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Networking for Change

The Development of the European Network on Statelessness and Perspectives on Developing Other Regional and Global Statelessness Coalitions

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Abstract

Until recently, there was no regional civil society alliance dedicated exclusively to addressing statelessness. This changed with the advent of the European Network on Statelessness (ENS), which has attracted fifty non-governmental organization (NGOs) members since its public launch in June 2012. Aside from vindicating the need for such a coordinating body in the region, the development of ENS also offers several useful perspectives on how networks can serve as effective generators for change and as forums to help overcome a historical lack of awareness of, or even indifference to, the plight of stateless persons. This article explores the importance of awareness-raising and the gains possible through finding diverse and multiple entry points to approach the issue. It reflects on these lessons and the challenges that remain, including their potential to help inform an emerging discussion around the need to develop an international coalition of actors dedicated to combatting statelessness. The article concludes that only through working together will it be possible to make real progress towards achieving the recently articulated ambition by the United Nations High Commissioner for Refugees (UNHCR) to eradicate statelessness within a decade.

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Keywords

statelessness in Europe – issue emergence – European Network on Statelessness – international coalition on statelessness – networking – statelessness conventions – accession pledges – eradicating child statelessness – EU citizenship – statelessness determination procedures

1 Introduction

Until recently, there was no regional civil society alliance dedicated exclusively to addressing statelessness. This changed with the advent of the European Network on Statelessness (ENS),¹ which has attracted fifty NGO members since its public launch in June 2012. This article commences with a brief overview of recent and current statelessness developments in Europe, which is necessary in order to understand the context in which ENS evolved. This is followed by an evaluation of the Network's achievements to date, including in order to identify useful networking functions that could potentially be exported to other regional contexts. After outlining a number of challenges that remain, the article concludes by considering how the development of an international coalition or campaign would help to secure real progress towards eradicating statelessness.

2 Statelessness in Europe

To start with it should be acknowledged that Europe has relatively high accession levels to the two main international instruments governing statelessness – namely the 1954 and 1961 Statelessness Conventions.² This is particularly so with regard to the former with near universal ratification among European Union (EU) Member States³ of this convention which sets down state obligations with regard to stateless persons who have migrated onto their territory. But delve only a little deeper and we see the chasm behind this superficially impressive accession rate – namely that only a handful of European

1 European Network on Statelessness <www.statelessness.eu> accessed 19 August 2013.

2 Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117; Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

3 The exceptions are Cyprus, Estonia, Malta and Poland.

states have introduced a dedicated statelessness determination procedure to enable them to fulfil their obligations in practice.⁴

The accession rate to the 1961 Convention leaves more to be desired with sixteen European states⁵ still not parties to this instrument which seeks to prevent and reduce statelessness. It remains an unacceptable phenomenon that many children are still born stateless in today's Europe. A recent in-depth study by EUDO Citizenship reveals that several states still have nationality legislation on their statute books that either causes or perpetuates statelessness.⁶ In other countries statelessness arises from a failure to ensure comprehensive birth or civil registration – particularly in South Eastern Europe.⁷ Meanwhile, in Estonia and Latvia hundreds of thousands of ethnic Russians are still denied effective access to nationality and live in a perpetual state of non-citizenship.⁸

In terms of institutional responses to the problem of statelessness, the Council of Europe has for several decades played an active role in adopting instruments and recommendations.⁹ In recent years UNHCR too has noticeably increased its regional activities commensurate with a greater global attention to this part of its mandate. This concentration of effort and resources leading up to and beyond its 2011 Ministerial meeting in Geneva, and the related State pledges, has achieved impressive results.¹⁰ This has also increased opportunities for effective collaboration with NGO partners. However, still somewhat trailing in the wake of these developments has been the response,

4 Those with procedures are France, Georgia, Hungary, Italy, Moldova, Spain and the United Kingdom.

5 States yet to accede are Belgium, Cyprus, Estonia, Greece, Iceland, Italy, Luxembourg, Malta, Moldova, Montenegro, Poland, Russia, Slovenia, Spain, Switzerland and Turkey.

