

EXECUTIVE SUMMARY

This is a report about discrimination and the human rights protection of stateless persons throughout the world, with a particular emphasis on the issue of detention. The report discovers that presently international human rights law is not sufficiently utilised to protect and fulfil the human rights of stateless persons. This is partly due to the existence of the parallel “statelessness mechanism” in international law which affords more restricted and modest protection to the stateless. The resultant lacuna in protection which is manifestly clear in detention related issues must be effectively addressed, and this report proposes recommendations in this regard.

A core problem addressed by the report is the concept of statelessness. The stateless have long been recognised as those who have no nationality (*de jure* stateless) or do not have an effective nationality (*de facto* stateless), i.e. persons who do not benefit from the protection of any state. Historically, it is *de jure* stateless persons who have benefitted from the protection of the statelessness mechanism. While the United Nations High Commissioner for Refugees (UNHCR) - which is the authority mandated with preventing and reducing statelessness as well as protecting the stateless - does also act on behalf of the *de facto* stateless, the historical distinction between the two categories has created a protection hierarchy even within this extremely vulnerable group. The Equal Rights Trust (ERT) challenges this hierarchy and proposes an alternative conceptualisation of statelessness as a basis for providing comprehensive and equal protection to all stateless persons. This conceptualisation builds a definition of statelessness around the inclusive notion of “effective nationality” which is central to contextualising and understanding the statelessness challenge.

The report proposes a strong equality and non-discrimination based approach to enhancing the protection of stateless persons. Equality and non-discrimination law has developed into a powerful tool for the protection of minorities and vulnerable groups. The stateless are most definitely a vulnerable group who are often discriminated against and treated unequally. An equality based protection approach is essential if meaningful and effective protection for the stateless is to be achieved.

The vulnerability of the stateless is most evident in the context of detention. Thousands of stateless persons are detained throughout the world because

they have no effective nationality. The detention of stateless persons is commonplace in many countries from all regions. Such detention is often – and at best – unnecessary and unreasonable; at worst it is arbitrary and degrading. Detention practices may also be humiliating, are at times violent, and may psychologically scar the victims for life. Such detention may be for administrative purposes in the context of immigration, may be legitimised on national security grounds, or may be the result of criminal action being brought against the stateless. In all of these contexts, stateless persons are extremely vulnerable to being detained, and disproportionately impacted by lengthy, unnecessary detention due to their irregular status and difficulties in effectuating their deportation. While the barriers to removing migrants who have an effective nationality are minor or non-existent, the process of identifying countries which would accept stateless persons and cooperate with such proceedings borders on the impossible. The failure of states to recognise such difficulties and accordingly adapt their laws and policies is a significant indictment on the international community.

ERT has conducted field research in Australia, Bangladesh, Egypt, Kenya, Malaysia, Myanmar, Thailand, the UK and USA; and testimony, jurisprudence, interviews, legal and policy developments from these and other countries inform this report. Over the past few years leading up to the publication of this report, there has been a growing body of research and writing on statelessness. This report aims to contribute to this discourse by deepening understanding of the aspects of statelessness it addresses.

This report comprises three parts. **Part One** analyses the concept of statelessness – the challenge that it poses to notions of international human rights and national sovereignty; and the boundaries of statelessness – what is meant by *de facto* and *de jure* statelessness, how useful the distinction between the two is, and whether a more inclusive approach to defining statelessness would result in better protection for all stateless persons. In **Part Two**, the report narrows its focus to the detention of stateless persons. It begins by surveying internationally accepted standards and norms pertaining to the detention of stateless persons and then explores practices of detention in the contexts of immigration, national security and criminal law – drawing from the field research conducted by ERT in countries around the world. **Part Three** identifies some positive developments and good practices adopted around the world, which are steps in the right direction to be further developed and replicated. It also provides recommendations based on observed good practices and the research findings of ERT.

PART ONE - THE RIGHTS OF THE STATELESS AND TYPES OF STATELESSNESS

CHAPTER 1: THE RIGHTS OF THE STATELESS

Key Findings:

1. Until very recently, the UNHCR, human rights treaty bodies, national, regional and international courts, states and organisations had not seen the challenge of statelessness primarily as a human rights issue. But it is essential that the problems of the stateless are addressed through the prism of well established human rights principles, of which the right to equality and non-discrimination is a key element.

