can be avoided if frameworks are in place ahead of time. Populations displaced by the climate crisis will need to be accommodated semi-permanently by host states. The home and host governments shall have to agree on the rights of the displaced population. The effective extinguishment of states must be avoided to prevent new stateless populations being created by the climate crisis.

Since 1990, the effects of CO_2 emissions for the oceans have been publicly known. It is easy to see who is responsible

Melting glaciers and ocean warming, along with changing currents and stronger storms, are threatening island and coastal states

Cities in wealthy countries are preparing for higher sea levels. New York City, for example, is planning high-water barriers on Manhattan Island. Poorer countries cannot afford similar defences. It is a collective duty to make provisions for the future, and to ensure that the vulnerable who will be displaced through the climate crisis do not also become stateless.



NO PAPERS, NO RIGHTS

Most people live in one place: they have a house or a flat, perhaps even a garden. Groups with a mobile lifestyle do not fit in, and thus are viewed with suspicion and hostility. That is true of the Roma in Europe, even though many have been settled for generations. The possession or acquisition of documents proving citizenship is a major problem.

Rom" means "man" in the language of the Roma (or Romani or Romany) people. "Roma" is used as an umbrella term to cover a range of European groups and subgroups, including the Roma, Sinti, Manouche, Calé, Kale, Romanichal, and many others. Linguistic research indicates that the Roma originated in India and arrived in Europe in the Middle Ages. With an estimated 10–12 million people, the Roma are by far the largest ethnic minority in Europe.

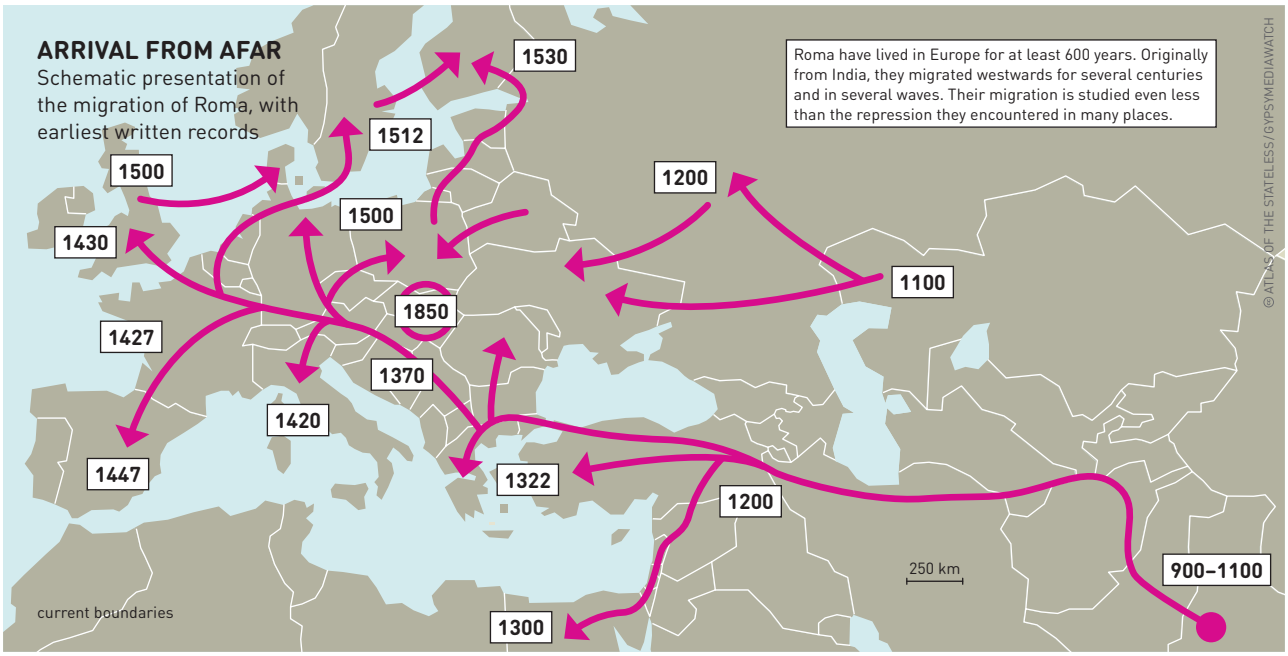
They still experience difficulties in applying for a residence permit or citizenship. Majority societies have always tended to reject them. Repressive measures have ranged from forced assimilation and restriction of rights to persecution – culminating in genocide by the Nazis in the Second World War, in which some 500,000 Roma were murdered.

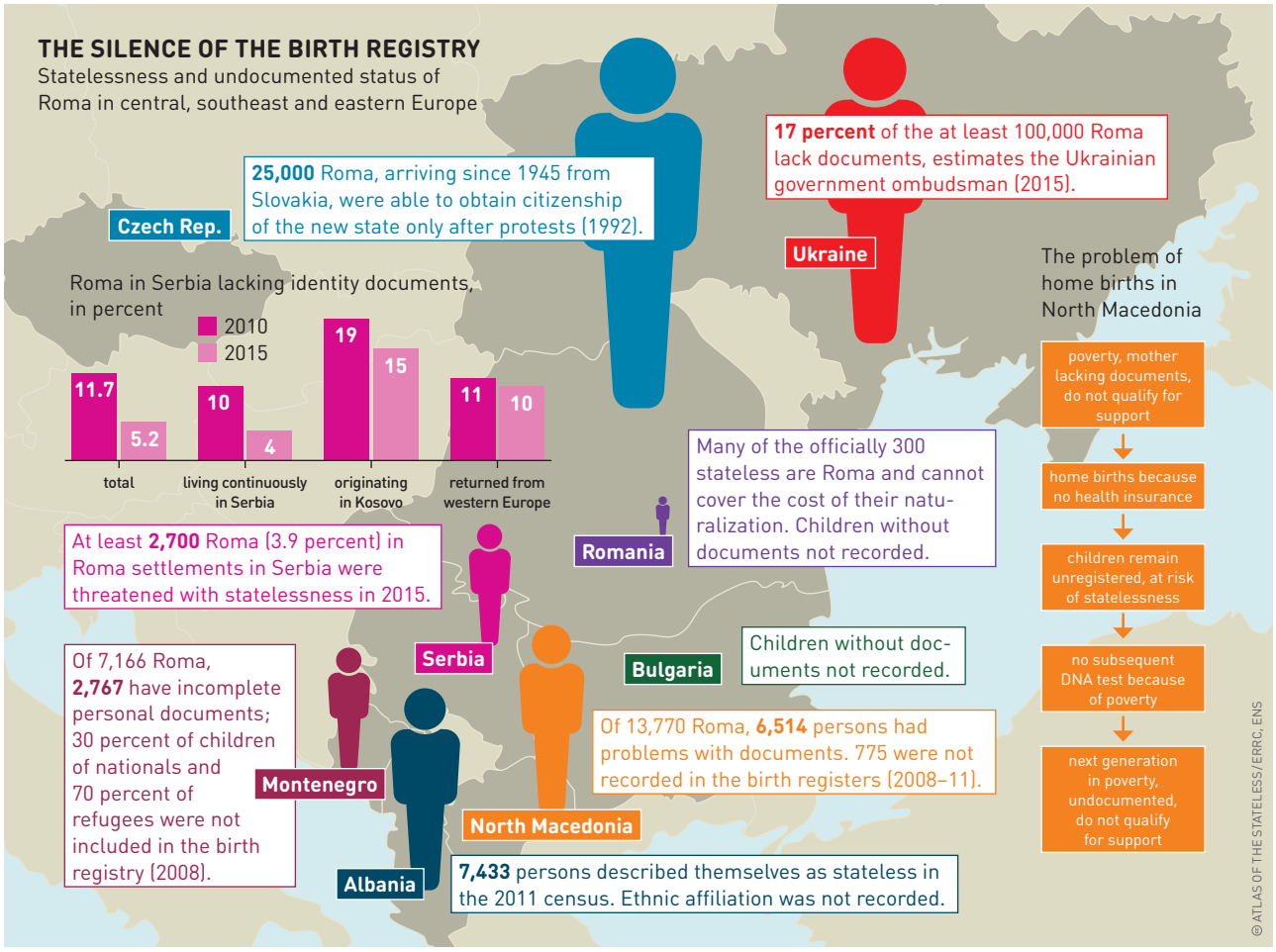
Even today, the groups often referred to as "Gypsies" are ascribed characteristics that stigmatize them as deviating from the norms of society. Racism against Roma, known as "antiziganism" or "antigypsyism", is expressed in the form of violence, hate speech, exploitation and structural discrimination. Like antisemitism, it is based on an ideology of racial superiority, a form of dehumanization and of institutional racism, nurtured by discrimination throughout history.