6 Olivier W Vonk, Maarten P Vink, and Gérard-René de Groot, 'Protection against Statelessness Trends and Regulations in Europe' (May 2013) <http://eudocitizenship.eu/images/docs/eudocit_vink_degroot_statelessness_final.pdf> accessed 19 August 2013.

7 UN High Commissioner for Refugees, 'Report on Statelessness in South Eastern Europe' (September 2011) <<http://www.refworld.org/docid/514d715f2.html>> accessed 19 August 2013.

8 See Council of Europe Commissioner for Human Rights, 'Governments Should Act in the Best Interests of Stateless Children' <<http://humanrightscomment.org/2013/01/15/governments-should-act-in-the-best-interest-of-stateless-children/>> accessed 19 August 2013.

9 See for full details of the Council of Europe's activities in the field of nationality <http://www.coe.int/t/dghl/standardsetting/nationality/default_en.asp> accessed 22 August 2013.

10 For a detailed summary of recent progress see UN High Commissioner for Refugees, 'Note on statelessness' (4 June 2013) EC/64/SC/CRP.11 <<http://www.refworld.org/docid/51d2a8884.html>> accessed 23 August 2013.

or lack thereof, from the EU which in itself remains an enduring obstacle to unblocking the problem of statelessness in Europe today. This is explored in more detail below, but arguably is both illustrative of and a contributory factor towards a wider malaise or lack of attention among the wider public.

Even when statelessness does enter the public discourse, it often does so in a confused or inaccurate way, for example the recent (erroneous) claim by whistleblower Edward Snowden that he was stateless following the revocation of his US passport.¹¹ Similarly, perhaps the closest the issue has come to entering the *vox populi* was in the 2004 film *The Terminal* starring Tom Hanks as a migrant stuck in the transit zone of a New York airport. This lack of public interest has done little to incentivise action, and with both government and civil society organizations seemingly oblivious to the problem, many stateless persons find themselves stuck in the margins of society without respect for their basic human rights. It also helps explain the huge gulf between notional protection provided under relevant legal standards and the actual realisation of those rights in practice.

ENS was set up against this backdrop and to fill a perceived gap by acting as a coordinating body and expert resource for organisations and individual experts across Europe who work with or come into contact with stateless persons. No equivalent network previously existed although there was earlier statelessness-related activity by a small number of NGOs at both a national and sub-regional level.¹² ENS conducts and supports a range of legal and policy development, awareness-raising and capacity building activities aimed at addressing statelessness. Since its public launch in June 2012, the Network has attracted 80 members (50 NGO members and 30 individual associate members) in over 30 European countries.¹³ Pending its incorporation with its

11 See Michael Goodwin, 'Edward Snowden – From Hero Whistleblower to Stateless Pariah' *Fox News* (10 July 2013) <<http://www.foxnews.com/opinion/2013/07/10/edward-snowden-from-hero-whistleblower-to-stateless-pariah>> accessed 19 August 2013; his claim to be stateless was challenged by others, see Daniel Rothberg, 'Is Edward Snowden Stateless? Not Really' *Los Angeles Times* (2 July 2013) <<http://articles.latimes.com/2013/jul/02/news/la-ol-edward-snowden-stateless-nsa-20130702>> accessed 19 August 2013.

12 Most notably, activities by the Hungarian Helsinki Committee. See Hungarian Helsinki Committee, 'Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe' (June 2007) <<http://helsinki.hu/en/forgotten-without-reason-%E2%80%93-protection-of-non-refugee-stateless-persons-in-central-europe-2007-2>> accessed 19 August 2013.