2. The 1954 Convention Relating to the Status of Stateless Persons falls short in protection terms - because it only fully applies to some *de jure* stateless persons, it does not provide explicit guidance on the identification of statelessness and the limited protection it offers is not equivalent to that of later human rights treaties. International human rights law has not been sufficiently used to complement the statelessness regime.

The nation state has historically been the central actor in international law, whose traditional role has been the regulation of relations between equal and sovereign states. Membership of a nation – through nationality – has been a crucial prerequisite for the enjoyment of certain entitlements and rights, including the rights to enter and leave, reside, move around and work in one's country. Consequently, on the one hand, the absence of nationality has become the basis of physical exclusion from a state's territory, as well as of rights exclusion within a territory, often in breach of international human rights law. On the other hand, national laws and policies which define and may exclude certain individuals are a cause of countless persons being rendered stateless.

The 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) only applies to the *de jure* stateless. The limited scope of the Convention is the result of an early position which equated the *de facto* stateless with refugees, while viewing the *de jure* stateless as a distinct group. However, the combined reach of the Refugee and Statelessness Conventions has not offered effective protection to all stateless persons. The *de facto* stateless who do not qualify for refugee status, the *de jure* stateless who are excluded from the full

protection of the 1954 Convention and the many stateless persons who have never crossed an international border with the intention of claiming refugee status, collectively form a large population of persons who remain largely unprotected despite the existence of these two protection regimes.

While statelessness is in itself a violation of the right to nationality, it should not undermine the individual's ability to enjoy other human rights. However, even though international human rights law has transformed the individual into a subject of international law, the actual enjoyment of human rights depends primarily on the national context. Attachment to a nation entitles one to enjoy human rights at a more tangible, effective and immediate level than international human rights mechanisms provide.

This is the challenge that statelessness imposes on the international human rights regime: that of affirming the importance of nationality and promoting the right of everyone to a nationality, while ensuring that the lack of a nationality does not result in vulnerability, exploitation and the violation of human rights. To-date, the international human rights regime has failed to rise to this challenge, a failure which could be primarily put down to two factors:

(i) The conceptual blind spot which has led to the non application of international human rights standards to the stateless in a consistent and holistic manner. This is mainly due to the international statelessness protection mechanism developing in parallel to the more comprehensive and advanced international human rights protection mechanism, and the protection of stateless persons being seen more as a "statelessness" issue than a "human rights" issue.

(ii) The counter-challenge posed by "national sovereignty" to the universal application of international human rights law, which has eroded the enjoyment of rights of peripheral groups such as the stateless.

The failure to rise to this challenge and afford adequate protection to vulnerable persons results in statelessness and also heightens the cost and impact of statelessness. From a rights perspective, the first limb of the human rights challenge is a threat to the right to nationality, and the second limb is a threat to the rights to equality and non-discrimination. Therefore these can be viewed as the pivotal rights in the context of statelessness.

CHAPTER 2: CRITIQUING THE CATEGORISATION OF THE STATELESS

Key Findings:

1. *De jure* and *de facto* statelessness may have many different causes. However, all stateless persons face vulnerabilities and challenges and the human rights of all stateless persons must be respected and protected.
2. The categorisation of stateless persons into the two groups of the *de jure* and *de facto* stateless, with greater protection provided to the former, is unjust and discriminatory. The *de facto* stateless are a particularly vulnerable group. This is because they are not protected under any specific treaty. There is also a protection gap in respect of persons who fall into the grey area between *de jure* and *de facto* statelessness.
3. The lack of consular protection is a distinctive factor with regard to *de facto* statelessness, and can arise from different causes: as a result of the non-existence of diplomatic ties between two countries, the non-existence of a consulate due to resource problems or the inability or unwillingness of a consulate to document their nationals.
4. Protection against *refoulement* must be recognised as a factor in *de facto* statelessness, including where the individual is not a refugee. While states have generally accepted their obligations of *non-refoulement* due to human rights considerations, they have not always taken the next step of recognising the individual as having ineffective nationality – and the need to protect on this basis.
5. There may be obstacles to return other than the lack of consular protection or the obligation of *non-refoulement*. Practical or administrative obstacles of a permanent or indefinite nature, such as the non-availability of transport links or the non-acceptance of travel documents, must be recognised as factors which may lead to *de facto* statelessness.
6. There may be situations where persons living in their country of nationality are rendered *de facto* stateless. The inability to obtain documentation, resulting in systematic discrimination and abuse is one such scenario. Such *de facto* stateless persons also have protection needs that should be met.