This is especially the case in the Balkans, home to a large percentage of the European Roma. With the disappearance of the socialist governments of Eastern and Southeastern Europe, the situation of the Roma, which was already difficult, worsened dramatically. Under socialism, the Roma were subjected to the destruction of informal settlements, resettlement and expulsion. But now the relative normalization of nationalistic and racist ideologies in some places has led to greater discrimination in the labour market, education and healthcare systems. Poverty and a lack of documentation mean that more than half of the Roma living in segregated settlements are often forced to endure inhumane conditions.

In Yugoslavia, many Roma moved frequently and did not appear in birth registers or residence records. When Yugoslavia broke up into its component parts, many lost their citizenship. The same happened to the Roma living in Western Europe: they became de facto stateless and

For a long time now, the Roma have had a similar level of mobility as the cultures that surround them. The idea that they are wanderers is a persistent myth





Poverty and lack of documents form a vicious circle that can pass from one generation to the next

still experience problems with their residence status or when applying for a new citizenship. This is in part due to the fact that the authorities do not provide assistance in obtaining the necessary documents.

As a minority subject to discrimination, Roma from Yugoslavia were especially vulnerable to the social upheavals and wars in the region. Those who were able to flee the war in Bosnia in 1992–95 lost both their homes and their citizenship. Roma were also collateral victims during the armed conflicts in Kosovo in 1998–99. More than 100,000 Roma, Ashkali and Balkan Egyptians were forced to flee. Some 50,000 sought asylum in the European Union, but in Germany, for example, they were only granted a "tolerated" status.

Some years after the war, Germany and other European countries negotiated repatriation agreements with the Balkan states to return people without a permanent residence status in the European Union to their countries of origin. As a result, several tens of thousands of Roma were deported to Serbia, Kosovo and North Macedonia. The majority tried to return to Germany and reapply for asylum.

This was possible until 2014 and 2015, when Germany and other countries in the EU added the Balkan states to the list of safe countries of origin. According to refugee organizations, the introduction of this list of "safe countries" led to the erosion of legal protections for asylum-seekers. For the Roma, this made it virtually impossible for them to obtain asylum in the EU. This also made it easier to deport Roma who were living in the EU. In 2015, a total of 21,000 people were deported from Germany alone, three-quarters of them to the countries of the Western Balkans.

In the Balkan countries, deported Roma often only have refugee status; many have no valid identity documents, or their documents are incomplete. As a result, they can only find accommodation in poor, informal settlements, which in turn means that they do not have a valid address they can use to register as residents. There are various programmes for their integration and inclusion, such as the 2011 EU Framework for National Roma Integration Strategies, which is in effect until 2020. However, they have not led to a significant improvement in situation of the Roma in the Balkans. On the contrary: the rise of right-wing extremism in Europe and the accompanying spread of hatred towards refugees and Muslims means that Roma throughout Europe are now living in fear again.

BREAKING UP AFTER A FORCED MARRIAGE

The three Baltic States – Estonia, Latvia and Lithuania – were independent between the two world wars but were absorbed by the Soviet Union in 1940. After the dissolution of the Soviet Union, they sought to rebuild their nation-states and identities. This explains the differences in their citizenship strategies.

After regaining their independence in 1991, Latvia and Estonia introduced restrictive policies granting citizenship only to those who possessed it before the Soviet occupation and to their descendants. As a result, about one-third of the populations of these countries – former citizens of the USSR – were deprived of citizenship. Russian-speaking people of Russian, Belarusian and Ukrainian ethnicity, who were believed to pose a threat to the national identity and language, were particularly disadvantaged by this policy. They were declared to be "non-citizens" *(nepilsoņi* in Latvian), or of "undetermined citizenship" *(kodakondsuseta isik* in Estonian).

In the 1990s, international institutions, including the United Nations, the European Union, the OECD, the Council of Europe, Helsinki Watch and Amnesty International, criticized the citizenship policy and the exclusive Citizenship Act in Latvia and Estonia. In response to this pressure, Latvia and Estonia introduced amendments to facilitate the acquisition of citizenship. The citizenship restrictions were meant to restore the legal status and ethnic demography of the interwar period. The naturalization process in the two countries was aimed at encouraging non-citizens and people with undetermined citizenship to adapt to the majority society.

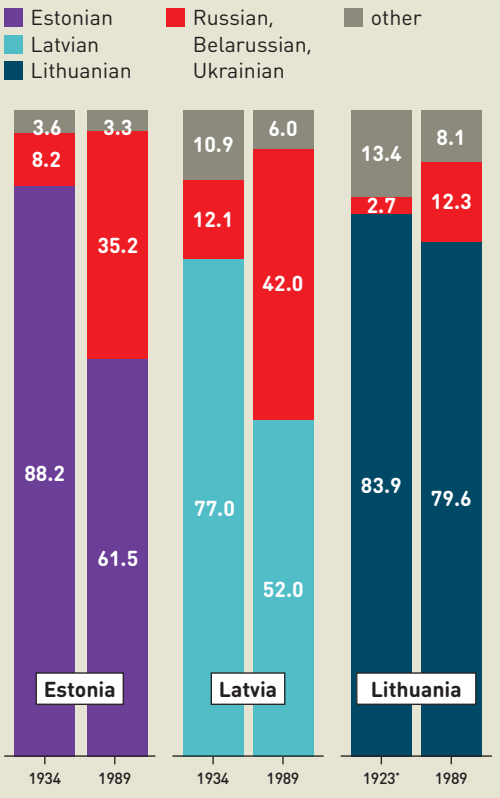
In Estonia, the naturalization process has proven more dynamic and effective than in Latvia. The number of people with undetermined citizenship fell from 32 percent in 1992 to 5.7 percent in 2019; it is currently at 76,148 persons. In Latvia, nearly 150,000 people have been naturalized since the Citizenship Act was launched in 1995. But 237,759 people, or 11 percent of the population, are still non-citizens.

In recent years, Estonia has introduced mechanisms to further reduce the number of people with undetermined citizenship. Persons who have a long-term or permanent residence permit and who were settled or born in Estonia before 1 July 1990 can apply for citizenship. They must be fluent in Estonian, have a legal source of income, a place of residence in Estonia, and proven loyalty to the Estonian state. Since 2015, people over the age of 65 are exempted from the written language exam. All children born in Estonia after 2016 whose parents have had their permanent residence in Estonia for at least five years are automatically granted Estonian citizenship.

A similar solution has just been approved by the Latvian parliament. Children who have reached the age of 15

FEARING THE MINORITY

Self-reported ethnicity in censuses in Baltic republics between the world wars, and "nationality" at breakup of Soviet Union, in percent



