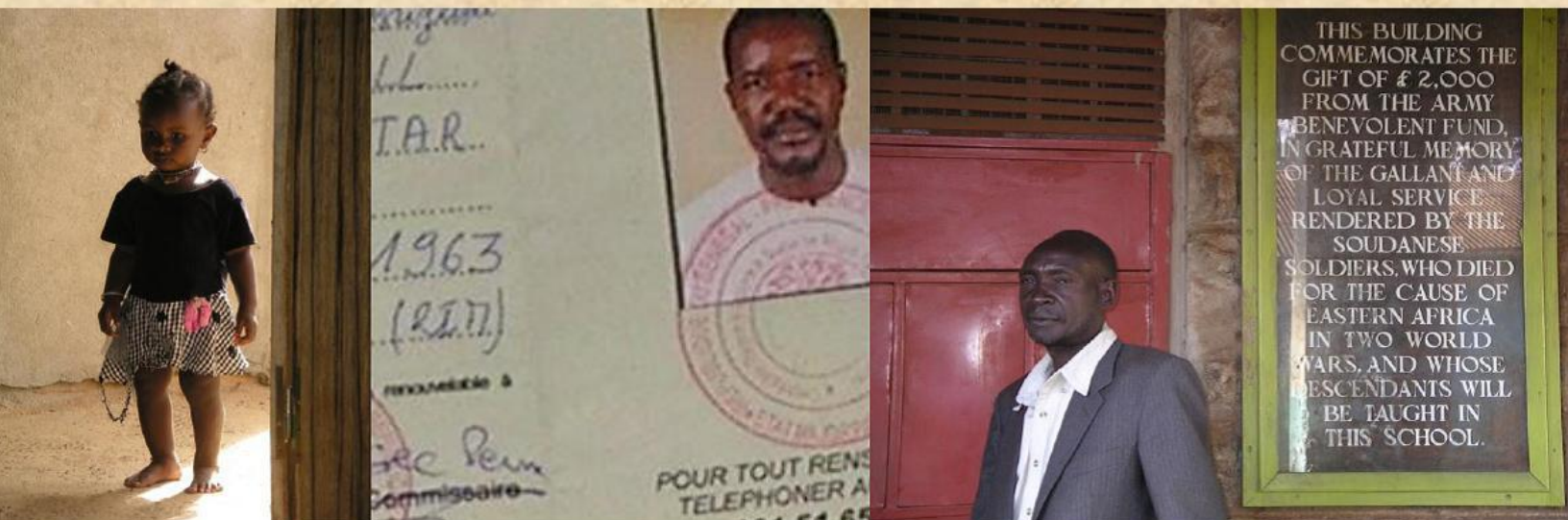


Open Society Justice Initiative

De Jure Statelessness in the Real World:

Applying the Prato Summary Conclusions



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The Open Society Justice Initiative bears sole responsibility for any errors or misrepresentations.

Introduction

Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, as interpreted in the Summary Conclusions of the Prato Expert Meeting (“Prato Conclusions”), defines an individual as *de jure* stateless if all states to which he or she has a factual link fail to consider the person as a national. Most stateless populations that the Justice Initiative works with have links with only one state, where they were born and physically reside.¹ In accordance with the Prato Conclusions, the Justice Initiative considers these populations to be *de jure* stateless on the basis that the state in question, acting through its agents responsible for determination of citizenship, immigration status, or documentation of citizenship, at some level of administration, does not consider these resident populations to be citizens. A majority of the world’s stateless people likely fall into this category, as illustrated by the numerous examples set forth in this document.

The Prato Conclusions state, in part:

Whether an individual actually is a national of a state under the operation of its law requires an assessment of the viewpoint of that State. This does not mean that the state must be asked in all cases for its views about whether the individual is its national in the context of statelessness determination procedures.

Rather, in assessing the State’s view it is necessary to identify which of its authorities are competent to establish/confirm nationality for the purposes of Article 1(1). This should be assessed on the basis of national law as well as practice in that State. In this context, a broad reading of “law” is justified, including for example customary rules and practices.

If, after having examined the nationality legislation and practice of States with which an individual enjoys a relevant link (in particular by birth on the territory, descent, marriage or habitual residence) – and/or after having checked as appropriate with those States – the individual concerned is not found to have the nationality of any of those States, then he or she should be considered to satisfy the definition of a stateless person in Article 1(1) of the 1954 Statelessness Convention.²

In order for the Prato Conclusions to be meaningful in practice, the Justice Initiative believes that two principles in particular require focused attention:

- a. The precise meaning of “competent authority” in the context of nationality determination must be clearly and broadly defined in order to establish the viewpoint of the state with respect to the legal status of an individual; and
- b. *Prima facie* evidence of the viewpoint of the state may give rise to a presumption of *de jure* statelessness with respect to either an individual or an entire population.