13 For a full list of ENS member profiles see European Network on Statelessness <<http://www.statelessness.eu/about-us/members/member-organisations>> accessed 19 August 2013.

own legal identity, the Network is hosted and coordinated by the UK NGO Asylum Aid, which, in conjunction with the ENS Steering Committee,¹⁴ is responsible for developing the Network and implementing its strategic plans.¹⁵

3 Building Effective Civil Society Networks – Lessons Learned Through Developing ENS

Networking is widely viewed as an effective way for NGOs to improve performance and to enhance impact. Since many NGOs are small and dispersed, networking is commonly seen as a cost-effective means to share information and spread knowledge about a target population's needs as well as corresponding solutions and best practices. Moreover, networking is believed to strengthen NGO's ability to speak with one voice and, through a 'multiplier effect', to significantly increase their impact as policy negotiators and as agents advocating for change.¹⁶ Many of these benefits are already apparent during the development of ENS.

Arguably a key success achieved by ENS has been its ability to find 'entry points' to recruit and engage new members with its activities, and to find ways for its mandate to resonate with the existing interests and priorities of its membership base. One important entry point for many ENS members has been the statelessness and refugee/asylum nexus, including undocumented refused asylum seekers who are unable to be returned by the host state.¹⁷

14 The ENS Steering Committee comprises representatives from the Network's six founding organisations: Asylum Aid <<http://www.asylumaid.org.uk/>>; The Equal Rights Trust <<http://www.equalrightstrust.org/>>; The Open Society Justice Initiative <<http://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative>>; Praxis Serbia <<http://www.praxis.org.rs/index.php/en/>>; and the Tilburg Statelessness Programme <<http://www.tilburguniversity.edu/research/institutes-and-research-groups/statelessness/>> all accessed 19 August 2013.

15 For an overview of ENS activities since its launch see The European Network on Statelessness Annual Report 2012/13 <<http://www.statelessness.eu/resources/ens-annual-report-201213>> accessed 23 August 2013.

16 For example see ENS Campaign to Protect Stateless Persons in Europe <<http://www.statelessness.eu/node/417>> accessed 14 October 2013.

17 While there is currently insufficient data enabling an accurate assessment of what percentage of this large and growing population are in fact legally stateless, the numbers are likely to be significant and affected individuals currently face a protection gap which often leaves them as victims of arbitrary detention and other human rights abuses. While by no means a solution for all refused asylum seekers, the absence of dedicated statelessness determination procedures leaves many trapped in a cycle of detention and destitution. The existence of this protection gap also inhibits the ability of states to find

Another entry point relevant for several ENS members is children's rights, including with regard to birth registration.¹⁸ However, particularly from a more global perspective, it is apparent that too often stateless populations or constituencies have not identified statelessness as their binding characteristic with regard to the problems confronting them. Therefore key to effectively engaging a broader spectrum of actors and resources is the adept framing of statelessness as part of other international discourses such as those on development and livelihood issues, for example access to education, healthcare or other services where stateless persons currently face discrimination. Other potential entry points for statelessness work are gender equality, political participation, human security and trafficking.¹⁹

The ENS membership spans a broad spectrum from large international NGOs to smaller grassroots organizations – encompassing advocacy and/or research focussed NGOs, academic institutions, legal advice agencies, frontline service providers, detention specialists and several prominent international law experts. Currently members vary in terms of their existing expertise and resources to work on statelessness. Some joined specifically because of the opportunities membership would provide to build their capacity. In contrast, others are more immediately equipped to contribute and to share their experience and expertise with less advanced members. This in itself represents a valuable networking function, and is consistent with ENS's philosophy of seeking to mainstream statelessness and to build capacity of civil society actors to act as an effective catalyst for change.

In this regard another success has been the visibility and awareness-raising impact achieved through the ENS blog, which features weekly pieces drawing attention to statelessness developments in Europe.²⁰ Since the launch of its

effective policy solutions for a population which by definition lacks a country to be returned to, and hence pose an increasingly protracted problem the longer they are left without status and rights in the host state.