*excluding Klaipėda/Memel region

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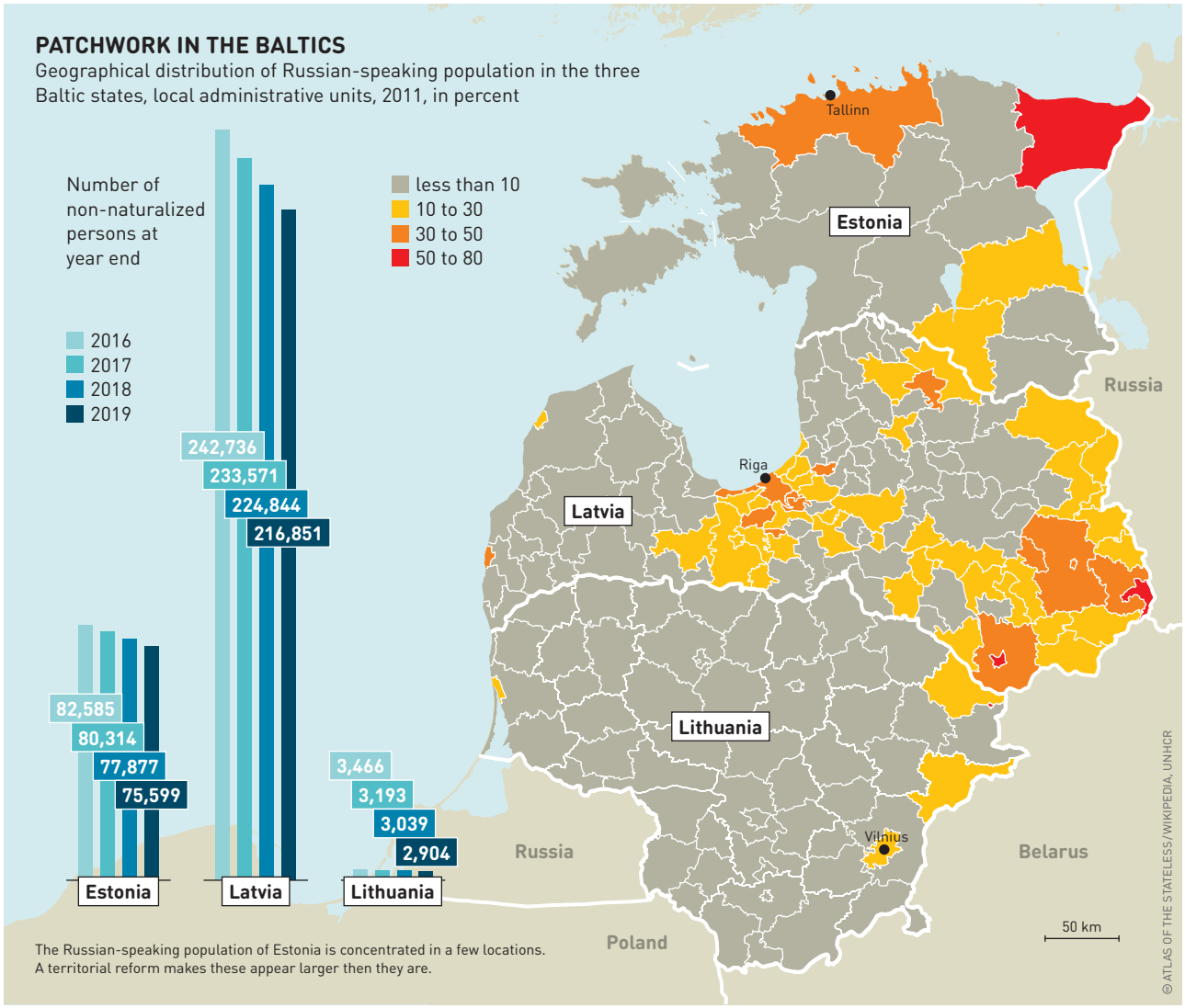
New jobs in factories and government, plus the influx of military personnel, quickly changed the ethnic composition of the Baltic states



Many non-naturalized Russians opposed the independence of the Baltic states. But they are getting older and are dying

can apply for citizenship; those under the age of 15 can become naturalized together with their parents. This applies also to applicants fluent in Latvian, with five years of permanent residence, and with a legal source of income.

Non-citizens in Latvia enjoy protection under the law, as do people with undetermined citizenship in Estonia. They may become members of civil organizations and they have the right to visa-free travel within the EU. Despite these guarantees, the political and economic rights of non-citizens or those with undetermined citizenship are restricted. They cannot vote, they lack protection under national minority legislation, they cannot work in the civil service, as state officials, judges, lawyers, police officers or soldiers, and their access to technical professions is restricted.

Lithuania, unlike Latvia and Estonia, chose the liberal "zero variant", which allowed people registered there to obtain citizenship regardless of their nationality, length of residence, or knowledge of Lithuanian. Less than 0.1 percent of people in Lithuania are stateless. The country's inclusive policy results from three sources. Lithuania has a history of being a multinational country; at independence, the percentage of minorities in the population was relatively low; and the country needed to stabilize relations with its neighbours. But this changed with the Citizenship Act of 2002, which limited the citizenship opportunities for people without Lithuanian roots. This significantly influenced the naturalization process, especially for migrants with Soviet-era citizenship. Like Estonia, Lithuania does not allow dual citizenship: holding another nationality makes it impossible to obtain Lithuanian citizenship.

In contrast to Lithuania, non-citizen status in Estonia and Latvia has affected the residents' political, economic and social position, harming their social integration. Gradually liberalizing citizenship has improved interethnic cohesion, particularly in Estonia, but a considerable number of non-citizens are still unwilling to naturalize after 30 years of independence.

NOT YET A MODEL FOR THE WORLD

The Old Continent – and the European Union in particular – likes to see itself as a model of democracy and human rights. But it is home to a surprising number of stateless people – some from Europe itself, as well as more recent arrivals. The countries of Europe must do more to solve this solvable issue.

At least half a million people in Europe are stateless – maybe more. The true figure is likely to be higher given how difficult it is to count people who are "legally invisible". The causes of statelessness in Europe vary but resemble those in other parts of the world. The dissolution of the Soviet Union led to large-scale statelessness in the Baltic and Eastern European states. In former Yugoslavia, some people fell through the cracks created by new nationality laws. Though most have since managed to establish their nationality, this is not the case for many Romani people. Throughout Europe, discrimination, legal gaps and the exclusion of minorities still leave people stateless. In recent years, many people from Syria, Iraq and elsewhere have sought safety in Europe. EU data suggest that thousands of people with "unknown" or no nationality have applied for asylum in recent years.

Statelessness is not a new phenomenon. An international legal framework that guarantees protection to stateless people and sets clear rules for preventing statelessness has been in place for at least a generation. All countries in Europe have signed up to some of these core standards. If they had translated this commitment into effective national law, statelessness would have been eradicated in the region by now. But despite a promising start, progress has slowed. Identity politics, migration debates and questions regarding who does and does not belong have intensified in recent years, reducing the political will to resolve an eminently solvable problem.

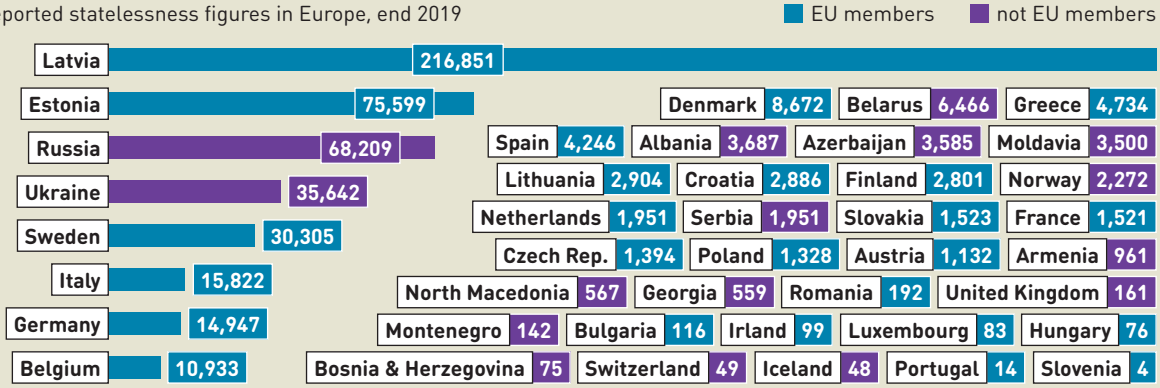
Founded in 2012, the European Network on Statelessness was established to coordinate civil society organizations working on this issue, create political space and highlight the need for reform. It works closely with institutions such as the EU, the Council of Europe and the OSCE to increase awareness about nationality rights. The Statelessness Index, launched in 2018, tracks the efforts of European countries to address statelessness, and enables a transnational comparison of laws, policies and practices. It can be used to support advocacy, give officials tools to draft more effective legislation, and provide information to stateless people.

But the stateless themselves are often not involved in the debate. Those working on the statelessness issue may find it difficult to engage with them. The stateless do not fall into a single category: they are of different genders, ages, sexual orientations, socio-economic backgrounds, abilities, languages, religions and ethnicities. The causes and consequences of statelessness can be addressed only if their multiple identities and experiences are taken into account. The failure to do so means that the links between statelessness and racism or patriarchy and other forms of oppression have been poorly understood. This often makes statelessness seem like a "niche" issue.