¹ See Alison Harvey, *Statelessness: The ‘de facto’ Statelessness Debate*, 24 *Immigration, Asylum and Nationality Law* 257, 258 (2010) (development of international laws on statelessness “predicated upon dealing with statelessness as the lack of a particular nationality rather than the lack of any nationality”).

² UNHCR, *Expert Meeting: The Concept of Statelessness under International Law, Summary Conclusions*, Prato, Italy, May 27-28, 2010 [hereinafter “Prato Conclusions”], at 3. As noted in the Prato Conclusions, foundlings are an exception to the cited paradigm. In the absence of proof to the contrary, foundlings should be presumed to have the nationality of the state in whose territory they are found.

These points will be further elaborated in the remainder of this Introduction and throughout the case studies that follow.

“Competent authority” must be read broadly, to include actors at every level of government.

Where the Prato Conclusions refer to “authorities competent to establish/confirm nationality for the purposes of Article 1(1),” they must logically refer to the ordinary, national authorities involved in citizenship determinations. Procedures for determining citizenship vary widely, but they routinely involve the presentation of documentary proof of both place and date of birth, parentage, and parents’ legal status. Often relatively low-level and/or local authorities examine the proof presented and handle the issuance or denial of documents recognizing an individual’s citizenship. In some cases, these local actors may have been deputized by an organ of the national government. The Prato Conclusions require that, in order to be considered stateless, an individual be denied citizenship, not by the host country’s ultimate legal authority, but only by some authority in the citizenship determination process. According to the Prato Conclusions, individuals denied a grant of nationality bear no ancillary obligation to exhaust domestic remedies before satisfying the Article 1(1) definition.³ This is crucial since many stateless persons will only have access to state authorities at lower and/or local levels, and decisions of such authorities will determine for all practical purposes the legal status of these people.

The Guidance on the Article 1(1) definition should accordingly make clear that the relevant decision-making “authorities” include actors at *every level* of the state apparatus competent to establish or confirm citizenship. The most important factor here is the impact that a particular decision has on the individual’s life. In other words, if the only agent of the state that he or she encounters is a low-level civil servant, then the decision of this person must be understood as the view of the state with respect to the individual’s legal status. Should the decision later be revised by a higher authority, this action should be seen as a change in opinion by the state with respect to the individual’s nationality.

***Prima facie* evidence of the state’s view, such as discriminatory impediments to securing proof of citizenship, should give rise to a presumption that the state does not consider individuals affected by such measures to be nationals.**

Many populations that seem to be citizens of their state of habitual residence, whether under a plain reading of the laws of their country of residence or going by self-description, common perception, logic or convenience, have difficulty securing proof or recognition of their citizenship, even if it is not formally denied to every individual within that population. Such populations have sometimes been referred to as “*de facto*” stateless because there was no official state pronouncement denying each and every person of their citizenship or proof of citizenship.⁴ However, according to the Prato Conclusions’ interpretation of Article 1(1), these populations may in fact be *de jure*, rather than *de facto*, stateless on the basis that certain state practices ought to be seen as *prima facie* evidence of the state not considering them—that is, the entire population in question—as nationals. Widespread discrimination against certain

³ *Id.* at 4, para. 19 (“There is no requirement for an individual to exhaust domestic remedies in relation to a refusal to grant nationality or a deprivation of his/her nationality before he or she can be considered as falling within Article 1(1).”).

⁴ The Prato Conclusions define *de facto* statelessness as follows:

[D]e facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right to diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.

Id. at 6, para. 2. The Prato Conclusions’ definition of *de facto* statelessness will be applied throughout this paper.

ethnic, religious or social groups in the citizenship acquisition process may be an example of such practices. Such evidence should give rise to a presumption of *de jure* statelessness, bringing these individuals within the mandate of the UNHCR.⁵ Moreover, as the Prato Conclusions acknowledge, no treaty regime for the protection of *de facto* stateless persons exists under international law and as a result, no rights or obligations arise from a finding of *de facto* statelessness.⁶ This is an important reason to avoid classifying people as *de facto* stateless when in fact they are *de jure* stateless.

