

TABLE OF CONTENTS

<i>Acknowledgements</i>	VII
<i>Executive Summary</i>	XI
Introduction	1
The Experience of Statelessness	6
Methodology and Structure of ERT Research and This Report	10
PART ONE - THE RIGHTS OF THE STATELESS AND TYPES OF STATELESSNESS	15
Chapter 1: The Rights of the Stateless	17
1.1 The Statelessness Challenge.....	19
1.1.1 A Human Rights Blind Spot	22
1.1.2 The National Sovereignty Barrier	24
1.2 Nationality, Equality and Non-discrimination	27
1.2.1 The Right to a Nationality.....	29
1.2.2 Equality and Non-Discrimination.....	32
1.2.2.1 Non-Discrimination.....	36
1.2.2.2 Treaty Body Standards.....	38
1.2.2.3 Regional and National Jurisprudence.....	40
1.2.2.4 The Practical Implementation of Equality Standards.....	42
1.3 The International Statelessness Regime	43
1.3.1 Convention Relating to the Status of Stateless Persons.....	43
1.3.1.1 The Provisions of the Convention	45
1.3.1.2 The Convention Definition of Statelessness	46
1.3.1.3 Poor Ratification.....	47
1.3.2 Convention on the Reduction of Statelessness	48
1.3.3 The Role of the UNHCR.....	49

Chapter 2: Critiquing the Categorisation of the Stateless	52
2.1 Categories of Stateless Persons.....	54
2.1.1 <i>De Jure</i> Statelessness.....	57
2.1.1.1 Case Study – The Rohingya in Myanmar	59
2.1.2 <i>De Facto</i> Statelessness.....	63
2.1.2.1 Scenarios of <i>De Facto</i> Statelessness	65
2.1.2.2 Case Study – Somalia and <i>De Facto</i> Statelessness.....	70
2.1.3 Grey Areas	74
2.1.3.1 Case Study – Kenya’s Stateless Populations.....	74
2.2 The <i>De Jure - De Facto</i> Dichotomy and the Ineffective Nationality Test.....	78
2.2.1 The Ineffective Nationality Test	80
PART TWO - STATELESS PERSONS IN DETENTION	85
Chapter 3: International and Regional Legal Norms Relating to Detention	87
3.1 International and Regional Jurisprudence.....	89
3.1.1 The UN Treaty Body System	89
3.1.1.1 Non-Discrimination and Detention	92
3.1.1.2 Indefinite Detention Amounting to Cruel, Inhuman or Degrading Treatment.....	93
3.1.2 The European Convention on Human Rights	94
3.2 Emerging Standards and Guidelines on the Detention of Stateless Persons	99
3.2.1 The UNHCR Position	99
3.2.2 European Law and Positions	102
3.2.2.1 The European Union Return Directive.....	102
3.2.2.2 The European Committee for the Prevention of Torture	104

3.2.2.3 The Council of Europe.....	105
Chapter 4: Immigration Detention.....	108
4.1 Immigration Detention of Stateless Persons in the United States, the United Kingdom and Australia.....	110
4.1.1 Detention Regimes.....	112
4.1.1.1 The United States	113
4.1.1.2 The United Kingdom.....	114
4.1.1.3 Australia	117
4.1.2 Judicial Responses.....	120
4.1.2.1 The United States	120
4.1.2.2 The United Kingdom.....	122
4.1.2.3 Australia	123
4.1.3 Removing Stateless Detainees	127
4.1.3.1 The United States	128
4.1.3.2 The United Kingdom	133
4.1.3.3 Australia	139
4.1.4 Restriction of Liberty and Release into Destitution	139
4.2 Immigration Detention of Stateless Persons in Kenya and Egypt.....	141
4.2.1 Kenya	141
4.2.2 Egypt.....	144
4.3 Immigration Detention of Stateless Rohingya in Bangladesh, Malaysia and Thailand.....	148
4.3.1 First Port of Call: Bangladesh.....	150
4.3.1.1 Immigration Detention	151
4.3.1.2 The Impact of Public Interest Litigation.....	153
4.3.1.3 Detention Conditions.....	153
4.3.1.4 “Push-backs” from Bangladesh	156

4.3.1.5 Crackdown on Rohingya in Bangladesh	159
4.3.2 Rohingya Boat People in Thailand	159
4.3.2.1 Push-Backs from Thailand	161
4.3.2.2 The Aftermath.....	164
4.3.2.3 Detention in Thailand.....	165
4.3.3 Malaysia, a Final Destination.....	166
4.3.3.1 Detention Practices	167
4.3.3.2 Deportation.....	167
4.3.3.3 Positive Developments	172
Chapter 5: Security Detention.....	176
5.1 National Security Detention at Guantanamo Bay	178
5.1.1 Non-Refoulement and <i>De Facto</i> Stateless Detainees.....	180
5.1.2 The Failed Promise of the Obama Administration.....	183
Chapter 6: Criminal Detention	187
6.1 Discriminatory Criminal Detention in Country of Habitual Residence	188
6.1.1 Arbitrary Arrest, Extortion and Torture.....	188
6.1.2 Imprisonment, Hard Labour and Shackles.....	190
6.2 Criminal Detention Linked with Statelessness, the Lack of Documentation and Corrupt Practices.....	192
6.3 The Criminalisation of Immigration Offences and Consequent Detention.....	194
PART THREE - POSITIVE DEVELOPMENTS, RECOMMENDATIONS AND CONCLUSIONS	199
Chapter 7: Positive Developments.....	200
7.1 Identifying the Stateless: Statelessness Determination Procedures.....	200
7.1.1 Statelessness Determination Procedures: The Case of Spain	204

7.2 Standards on the Detention of Stateless Persons	208
7.2.1 National Limits on Detention	211
7.3 Recent Policy Changes in Australia.....	214
Chapter 8: Recommendations and Conclusions	218
BIBLIOGRAPHY	242
ANNEXES.....	262
Annex A. ERT October 2008 Roundtable Discussion on Statelessness - List of Participants	262
Annex B. Rohingya Migration Map (Courtesy of the Arakan Project)	263