A wide range in Europe: from hundreds of thousands of stateless people, to just a few. But no one knows how many cases are hidden

NOWHERE HAS HIT ZERO

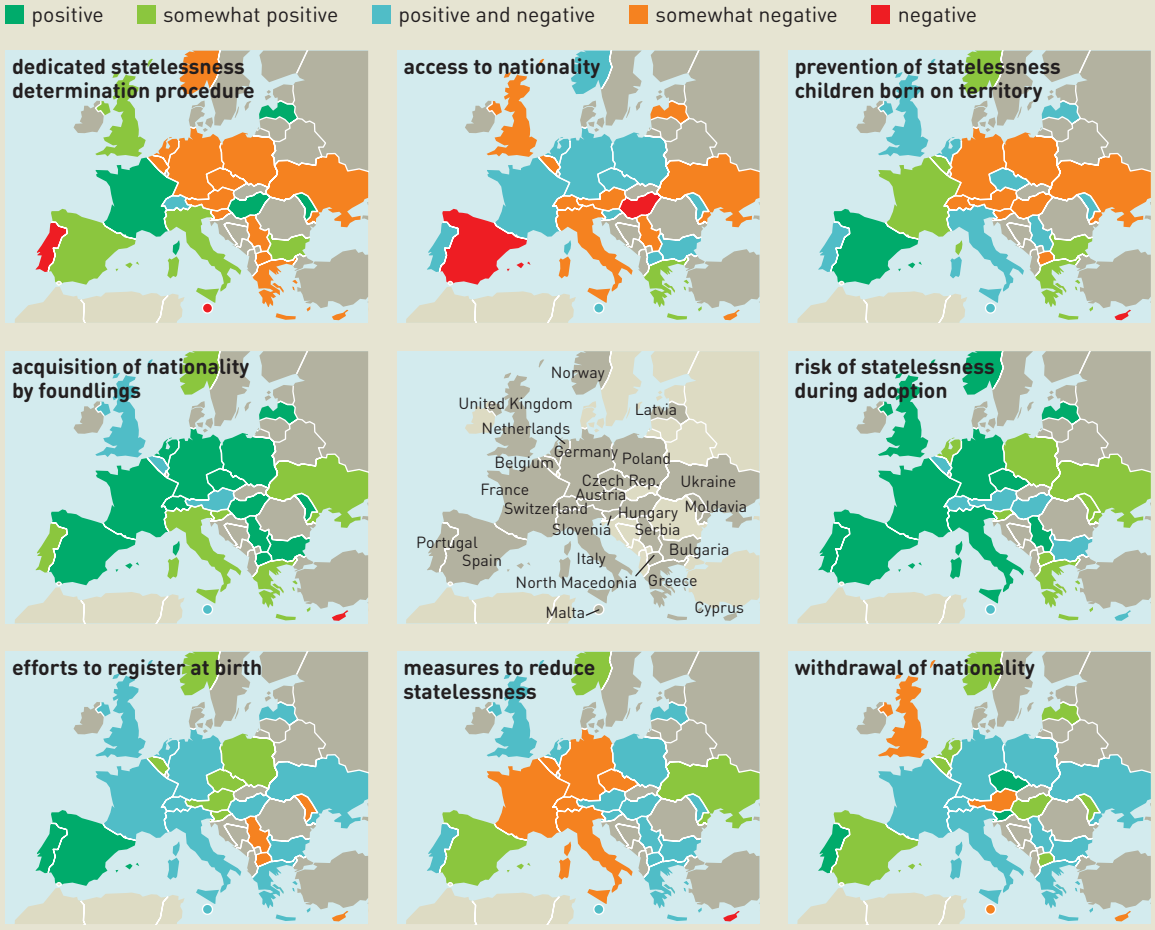
Reported statelessness figures in Europe, end 2019



Without Malta, Cyprus and Turkey. Latvia: all stateless groups. Serbia: with Kosovo.

POLICIES COMPARED

Better or worse for stateless people? Legal requirements and administrative actions in 24 European countries, from the statelessness index of the "European Network on Statelessness", selection, 2020



Attempts at a uniform policy on statelessness in Europe, and even in the European Union, have so far failed

Nevertheless, progress has been made in the last decade. Seven European states have acceded to the statelessness conventions; nine have reformed their national laws to grant protection to stateless people or prevent statelessness. The EU and the Council of Europe have made political commitments. But much more needs to be done – and quickly – if Europe is to end the scourge of statelessness.

First, children are still being born into statelessness across the continent. In 2015, research by the European Network on Statelessness revealed that half of Europe's countries have gaps in their laws. Only Norway and Albania have recently introduced reforms, leaving thousands of children in Europe that are still born stateless. Second, only 11 European states have procedures to identify who is stateless on their territory and to grant them rights. Many such people find themselves in legal limbo: they have no way to regularize their stay, and if they move elsewhere they risk detention and destitution. Third, although many thousands of refugees in Europe are stateless, asylum law and policy fail to adequately address the challenges they face. Stateless Journeys, a project supported by the Network, highlights these difficulties and provides information to address them.

Although state-led initiatives are welcome, they are not enough. Regional bodies must urgently address the issue to catalyse reform and end statelessness. Despite agreements and initiatives by the European Council and Parliament and the Council of Europe, the continent still lacks a common approach to statelessness akin to regional strategies adopted in the Americas and West Africa. The next phase of UNHCR's IBelong campaign aims to galvanize action.

Ending statelessness in Europe will require new coalitions that include stateless people, and a close monitoring of law, policy and practice to hold governments to account. Civil society is pushing for a Europe where everyone has the right to a nationality. This is a vital reflection of the continent's values of freedom, democracy, equality, rule of law and human rights.

CONVENTIONS

OF STATES AND STATELESSNESS

States grant their nationality to individuals, but they follow different sets of rules, and sometimes apply those rules in ways that lead to statelessness. International law has tried to plug the gaps, but less than half the world's countries have signed up.

The rights and status of stateless individuals are covered mainly by two international conventions: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention defines a person as stateless if he or she is "not considered as a national by any State under the operation of its law". Statelessness is defined as a legal status that depends on the laws and regulations made by states. Nationality and statelessness are thus two legal concepts that mirror each other. Neither the international community nor the United Nations can grant a specific nationality to a person; only states have this power. The definition also implies that it is the state, not the individual, that decides a person's nationality.

But what matters is the actual operation of a law, not only the wording. State authorities may consistently apply a particular provision in their nationality legislation in ways that differ from the wording of that legislation. They may do so for reasons of racial, ethnic, religious or political discrimination. The actual practice needs to be taken into account in determining a person's nationality status. Moreover, the wording "considered by a state" requires an actual decision by a state's officials on the nationality status of a person before he or she can be called stateless.

But not every unregistered or undocumented individual can be considered as stateless. In fact, the vast majority of unregistered or undocumented persons are nationals of a specific country, most frequently the one where they were born. They may be of undetermined nationality, perhaps at risk of statelessness, but legally they are not considered stateless until a state official has denied them the nationality that they claim. As far as the definition uses the notion of nationality, "nationality" and "citizenship" are synonymous.

Some 45 states, most of them in Asia, have not yet signed any international treaties for the protection of stateless persons

STATES AND STATELESSNESS
Member states of the United Nations that have signed the most important international agreements to protect stateless people, and countries that intend to improve the status of the stateless through new initiatives.

*Western Sahara (not UN member)