ERT challenges the hierarchy of *de jure* and *de facto* statelessness and calls for a more comprehensive and inclusive approach to defining statelessness, to ensure that persons are not arbitrarily excluded from protection. All stateless persons should benefit from equal and effective protection of the law. The historical approach of categorising the stateless into two groups and providing greater protection to one is discriminatory and unjust. ERT's position is that all stateless persons suffer from ineffective nationality, and consequently this is the most suitable concept around which to build a definition which is comprehensive, inclusive and non-discriminatory. Chapter 2 argues that there is no tangible link between the type of statelessness (*de jure* or *de facto*) and the level of protection required. The range of protection needs of stateless persons vary according to the extent of vulnerability, discrimination, abuse and exclusion suffered in a particular context and not according to whether an individual is *de jure* or *de facto* stateless. Consequently, protection mechanisms should not discriminate between the *de jure* and *de facto* stateless, and should instead focus on the particular context. When approaching statelessness through a protection lens, it is clear that the inequalities and gaps which result from this hierarchy are unsatisfactory. Chapter 2 therefore proposes a more inclusive and comprehensive approach to defining statelessness built on the notion of ineffective nationality. ERT offers a **five-pronged legal test** to be utilised in determining whether a nationality is effective or not.

(i) **Recognition as a national:** Does the person concerned enjoy a legal nationality, i.e. is he or she *de jure* stateless?

(ii) **Protection of the state:** Does the person enjoy the protection of his/her state, particularly when outside his or her country?

(iii) **Ability to establish nationality:** Does the person concerned have access to documentation (either held by the state, or which is issued by the state) to establish nationality? This access may be through a consulate, or through state officials within the country of presumed nationality.

(iv) **Guarantee of safe return:** Is there a guarantee of safe return to the country of nationality or habitual residence – or is there a risk of “irreparable harm”? Is return practicable?

(v) **Enjoyment of human rights:** Does an individual's lack of documentation, nationality or recognition as a national have a significant negative impact on the enjoyment of his or her human rights?

PART TWO – STATELESS PERSONS IN DETENTION

CHAPTER 3: INTERNATIONAL AND REGIONAL LEGAL NORMS RELATING TO DETENTION

Key Findings:

- 1. There are very few international and regional court decisions on the detention of stateless persons. However, despite some inconsistencies in the application and development of treaty provisions pertaining to detention, a strong common set of principles related to the detention of asylum seekers and irregular migrants has been established. These principles are equally applicable to the detention of stateless persons and provide strong safeguards which must be adhered to. Accordingly, detention must be lawful, cannot be arbitrary, must at all times be necessary and proportionate to the situation, must be carried out with due diligence and must be subject to appeal and/or review.**
- 2. The widespread lack of guidelines and standards which specifically address the detention of stateless persons is symptomatic of the low prioritisation of the statelessness problem. The lack of clear guidance on this issue results in the need to draw parallels from guidelines and directives on the detention of asylum seekers and migrants in general, and apply them to the specific context of statelessness.**

The Universal Declaration of Human Rights states that *“no one shall be subjected to arbitrary arrest, detention or exile”*, a principle that has become entrenched in international law and reiterated by subsequent human rights instruments including Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the European Convention on the Protection of Human Rights (ECHR). A strong set of principles which must be applied to establish the legitimacy of detention, including that of stateless persons, has emerged from the authoritative texts and jurisprudence of the UN Treaty bodies and the European courts. Standards of proportionality, necessity and non-arbitrariness must be met in all such detention.