- 18 At a global level this has also been a priority issue for Plan International, see Plan International 'Count Every Child' <<http://plan-international.org/birthregistration/universal-birth-registration>> accessed 22 August 2013; more recently there are also signs of interest from 'Save the Children, see Save the Children 'Pushing the Boundaries: A Guide to Increasing the Realisation of Children's Civil Rights and Freedoms' <<http://resource.centre.savethechildren.se/sites/default/files/documents/7261.pdf>> accessed 22 August 2013.
- 19 For further analysis on the importance of issue framing and identifying entry points for statelessness work see Lindsey N Kingston, "A Forgotten Human Rights Crisis": Statelessness and Issue (Non)Emergence' (2013) 14 (2) *Human Rights Review* 73-87.
- 20 ENS Blog <<http://www.statelessness.eu/blog>> accessed 14 October 2013.

website in June 2012, the Network's mailing list has continued to grow rapidly. Not only does this blog function facilitate a quick, flexible and low-cost way to engage in policy discussion and communicate key advocacy messages, it also helps to ensure a concentrated and consistent focus on the issue. In addition ENS publishes a quarterly newsletter, which maintains the profile of the Network and facilitates a more public dialogue with other key stakeholders.²¹

ENS aims to achieve greater impact over time through the combined efforts and resources of its member organizations. This broad membership base also provides ENS with an authoritative voice to act as the key interlocutor between its members and other stakeholders, including representatives from EU institutions and other bodies such as the EU Fundamental Rights Agency, the Council of Europe, and the Organisation for Security and Cooperation in Europe. Of particular importance is its partnership with UNHCR as the main agency mandated to work on statelessness.

4 Looking Ahead - Key Challenges and Obstacles

Statelessness is often labelled a forgotten issue and organizations that work on the issue of statelessness are well attuned to the lack of awareness on statelessness at a more general level, and the negative impact this has on the human rights protection of stateless persons worldwide. To provide some perspective, UNHCR estimates the global stateless population to be 10 million. Most agree that this is a conservative estimate, and as efforts to map stateless populations continue, there is increasing awareness of both the extent of the problem and our ignorance in relation to it. UNHCR has much more accurate data on refugees. In 2012 there were 10.4 million refugees of concern to UNHCR and a further 4.8 million refugees of concern to the United Nations Relief and Works Agency (UNRWA). Additionally, 15.5 million internally displaced persons (IDPs) receive protection and/or assistance from UNHCR. Despite the similar sizes of these three vulnerable populations, no comparison can be made between the extent of awareness, expertise and resources on, and resultant protection available to refugees and IDPs compared to stateless persons.

Perhaps it is not so surprising then that a similar lack of attention has also historically been evident in the response by civil society, as illustrated by the fact that to date no major mainstream international NGO has chosen to

21 For example through interview pieces with actors such as the Council of Europe Commissioner for Human Rights. See ENS Newsletter Issue 2 (January 2013) <<http://www.statelessness.eu/resources/ens-newsletter-issue-2>> accessed 22 August 2013.

prioritise statelessness work.²² This is compounded by a lack of awareness among the donor community, which makes it difficult for organizations wishing to work on statelessness to even secure a foothold in the face of competing interests, let alone sustain a longer-term programme of activities. These challenges are even more pronounced in the current climate of economic austerity, with many charitable trusts and foundations looking to rein back spending rather than increase their areas of focus. Another challenge is that at present there is no dedicated EU funding provision for statelessness work.²³ This relative lack of available resources has not only inhibited research efforts necessary to underscore effective advocacy but has also resulted in a dearth of narratives or stories required to raise awareness about the plight of stateless persons, and therefore to help unlock the emergence of stateless as an issue deserving greater attention.²⁴ The risk is that this cause and effect becomes somewhat circular and embedded.