AD Andorra
AL Albania
AT Austria
BA Bosnia and Herzegovina
BE Belgium
BG Bulgaria
BY Belarus
CH Switzerland
CY Cyprus
CZ Czech Rep.
DE Germany
DK Denmark
EE Estonia
ES Spain
FI Finland
FR France
GB United Kingdom
GR Greece
HR Croatia
HU Hungary
IE Ireland
IT Italy
KS Kosovo
LI Liechtenstein
LT Lithuania
LU Luxembourg
LV Latvia
MC Monaco
MD Moldavia
ME Montenegro
MK North Macedonia
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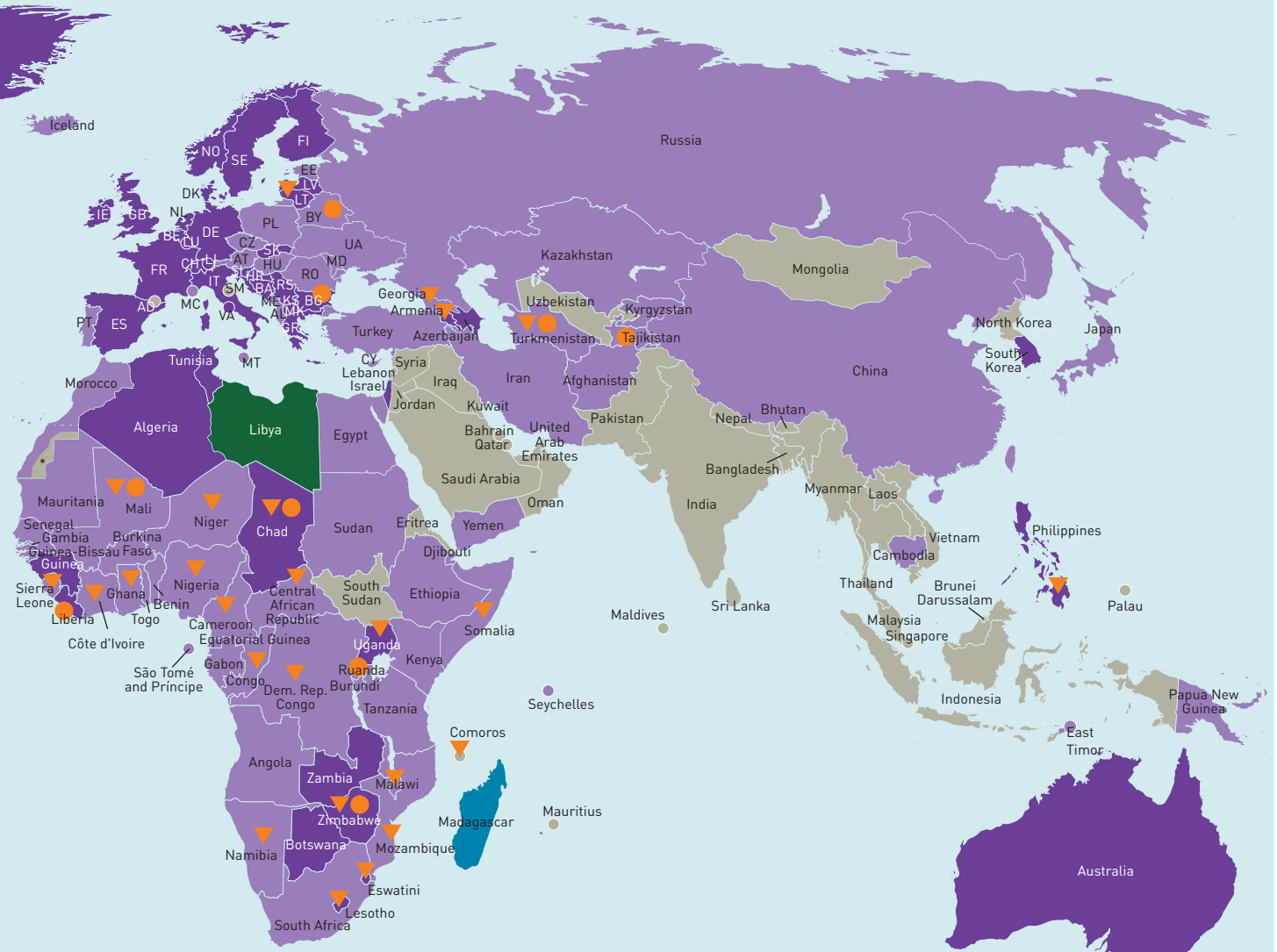
PL Poland
PT Portugal
RO Romania
RS Serbia
SE Sweden
SI Slovenia
SK Slovakia
SM San Marino
UA Ukraine
VA Vatican



States signing:

1951 Convention relating to the Status of Refugees (recognizes rights and protection of refugees, but does not cover all stateless persons)

1967 Protocol on the Status of Refugees (removes restrictions on the period before 1951 and on Europe)

both Protocol only

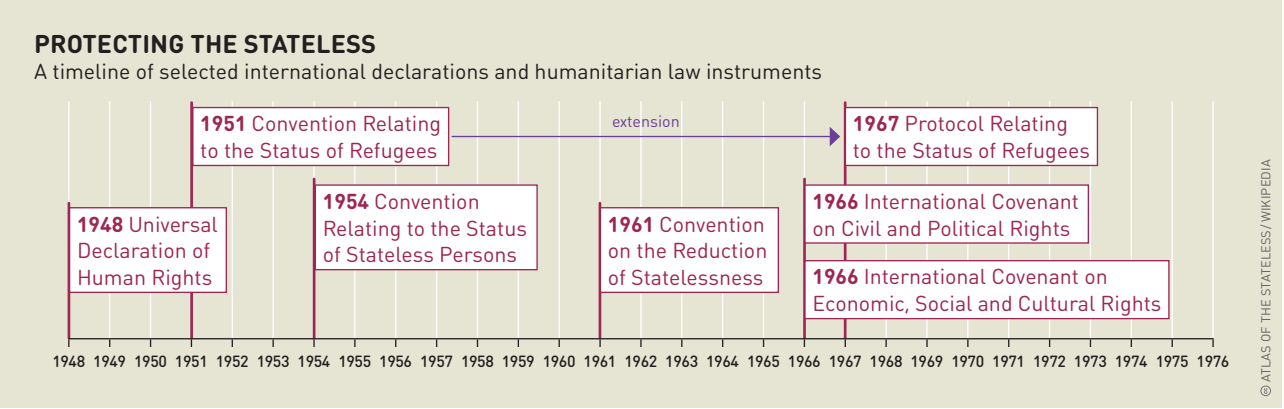
in addition: 1954 Convention relating to the Status of Stateless Persons (defines statelessness as a status, recognizes special need for protection as a foreigner)

Madagascar: signed only the 1951 Convention
Libya: signed only the 1954 Convention
non-signatories

States agreeing to:

Commitments at the high-level meeting at the UNHCR in Geneva at the mid-term of the IBelong campaign against statelessness, October 2019, selected

▼ studies
● censuses



While the 1954 Convention currently has only 94 State Parties, many of its core provisions have crystallized into customary international law. The definition of the term "stateless person" may thus be seen to be legally binding upon all states, irrespective of their accession to the 1954 Convention. Apart from that, the 1954 Convention guarantees certain human rights to stateless persons, such as the freedom of religion, access to courts, right to work, and access to public education.

However, these rights are essentially construed as state obligations, not as individual entitlements. Moreover, the protection level of the 1954 Convention often falls short of international human rights granted in later treaties, such as the standards defined by the two 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

The 1954 Convention stipulates certain rights on the lawfulness of a stateless person's stay in the country. It is the only one that universally provides for the status of stateless persons, defines the legal meaning of statelessness, guarantees basic human rights for stateless persons, obliges states to issue identity papers and travel documents to them, and foresees the possibility of their naturalization. As such, the 1954 Convention has retained its crucial role for the protection of stateless individuals.

Various international human rights documents, starting with the Universal Declaration of Human Rights, protect the individual human right to a nationality. However, none of these are sufficiently concrete and operational to stipulate the obligation of a specific state to grant its nationality to a particular person. This legal gap is filled by the 1961 Convention on the Reduction of Statelessness. In other words, this Convention defines state obligations to grant nationality.

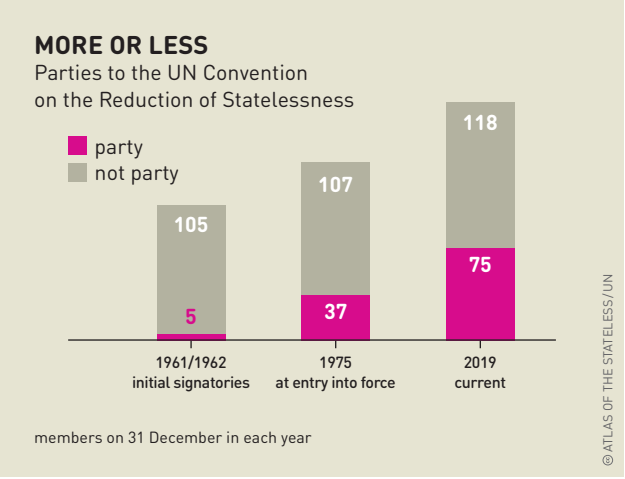
For 50 years the emphasis has not been on making new treaties to protect human rights, but on making sure they apply everywhere

The 1961 Convention starts from the fundamental principles that a state should grant its nationality (1) to a person born in its territory who would otherwise be stateless; and (2) to a person not born in its territory, if one of his or her parents was a national of this state and the person would otherwise be stateless. Foundlings should acquire the nationality of the state where they are found.