There are very few internationally recognised human rights standards which specifically govern the detention of stateless persons. Most focus on the detention of asylum seekers, and may or may not include some references to stateless persons. There is no normative standard which applies solely or even predominantly to stateless persons. However, texts which are specific

to asylum seekers or irregular migrants can be applied to the detention of stateless persons with limited success.

CHAPTER 4: IMMIGRATION DETENTION

Key Findings:

- 1. ERT research found a clear connection between immigration detention and statelessness. This has not been fully understood, either by national immigration regimes or by non-governmental organisations (NGOs) and lawyers working on behalf of the rights of detainees. The stateless (*de jure* and *de facto*) often form a significant percentage of immigration detainees. Immigration detention regimes which are not sensitive to statelessness are likely to discriminate against the stateless by failing to recognise the needs arising from their special status.**
- 2. Mandatory immigration detention (particularly for foreign national prisoners), and policies which carry a presumption in favour of detention, often lengthy, are becoming increasingly attractive to policy makers.**
- 3. There have however been some positive steps, through jurisprudence and progressive policies, which have drawn from international human rights standards relating to detention and created stronger safeguards for immigration detainees.**
- 4. No states studied by ERT maintain comprehensive statistics on the stateless, or record those who have no legal nationality or no effective nationality. Nor do they record the reasons why detained individuals cannot be removed in such a way that statelessness as an underlying element can be identified.**
- 5. Very few countries have statelessness determination procedures in place, with the result that individuals who cannot be removed because they have no right to enter another country are detained under immigration laws “pending removal”, although removal is practically impossible.**
- 6. Particularly in the UK, stateless detainees who are released from detention, continue to face restrictions on their liberty (through electronic tagging for example) and are often pushed into destitution in**

breach of their social and economic rights. This is because they are not allowed to work after release, nor are they entitled to social welfare benefits.

7. The inaction and indifference of state authorities both in the country of detention and in the country of nationality/habitual residence of stateless detainees is often a major factor contributing to non-removability, and consequent indefinite detention. There have been such cases in all countries researched, but this is particularly true of Kenya and Egypt.

There are two main forms of administrative immigration detention and restriction of liberty. These are the detention/restriction of liberty pending a decision on an asylum application, and the detention/restriction of liberty of those who are to be removed or deported. The second category includes – on the one hand - rejected asylum seekers and migrants whose applications to remain have been refused but who have not left the country, and – on the other hand – non-nationals who have been convicted of a criminal offence, and have completed their sentences. Detention in these circumstances is especially problematic for stateless persons, and often violates human rights law due to its lengthy, potentially indefinite nature – removal cannot take place if the individual has no country of nationality willing to admit him or her.

Of particular concern in all researched countries is the lack of any procedure for determining who is stateless, which could operate in parallel with – and complement – refugee status determination procedures. As a result, stateless persons who are in need of protection are often compelled to go through asylum procedures, because there is no provision for them to apply for recognition as a stateless person. This means that if they are refused asylum, the fact that they are stateless is not then identified.

The detention, deportation and trafficking of stateless Rohingya in Myanmar, Bangladesh, Malaysia and Thailand is a unique example of acute discrimination and its impact on a community. Rohingya who flee discrimination and arbitrary detention in Myanmar face similar plights in their host countries. The 2009 “push-backs” of hundreds of Rohingya into the sea by the Thai government, and the ineffective regional response to this humanitarian crisis epitomises the extremely vulnerable position of Rohingya in the region.