A specific challenge facing ENS, as opposed to some other pan European networks, is the limited competence of or engagement by EU on statelessness and nationality. This is partly explained by the sovereign right of each Member State to regulate access to nationality. Unlike refugee protection, statelessness *per se* is not a ground for obtaining an international protection status in EU law.²⁵ That being said, there are some positive signs of a sea change. One area ripe for development is the increased recognition of the link between nationality and the enjoyment of EU citizenship, as confirmed in the ruling of the

22 Although in recent years significant attention has been paid to statelessness by Refugees International, the Open Society Justice Initiative and Plan International, there has been little or no engagement from the likes of Amnesty International, Oxfam and Save the Children. Given the combined profile and resources of these organisations, their collective lack of engagement present a significant inhibitor to the proper emergence of statelessness as an issue worthy of international attention.

23 For example statelessness is not within the scope of the European Refugee Fund, which in recent years has proved an invaluable source of income for NGOs working on refugee issues. European Commission, 'Refugee Fund' <http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/refugee-fund/index_en.htm> accessed 22 August 2013.

24 Kingston (n18).

25 The Treaty on the Functioning of the European Union only establishes a competence to operate common policies in the field of asylum and migration. Although it is worth noting that the 2007 Lisbon Treaty does confirm that with regard to EU law on freedom, security and justice 'stateless persons shall be treated as third country nationals', a term commonly used in EU legislation with corresponding (and potentially useful) obligations. See Gábor Gyulai, 'Statelessness in the EU Framework for International Protection' (2012) 14 *European Journal of Migration and Law* 279–295.

Court of Justice in *Rottmann*.²⁶ There is also evidence of growing political awareness about statelessness among EU states and an ensuing commitment to take action.²⁷ This was illustrated when in September 2012 at the UN High Level Rule of Law Conference the EU pledged that all Member States not yet parties would ratify the 1954 and consider acceding to the 1961 Convention.²⁸

While it would be premature to consider common EU legislation in this area, there is nonetheless a clear need for the European Commission to play more of a leadership role in helping to raise awareness about statelessness and to make necessary links with current EU-wide debates on integration and active citizenship, particularly in 2013 the Year of the European Citizen. Greater attention should be paid to assessing the impact of current EU legislation and policy on stateless persons.²⁹ The Commission should more actively follow up on the pledges made in 2012 at the UN High Level Rule of Law Conference. It could also play a greater role in encouraging accessions to the Council of Europe instruments on statelessness. Finally, the EU needs to develop appropriate funding streams for work to tackle statelessness. In this regard it is welcome to observe the apparent inclusion of stateless persons within the scope of the Commission's Proposal for a new Asylum and Migration Fund for the period 2014-2020.³⁰

5 Developing an International Statelessness Coalition?

Although no equivalent network exists in other regions, there are already some seeds of coordinated activity, for example through the establishment of a statelessness working group by the Asia and Pacific Refugee Rights Network.³¹

26 Case C-135/08 *Janko Rottman v Freistaat Bayern* [2010] ECR I-1467. For a more detailed analysis of the implications of this judgement see Laura van Waas, 'Fighting Statelessness and Discriminatory Nationality Laws in Europe' (2012) 14 *European Journal of Migration and Law* 243–260.

27 For example, half of all EU Member States made statelessness-related pledges at the UNHCR Ministerial Meeting in December 2011.

28 Delegation of the European Union to the United Nations, 'Note Verbale' (New York, 19 September 2012) <<http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf>> accessed 23 August 2013.

29 For example with regard to identifying stateless migrants when applying the EU Returns Directive.

30 European Commission, 'Funding home affairs beyond 2013' <http://ec.europa.eu/dgs/home-affairs/financing/fundings/funding-home-affairs-beyond-2013/index_en.htm> accessed 22 August 2013.

31 Asia and Pacific Refugee Rights Network, 'Statelessness Working Group' <<http://www.aprrn.info/1/index.php/programmes/thematic-programmes/statelessness>> accessed 23 August 2013.

Equally, at a global level the International Observatory on Statelessness³² has existed since 2007 as a forum to engage in and support research in order to inform policy. A number of other NGOs are also undertaking statelessness work at the national level in different regions, as evidenced by a high turnout at the inaugural NGO Statelessness Retreat organised and hosted by UNHCR in Geneva earlier this year.