Additionally, the 1961 Convention aims to ensure that a loss or withdrawal of nationality does not create statelessness. Accordingly, a state shall not deprive a person of his or her nationality if such deprivation would render him or her stateless. Marriage or any change of personal status may not lead to the loss of nationality if the affected person would thereby become stateless. Spouses and children may only be affected by a person's loss of nationality if this does not render them stateless. And last but not least, the deprivation of nationality shall never be based on racial, ethnic, religious or political grounds.

The 1961 Convention currently has 75 state parties. While accessions have increased in recent years, there is still a long way to go towards universal backing. However, even in those states that are not party to the 1961 Convention, the instrument provides authoritative guidance on how to respect, protect and fulfil every human being's right to a nationality.

The Convention prohibits expatriation on political, racial, ethnic and religious grounds – or because of a change of territory



THE IBELONG CAMPAIGN

PUTTING STATELESSNESS ON THE FRONT BURNER

Statelessness is all too often invisible. Not recognised as nationals of any country, stateless people are often deprived of basic rights. The IBelong campaign, led by UNHCR, is trying to change this by raising awareness about the issue and pushing for change — with some initial successes.

The United Nations High Commissioner for Refugees (UNHCR) is best known for its work with refugees. It is also the UN agency mandated to protect stateless people and seek solutions to their plight. In 2014, it launched an ambitious campaign to end statelessness by 2024, also known as the IBelong Campaign, or, with a hashtag, as the #IBelong Campaign. Now halfway through its 10-year life span, this campaign has boosted awareness of statelessness and galvanized momentum in places where the phenomenon of people living without any nationality – and indeed the word "statelessness" itself – were previously not acknowledged.

This is particularly true of Africa, but there has been notable progress on other continents as well. Media coverage of the issue tends to be dominated by the worsening of the situation of certain stateless populations, such as the Rohingya in Myanmar, or the risk of new problems, notably in India. Despite this, the quiet but important positive steps undertaken by dozens of countries deserve recognition. Various countries pledged concrete action to address statelessness by 2024 at a high-level event convened by UNHCR in 2019. These promise significant progress to reduce and prevent statelessness in the years ahead.

To appreciate recent achievements in the fight against statelessness, it is important to understand the origins of the problem. One major cause is state succession, i.e., when one state ceases to exist and its successors do not recognize certain residents as their citizens. Apart from state succession, the drivers of statelessness include the presence of outright discrimination (on the basis of ethnicity, race, or religion, for example) in nationality laws combined with the absence of safeguards against statelessness in those same laws.

People may also be left stateless when nationality laws are based on a strict interpretation of *jus sanguinis* (citizenship by descent). People who are descendants of forebears who migrated generations ago may have lost ties to their countries of origin without being recognized as belonging to their country of birth. Poor civil-documentation practices, particularly where many births are not registered or certified, can also lead to statelessness, especially for members of minorities. Birth certificates record a person's place of birth and parentage – the two key factors that are relevant for a person's claim to citizenship. People who lack proof of entitlement to citizenship often face problems if they do not look like the dominant group, speak its language or follow its religion.

Reforms to nationality laws and improved civil registration practices can prevent statelessness from occurring in the first place. In both areas there is some cause for optimism. Since the start of the IBelong Campaign, seven countries (Armenia, Cuba, Estonia, Iceland, Latvia, Luxembourg and Tajikistan) have introduced legal provisions to grant nationality to children born in their territory who would otherwise be stateless. Two (Cuba and Paraguay) have introduced provisions to grant nationality to children born to nationals abroad who would otherwise be stateless. Another two (Madagascar and Sierra Leone) have reformed their nationality laws to allow women to confer their nationality to their children on an equal basis with men.

Some 25 states around the world still do not allow mothers the unfettered and equal right to confer nationality to their children. But there is momentum towards reform in several of them. This is largely thanks to the engagement of civil society, including many grassroots organizations and the Global Campaign for Equal Nationality Rights, a network of NGOs and United Nations agencies. Legal reforms will also be spurred as states finally sign up to the 1961 Convention on the Reduction of Statelessness. This treaty lay largely dormant for many years; as recently as 1990, it had been ratified by a mere 15 states. But by 2020, 75 states had done so. Since the IBelong Campaign was launched, 14 states – Angola, Argentina, Belize, Burkina Faso, Chile, Guinea-Bissau, Haiti, Italy, Luxembourg, Mali, North Macedonia, Sierra Leone, Peru and Spain – have all ratified the Convention.

In addition to positive legal reforms, birth registration rates have continued to rise globally. Innovations in technology and best practices, such as direct hospital notification of births to civil registries, have aided coverage. Rates remain lowest in the least developed countries, where the absence of birth registration makes it hard for individuals to obtain the identity documents they need for education, legal employment and access to services.

In adopting the Sustainable Development Agenda in 2015, all member states of the United Nations recognized that birth registration and documentation of legal identity are development issues. Through Sustainable Development Goal 16.9, they undertook to provide "legal identity for all, including birth registration, by 2030".

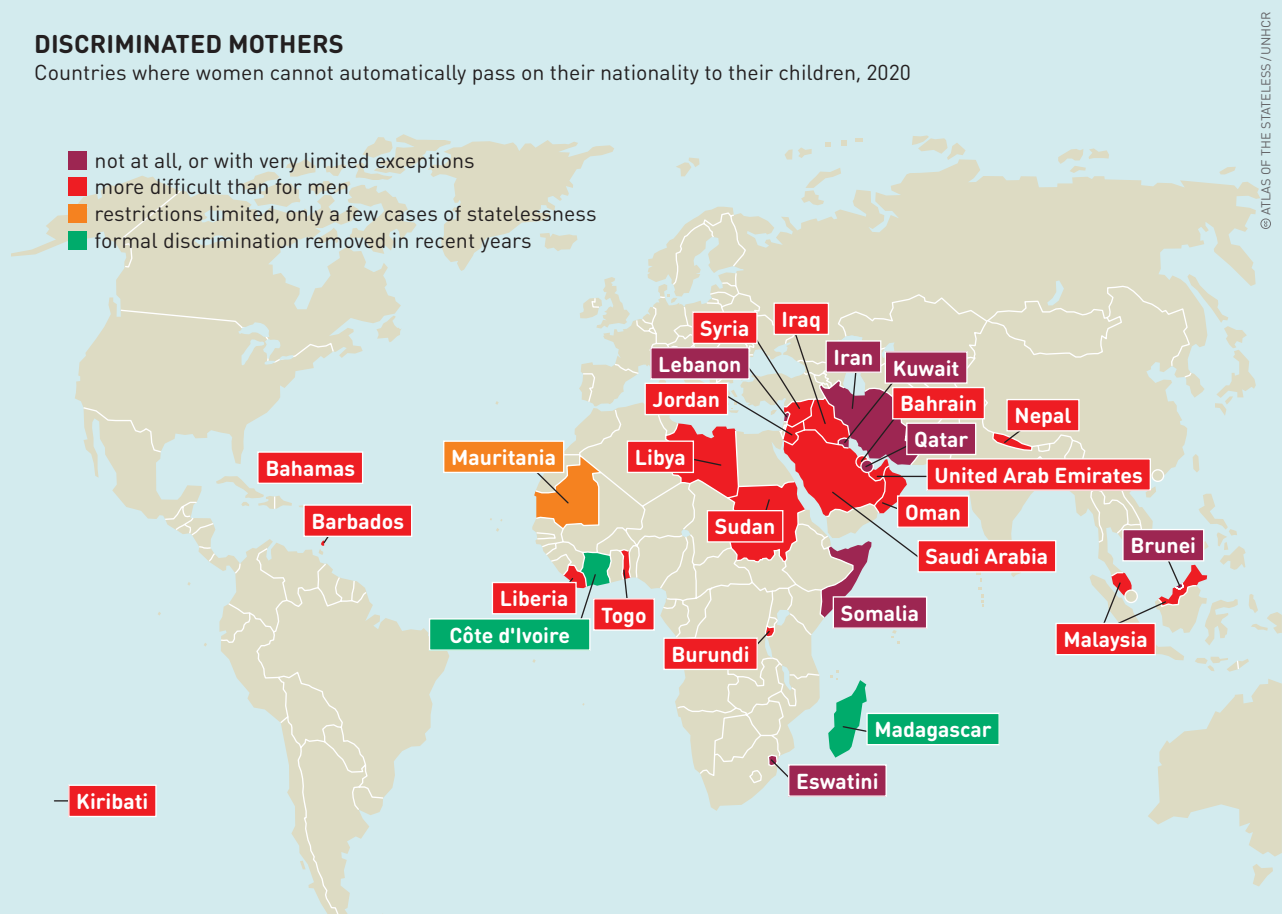
In addition to movement on the prevention side, there has been an increase in the political willingness of many states to resolve statelessness on their territories. This has been most evident in Central Asia, where statelessness caused by the breakup of the Soviet Union has lingered for decades:

- In 2019, Kyrgyzstan became the first state worldwide to declare a resolution of all known cases of statelessness on its territory. The 2019 Nansen Award recognized the legal aid work of the organization led by lawyer Azizbek Ashurov. This was the first time this prestigious prize has been given for efforts to address statelessness.
- In 2020, Uzbekistan adopted a new law that will confer citizenship immediately upon approximately half of its stateless population, an estimated 50,000 people, and help address the situation of others.
- Also in 2020, Tajikistan adopted an amnesty law to allow undocumented persons to obtain identity documentation and put them on a path towards naturalization.