CHAPTER 5: SECURITY DETENTION

Key Findings:

- 1. Security detention is an increasing global phenomenon and its effect on statelessness is largely unknown, mainly due to the covert nature of security detention regimes, the difficulties of obtaining information and statistics about detainees and the barriers to removal of those who are cleared for release. The Guantanamo Bay facility offers insight into this otherwise opaque practice, because of the heightened scrutiny by human rights organisations, lawyers, and lengthy court battles.**
- 2. *De jure* stateless persons who are detained for security purposes and later cleared for release are often non-removable because there is no country of nationality to which they can be deported. *De facto* stateless persons may also be non removable because return to their country of nationality/habitual residence is barred under human rights law if there is a risk that they would be tortured or seriously harmed.**
- 3. Persons who were not stateless before being detained for security purposes may become *de facto* stateless as a result of their security detention. This may occur if the stigma of having been labelled a “terror suspect” renders such persons susceptible to torture and other serious human rights abuses if returned to their home countries. The principle of *non-refoulement* bars return under such circumstances, leaving such individuals not safely deportable to their own country.**

Detention for the purposes of national security is an issue which sharply increased in importance in human rights discourses after September 2001. National governments found it difficult, if not impossible to protect those of their citizens detained as terrorist suspects in Guantanamo Bay, and elsewhere. The position of stateless persons has been even worse because they have no state of nationality to intercede on their behalf.

After seven years in operation, during which many fierce legal battles were fought on behalf of the detainees in the U.S. courts, President Barack Obama signed an Executive Order in January 2009 requiring the closure of detention facilities at Guantanamo Bay. However, the non-removability of many *de jure* and *de facto* detainees meant that President Obama’s one year deadline for the closure of the detention facility was not met. The non-removables include persons from Algeria, Azerbaijan, China, Egypt, Kuwait, Libya, Saudi Arabia,

Syria, Tajikistan, Tunisia, Uzbekistan, the West Bank and Yemen, many of whom cannot return – or be *refouled* – to their country of nationality or last habitual residence. In some cases, the stigma attached to their detention in Guantanamo as suspects in the “war on terror” makes them vulnerable to persecution.

CHAPTER 6: CRIMINAL DETENTION

Key Findings:

- 1. There are discriminatory laws in Myanmar which specifically target the Rohingya, prevent them from leading normal lives and render them vulnerable to arrest, extortion, torture and detention. Corrupt officials utilise such laws to elicit bribes from the Rohingya.**
- 2. ERT research indicates that there is a connection between the lack of personal documents and criminal imprisonment. Stateless persons who do not possess personal documents are particularly vulnerable to arrest (often by corrupt authorities) and detention for the violation of laws which are not sensitive to the statelessness challenge. However, more research is required to grasp the true scope of this problem.**
- 3. There is a growing international trend towards the greater criminalisation of irregular migration. This trend has an impact on all irregular migrants. However, the stateless are disproportionately affected due to the reality that many are unable to travel legitimately. The Malaysian practice of caning is of particular concern.**

Information on the criminal detention of stateless persons has not been systematically collected, and because information on detention generally is rarely – if ever – disaggregated to consider statelessness, it is not easily accessible or discernible. However, ERT’s research suggests that this form of detention primarily raises human rights concerns in two contexts. First, *de jure* and *de facto* stateless persons – particularly if they form a distinct ethnic group – may face discrimination within their country of their habitual residence, either as a result of state policies, or because they are vulnerable to corrupt officials, including law enforcement officers, who abuse their irregular status as a means of extorting money from them, for example where stateless persons are detained under criminal law because they lack identity and other documents. Second, outside their countries of habitual residence, there is a visible global pattern in which immigration offences – such as the

use of false documents, illegal entry and overstay – are increasingly carrying criminal sentences. These are particularly harsh on stateless individuals and communities who are often unable to comply with immigration requirements due to their statelessness.

PART THREE – POSITIVE DEVELOPMENTS, RECOMMENDATIONS AND CONCLUSIONS

CHAPTER 7: POSITIVE DEVELOPMENTS

ERT’s research also highlights many positive developments which can be built on and replicated to ensure better protection for the stateless.

Hungary and Spain are the only two countries which have legislation creating dedicated statelessness determination procedures to provide for a separate stateless status. Hungary created its separate determination procedure in 2007, under which it is possible to apply for stateless status. Spain put a statelessness determination procedure in place in 2000. Mexico is perhaps the only country in the world which has a procedure in place, through an executive circular, to determine *de facto* statelessness.