A total of 25 representatives from organizations based in Africa, Asia, the Americas, Europe and the Middle East participated in the Retreat which aimed to encourage, increase and strengthen collaboration amongst civil society actors working on statelessness or in areas related to issues of nationality and statelessness, and to foster better cooperation and knowledge-sharing by and with UNHCR. A number of action points were agreed relating to increased use of the Universal Periodic Review and other treaty body review processes, improved collaboration on advocacy-led research initiatives, establishing working groups to tackle selected protracted situations, the development of more effective public messaging and sustained media campaigns, increased donor sensitization, improved sharing of resources (including the development of a statelessness case-law database) and closer cooperation on strategic litigation. There was also discussion about how to increase UNHCR-NGO engagement with existing regional structures (ie. institutions and courts) and processes.

Underpinning all these ambitions was recognition of the need for significantly enhanced regional coordination among civil society in order to build a platform for developing an effective global coalition or campaign. It is clear that regional coalitions can support one another as well as draw on experience gained by already established networks such as ENS. While it seems sensible to adopt a regional approach based on similar legal frameworks or levels of development in member countries, it should also be recognized that many parallels already exist between regions such as Europe and the Americas. For example, both regions have near universal accession to the 1954 Statelessness Convention but few established statelessness determination procedures.

The jury is still out on the best way to achieve an international coalition but an important step made (including during the UNHCR Retreat in Geneva) is a growing consensus that this is a necessary development. The crucial question remaining is to agree the best approach - namely coalition or cause? This is essentially a 'chicken and egg' discussion as to whether it would be best to devote already stretched resources towards establishing a coalition of organizations to work on statelessness or alternatively to first identify a common

32 International Observatory on Statelessness <<http://www.nationalityforall.org/>> accessed 23 August 2013.

cause around which prospective coalition members could rally? Arguably the latter approach may be more fruitful and therefore the key question becomes what should be the campaign goal? One seemingly obvious although ambitious option would be to take up the rallying call by UNHCR High Commissioner Guterres for statelessness to be eradicated within a decade. A slight variation on this, while still challenging, could be the goal that within a decade no child is born stateless. While ambitious, such a public commitment by an increasing body of actors would, even if only partially achieved, enable the collective channeling of resources and provide a roadmap to bring about real and lasting change.

6 Conclusion

As evident from dialogue at this year's UNHCR NGO Consultations in Geneva,³³ increasing numbers of individuals and organizations are starting to include statelessness within their mandates. Given recent momentum on the issue, rather than lament a historical lack of attention to the plight of the stateless, now is the time to seize the initiative with bold and concerted action if we are to make real progress towards the ambition to eradicate statelessness within a decade. However, not only will this require significantly increased funding and resources, but also finding imaginative ways to reach new and wider audiences. One such innovation already proposed earlier this year was a Call for the UN General Assembly to adopt an international day of action against statelessness.³⁴ Hopefully, next year's commemoration of the 60th anniversary of the 1954 Statelessness Convention will inspire additional ideas and provide further impetus to our collective efforts.

33 See Chris Nash, 'Setting the Bar Higher – the UNHCR NGO Consultations and Getting Serious about Eradicating Statelessness' (European Network on Statelessness Blog, 18 June 2013) <<http://www.statelessness.eu/blog/setting-bar-higher-unhcr-ngo-consultations-and-getting-serious-about-eradicating-statelessness>> accessed 23 August 2013.

34 In making this Call, ENS and the Tilburg Statelessness Programme argue that the adoption of an international day of action against statelessness would have the potential to positively impact in the same way as World Refugee Day or the International Day for the Elimination of Violence against Women. See European Network on Statelessness, 'A Call for the Adoption of an International Day against Statelessness' <<http://www.statelessness.eu/communications/call-adoption-international-day-statelessness>> accessed 23 August 2013.