Important measures to reduce statelessness have been taken in Africa:

- Kenya has provided nationality to the formerly stateless Makonde minority, making them the country's 43rd official tribe. It has promised to provide nationality to the Shona, another minority group, and has set up a national task force with the goal of eradicating statelessness.
- Cote d'Ivoire, which has the highest known number of stateless persons in Africa, has adopted a national action plan to end statelessness. It has taken measures to ensure that foundlings, including older war orphans, will acquire Ivorian nationality.
- Many African states pledged in 2019 to undertake studies of statelessness, adopt national action plans, and accede to the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, or to both treaties.
- Liberia and Eswatini, two of the remaining 25 states that do not allow mothers to confer their nationality to their children on an equal basis as fathers, have promised to address this before the end of the IBelong Campaign.

Women in 25 countries around the world are still prevented from passing on their citizenship to their children



Progress has also been made in the Asia Pacific region:

- Thailand, which has one of the highest known number of stateless persons in Asia at just over 400,000 (famously including some of the boys dramatically rescued from the Tham Luang cave in 2018), is taking bold steps to confer nationality on those without it. The government has made a political commitment to try to fully resolve statelessness by 2024.
- Malaysia's government recently adopted a five-year plan to resolve statelessness among its population of Tamil origin.
- The Philippines and Indonesia are cooperating with each other to address cases of persons who have ties to both countries but have no proof of citizenship to either.

In Europe, almost all countries are now party to the statelessness conventions. The numbers of stateless persons in the Baltic states, the highest in Europe, are on a decline, thanks in part to reforms by Estonia and Latvia to ensure that children born to persons without nationality automatically acquire their nationality at birth.

Since the start of the IBelong Campaign, many states in the Americas, including Argentina, Brazil, Costa Rica, Ecuador, Panama, and Uruguay, have adopted procedures to determine statelessness. These are similar to asylum procedures for refugees, but focus on identifying and conferring a protected status on stateless persons pending their naturalization. Colombia has decided to confer citizenship on all children born there during a certain period to parents who have fled from Venezuela. This is a welcome development that benefits tens of thousands of newborns who would otherwise have been left in legal limbo. They were unable to obtain Venezuelan documentation and were technically not eligible for Colombian citizenship.

While these are significant positive developments as compared with the situation before 2014, persistent challenges remain, and new ones continually arise. These include the threat of new situations of statelessness posed by increased forced displacement and the rise of ethno-nationalism in places like India. The use of deprivation of nationality as a counter-terrorism measure is another cause of concern. Such measures may be abused as a tool to pursue political opponents or others out of favour with those in power. Hope lies in the increased awareness of the statelessness issue, coupled with generally higher levels of political will.

Mainstream civil society also increasingly recognizes that statelessness is an important issue in securing women's, minorities', and children's rights. The 2015 special report by UNHCR, "I am here, IBelong: The urgent need to end childhood statelessness", stimulated a coalition of NGOs, UNICEF and UNHCR known as Every Child's Right to a Nationality. This coalition is active in 20 states and growing.

A 2017 UNHCR report, "This is our home: Stateless minorities and their search for citizenship", led to increased interest by many, including the Minority Rights Group and the UN Special Rapporteur on Minority Issues. In 2018, statelessness was a focus of the UN Forum on Minority Issues for the first time. These developments are encouraging. Statelessness is on a spectrum with other dangerous forms of exclusion. The fight for citizenship rights for all is an important part of the fight for inclusive and open societies.

AUTHORS AND SOURCES FOR DATA AND GRAPHICS

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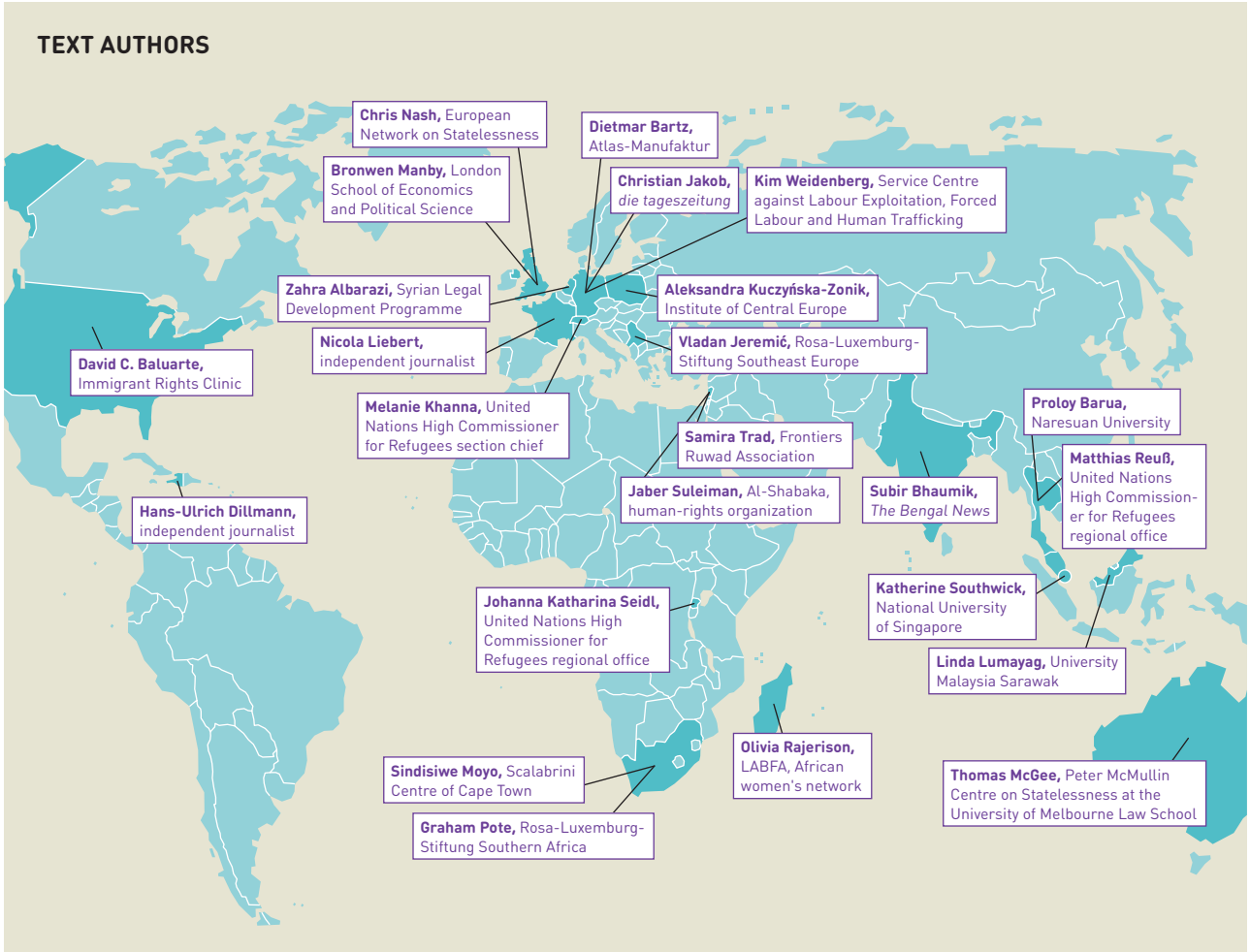

ROSA-LUXEMBURG-STIFTUNG

The Rosa-Luxemburg-Stiftung is a globally operating institution of political education with close links to the German political party Die Linke. With twenty-five European and international as well as sixteen national locations, it is one of the largest left-wing educational institutions in the world. Besides social rights and, in this context, statelessness, it deals with numerous topics such as socio-ecological transformation, left-wing feminism, transformations of societies and statehood, anti-revisionist politics of history and plural internationalism.