There are some emerging guidelines and standards for the detention of stateless persons which are progressive, based on human rights norms and afford greater protection to the stateless in detention. These must be embraced and applied holistically in countries around the world. The UNHCR Analytical Framework on Statelessness is one such example. It highlights the key questions which must be asked in assessing the detention of stateless persons in different countries. The European Return Directive too imposes some strong procedural safeguards pertaining to removal pending detention. It views detention as a last resort.

CHAPTER 8: RECOMMENDATIONS AND CONCLUSIONS

ERT’s recommendations and conclusions are based both on “good practices” identified in our research, and new ideas as to how this difficult and complex issue can be addressed in a positive and principled way:

- 1. Strengthening the International Statelessness Regime** – A global commitment is needed to eradicate statelessness and protect the stateless, not only through increased ratification of the two statelessness conventions,

but also through a serious commitment by states to fulfil their obligations under the treaties. The UN Treaty Bodies, the UN Human Rights Council's Special Rapporteurs and local and international NGOs all have a role to play in recommending and lobbying states to ratify the conventions. States are also urged to go beyond those clauses in the 1954 Convention which limit protection, such as the "lawful stay" clause. States are urged, in this regard, to devise criteria based on which they grant lawful stay to stateless persons who are illegally within their territory, and accordingly extend all the rights under the 1954 Convention in a non-discriminatory manner.

2. Reaffirming the Centrality of Human Rights Principles in Protecting the Stateless – States, the UNHCR, the UN Treaty Bodies, the UN Human Rights Council's Special Rapporteurs, national, regional and international courts and organisations working on behalf of the stateless must recognise that the protection of stateless persons is primarily a human rights issue, which must be addressed through the application of human rights law, as well as through the statelessness treaty regime. A comprehensive body of jurisprudence and authoritative interpretation should be developed.

3. Equality and Non-Discrimination – Principles of equality and non-discrimination are of particular relevance to the stateless, and must be central to all laws, policies and practices which have an impact on them. The most desirable way of ensuring this is for states to adopt a holistic understanding of equality and non-discrimination, and incorporate it into national law through comprehensive equality legislation.

4. Abolishing Hierarchies within Statelessness – The *de jure* – *de facto* dichotomy, which creates a hierarchy within statelessness and results in discrimination between the two groups must be replaced with a more comprehensive, inclusive and fair understanding of statelessness, which promotes equal and effective protection for all. The definition should be based on the notion of effective nationality. Until this is achieved, *de jure* statelessness should be interpreted in as broad a manner as possible, so as to bring many groups presently recognised as *de facto* stateless under the protection of the 1954 Convention. Additionally, greater protection must be provided for the *de facto* stateless through progressive policies and practices such as the Mexican process for identifying and protecting *de facto* stateless persons. Furthermore, organisations which work on behalf of refugees and the stateless must include the *de facto* stateless within their mandates. The UNHCR is now developing more comprehensive definitions of *de jure* and *de facto* stateless-

ness. This should be an open-ended approach which has the flexibility to recognise unanticipated scenarios of statelessness in the future.

5. Implementing National Statelessness Determination Procedures

– Effective and fair statelessness determination procedures must be put in place. Such procedures must not be limited to identifying only the *de jure* stateless, but should identify all persons who have no effective nationality. This would ensure that statelessness is identified in the course of immigration procedures, or when an application for political asylum is refused, thus establishing situations where an individual has no effective nationality, cannot be removed to another country, and should not therefore be detained “pending removal”. This will enable detention to be used as a last, rather than first resort. Steps must also be taken to determine whether those already in detention awaiting deportation are stateless.

6. Information and Statistics on Stateless Populations

– All states should maintain information and statistics on stateless populations, particularly those in detention. *De facto* stateless persons should be included within these statistics, which should be broken down in such a manner that the reason behind ineffective nationality is clearly identified.

7. The Stateless and Refugees

– The strong connection between statelessness and refugees must be affirmed. This was the basis on which the 1951 and 1954 Conventions were drafted. The parallel routes taken by the two conventions – i.e. the development of the refugee protection regime and until recently the near stagnation of the statelessness regime - has been detrimental to both refugee and stateless populations. By strengthening stateless mechanisms, the protection afforded to the stateless acts as a safety net for refugees, for example where they are wrongly refused recognition, in addition to being a valuable protection tool in its own right.