A fundamental element of the Rosa-Luxemburg-Stiftung's political education work in the field of social rights is the concept of "Global Social Rights" (GSR). These are based on human rights, but are not directed at a national or supranational organization that grants such rights. Instead, people should together invoke the basic rights that are considered legitimate to actively acquire recognized rights.

The concept of GSR propagates collective processes, because it assumes that rights are always and simultaneously available to all people and each individual. It therefore implies collective processes as emancipation by appropriating universal human rights. It should be applied in such a way as to ensure that the "right to rights" becomes embedded in everyday life throughout the world. At the same time, it can also serve as an umbrella under which actors can convene for political debates with specific demands. The aim is to acquire unconditional basic rights to make a participatory, fairer and democratic society possible.

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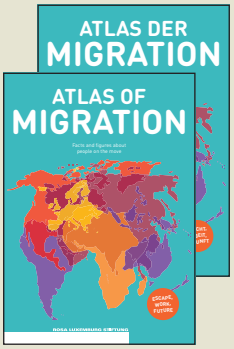

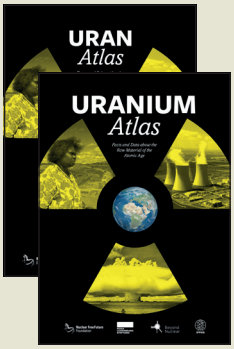

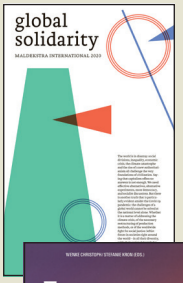

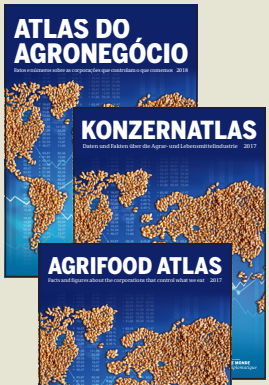

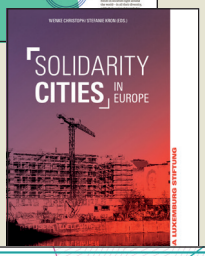

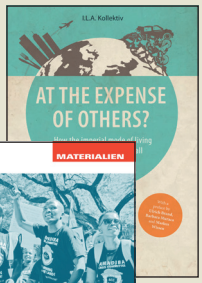

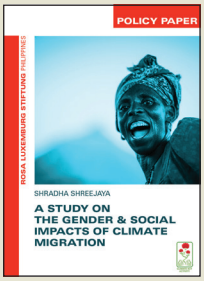

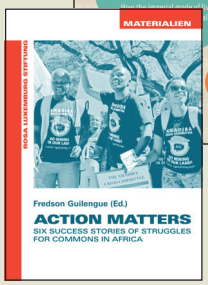

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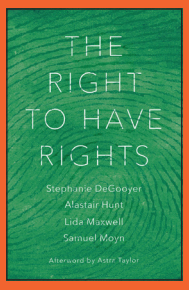
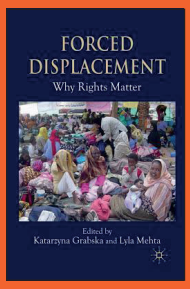


Stephanie DeGooyer et al.: The Right to Have Rights. Verso Books, London/New York 2018

Leading thinkers from various disciplines on the critical foundations of rights and the significance of radical democratic politics today.

Melanie Khanna, Laura Van Waas: Solving Statelessness. Wolf Legal Publishers, Nijmegen 2016

The essays in this edited volume approach statelessness from a solutions perspective, looking at what is being done, and what more can be done, to address this issue.



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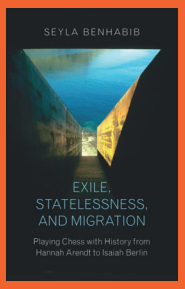
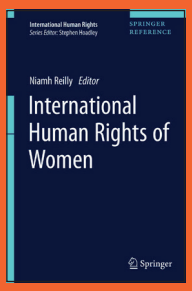


Seyla Benhabib: Exile, Statelessness, and Migration. Playing Chess with History from Hannah Arendt to Isaiah Berlin. Princeton University Press, Princeton 2018

This overview of the work of influential intellectuals restores the valuable plurality of their Jewish voices and develops their universal insights in the face of the crises of this century.



Zahra Al-Barazi: Gender discrimination in nationality laws: Human rights pathways to gender neutrality, in: **Niamh Reilly (ed.): International Human Rights of Women.** Springer, Singapore 2020. pp. 193–207

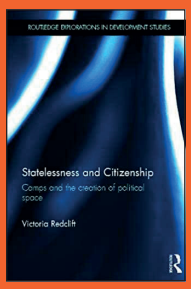
This book provides a comprehensive introduction to the broad spectrum of human rights issues and violations as they are experienced by women and sexual minorities across civil, political, social, economic, and/or cultural domains, in different regions, countries, and contexts.

Jane Anna Gordon: Statelessness and Contemporary Enslavement. Routledge, London 2018

The analysis of both statelessness and enslavement forces us to think about constructive alternatives, especially institutions of political affiliation.

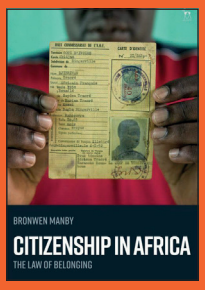
Christian Jakob, Simone Schlindwein: Diktatoren als Türsteher. Wie die EU ihre Grenzen nach Afrika verlagert. Ch. Links, Berlin 2018

A comprehensive documentation of Europe's attempt to stop refugees and migrants before they reach the Mediterranean.



Victoria Redclift: Statelessness and Citizenship. Camps and the Creation of Political Space. Routledge, London 2013

In its analysis of history and space, this book offers an analytic approach of relevance to wider problems of displacement, citizenship and ethnic relations.

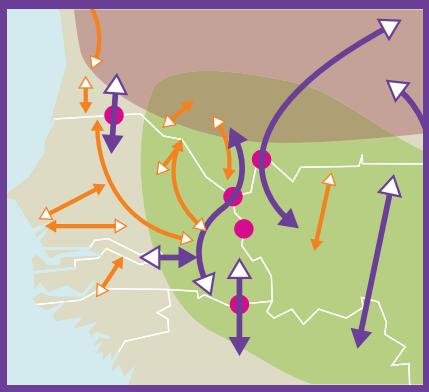


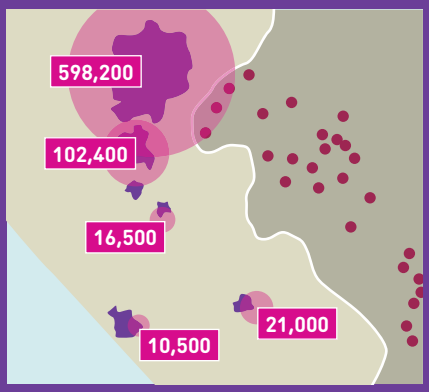
Bronwen Manby: Citizenship in Africa. The Law of Belonging. Hart Publishing, Oxford 2018

The first serious attempt to analyse the impact of nationality law on politics and society in different African states from a trans-continental comparative perspective.

Margaret R. Somers: Genealogies of Citizenship. Markets, Statelessness, and the Right to Have Rights. Cambridge University Press, Cambridge 2008

This book is an ambitious interweaving of multidisciplinary themes on citizenship, social exclusion, statelessness, civil society, knowledge, the public sphere, networks and narrative.





For the philosopher Hannah Arendt, every person has the right to become a citizen and to belong to a politically organized community.

from: **CITIZENS OF NOWHERE,** page 10

The risk of statelessness increases with each undocumented generation.

from: **MOVING WITH THE HERDS**, page 39

If the European countries had translated their commitment into effective national law, statelessness would have been eradicated in the region by now.

from: **NOT YET A MODEL FOR THE WORLD,** page 54

Some 25 states around the world still do not allow mothers the unfettered and equal right to confer nationality to their children.

from: **PUTTING STATELESSNESS ON THE FRONT BURNER,** page 59