8. The Integration and Naturalisation of Stateless Persons

– States should expedite the integration of all stateless immigrants into society, through the provision of documents, access to education, healthcare, employment and social welfare and ultimately through the facilitation of their naturalisation. In the short term, Bridging Visas or their equivalent should be provided to the stateless so as to regularise their status.

9. The *Non-Refoulement* Dilemma

– States must consistently and comprehensively fulfil their obligations of *non-refoulement* in a manner which does not undermine the liberty of those who have a right not to be *refouled*.

Stateless persons who cannot be removed to their countries of habitual residence for fear of persecution, torture or acute discrimination, must not be kept in lengthy detention (if any detention at all is necessary and non-arbitrary).

10. Protecting Those Who Do Not Have Consular Protection – The lack of consular protection is a distinctive factor with regard to ineffective nationality, which can arise due to, *inter alia*, the absence of diplomatic ties between two countries, the non-existence of a consulate due to resource problems, and the failure of a consulate to co-operate with removal. Consideration is needed of how these gaps can be filled, including whether an international organisation such as the UNHCR could act as “default” consul on behalf of such persons.

11. Adopting International Standards on the Detention of Stateless Persons – There is a need to develop international detention standards which are specific to stateless persons. They should reflect the expertise of both the UNHCR and the UN human rights system, as well as the principles and standards developed by international, regional and national courts. The existing UNHCR guidelines on the detention of asylum seekers referred to in this report can be used as a template for the development of statelessness-specific principles. Key stakeholders including the UNHCR, the UN Working Group on Arbitrary Detention and NGOs must work together to develop such a set of guidelines, and ERT is dedicated to catalysing this process.

12. Promoting Alternatives to Detention in an Immigration Context – The established international norms protecting persons against arbitrary detention should be applied to stateless persons. Any exceptions should be narrow. In all cases, non-detention in a non-criminal context is the solution most in keeping with international human rights principles. Positive alternatives to detention including community based alternatives must be promoted. Detention should never be mandatory. In limited cases where detention cannot be avoided, there should be a maximum limit of six months detention pending removal, after which, if removal is not possible, detainees should be released. The U.S. post-*Zadvydas* regulations are a step in the right direction in this regard. The notion of “reasonable time” employed by the UK must be discarded as this creates a situation where persons remain indefinitely in detention until they manage to successfully challenge their detention in courts. In the case of foreign nationals convicted for a crime, removal proceedings should begin at least six months before their criminal sentence ends, with the presumption that if removal cannot be secured by the time the full sentence

has been served, removal is highly unlikely if not impossible and further detention should not be authorised.

13. The Non-Deportation of Persons who have been Resident in a Country since Early Childhood – Stateless persons who have been resident within a state or territory since childhood should not be deported from these states or territories under any circumstances. In such situations, the states in which they have spent their formative years and most of their lives should be viewed as their countries of habitual residence. Such persons should have facilitated access to naturalisation in accordance with the provisions of the 1954 Convention.

14. Immigration Laws with Criminal Penalties Should be Reviewed – States should review their immigration laws and make them sensitive to the reality of statelessness and the reasons behind the lack of personal documents. Stateless persons should not be criminally penalised as a result of their status. Immigration regimes must identify the stateless and be consistent with state obligations under international human rights law.

15. Release into Enforced Destitution – Stateless persons should not be released from detention into destitution. Providing such persons with access to employment, welfare, education and healthcare is a basic positive obligation of states.

16. Continued and Unfounded Security Detention Must End – Continued security detention of persons who have been cleared for release is not acceptable. Such persons must be allowed residence in a country in which they are not a threat. Detaining states must expedite the release of such persons, and in the very least, temporarily release them onto their territory with basic welfare guarantees, until a suitable third country accepts them.

17. Compensation for Stateless Detainees – Due compensation must be provided to stateless persons who have remained in detention for unnecessarily lengthy periods, when they have been cleared for release (for example, in the context of security detention), have been sentenced wrongly (in the context of criminal detention) or when there has been no reasonable prospect of removal (in the context of immigration detention).