This paper examines the situation of various populations of stateless or potentially stateless people according to the Prato interpretation of the Article 1(1) definition of statelessness, as well as the two broad principles of interpretation advocated above. The series of case studies presented does not represent an exhaustive list of all relevant populations, but it does endeavor to capture the diverse range of individuals and groups experiencing statelessness in real life. This exercise highlights several key points concerning the Prato Conclusions and the Article 1(1) definition:

- (i) The vast majority of the world's stateless population falls within the scope of Article 1(1), as interpreted in the Prato Conclusions, and are thus entitled to international protection, in particular as established under the 1954 Convention;
- (ii) *De jure* statelessness arises for persons in the country/ies of desired nationality in cases of prolonged non-cooperation by competent authorities with an individual's efforts to clarify his or her citizenship status. The precise point at which *de jure* statelessness arises will be specific to the context and must be assessed on the basis of the totality of the circumstances;⁷ and,
- (iii) Where a host country posits theoretical nationality in another state as grounds for denying or withdrawing citizenship in the host state, the individual concerned is *de jure* stateless, unless and until that person actually acquires another nationality. In such cases it is important to consider whether or not nationality is acquired *automatically* at birth (or through marriage), or if there is an application procedure involved. Where an application is required, the individual is per definition not considered as a national of that other state until the application has been approved. On the other hand, if nationality is automatically granted at birth then the individual may be seen as a national of that other state unless there is evidence to the contrary.⁸

⁵ The Prato Conclusions refer to the "conceptual distinction" between, on the one hand, state actions which tend to evacuate all content from a nationality that is subsequently possessed in name only and, on the other hand, the state's view that a given individual or group of individuals does not possess the thing itself; nationality. See *id.*, at 2-3, para. 9 and 13. In certain cases, state actions barring access to voting, employment, education and healthcare are not, under this rubric, sufficient to render those subject to such restrictions *de jure* stateless. Prato's "conceptual distinction," if interpreted too conservatively, could generate a significant protection gap for those who experience total deterioration of rights attached to nationality without being formally classified as non-nationals. *Id.* at 2, para. 3. In this paper, the distinction is maintained, although where rights and services are denied *on the basis that an individual is not a citizen*, such actions are held to constitute *prima facie* evidence that the state in question does not consider the individual to be a national.

⁶ *Id.* at 5.

⁷ Cf. *id.* at 7 ("[P]rolonged non-cooperation" may amount to refusal of protection where a national abroad seeks to return to his or her country of nationality, resulting in *de facto* statelessness). See also *infra*, discussion of Cuban nationals abroad denied readmission. The Prato Conclusions themselves do not define "prolonged non-cooperation," for example, by establishing a threshold length of time after which statelessness results. Prolonged non-cooperation could also be seen as one factor in a totality of the circumstances test. For the purposes of applying the Prato Conclusions, however, failure to address applications for a period exceeding two years should be considered as unreasonable under most circumstances, strongly suggesting that the state in question does not consider the applicant to be a citizen.

⁸ See *id.* at 3, para. 16 ("The Article 1(1) definition employs the *present tense* ("who is . . .") and so the test is whether a person is considered as a national at the time the case is examined and not whether he or she might be able to acquire the nationality in the future.").

Case studies

Dominicans of Haitian Descent

Background

Dominicans of Haitian descent comprise an estimated total population of 250,000 to 500,000 within the Dominican Republic. The Dominican state continues to engage in the longstanding discriminatory practice of denying access to citizenship to Dominicans of Haitian descent born in the Dominican Republic, despite their legal right to nationality under Dominican law and in open violation of the Inter-American Court of Human Rights decision in the landmark *Yean and Bosico v. Dominican Republic* case. Recent legislative and administrative reforms, including a revised constitution in force as of January 26, 2010, have further entrenched the categorical exclusion of Dominicans of Haitian descent from access to citizenship in the Dominican Republic.

The critical decision in Dominican citizenship determination occurs at the time of birth registration. The civil registries, which are overseen by the Central Electoral Board (*Junta Central Electoral*, or JCE), issue birth certificates attesting to citizenship status at birth and these documents, in turn, serve as prerequisites to the enjoyment of virtually every aspect of Dominican nationality. For minors in the Dominican Republic, the birth certificate functions as the primary piece of identification. Upon reaching 18 years of age, individuals born in the Dominican Republic must have a birth certificate confirming Dominican citizenship to apply for a national identity card (*cédula de identidad y electoral*). Birth certificates are the key requirement for access to all administrative and judicial services of the state—in short, without a birth certificate attesting to Dominican citizenship, full engagement with and participation in Dominican society are impossible.

Under Article 11 of the Constitution in force until January 2010, everyone born on Dominican soil was a national except children of diplomats and children of persons who were “in transit,” defined under Dominican law as a period of less than 10 days. A 2004 migration law expanded the exclusionary definition of “in transit” to include all “non-residents,” a broad category that encompasses, *inter alia*, those who cannot prove their lawful residence and undocumented migrants. The civil registries have relied on this provision to withdraw citizenship retroactively from persons of actual or perceived Haitian descent born on Dominican soil before the 2004 law came into force. The revised constitution establishes “illegal residents” as a separate category from those “in transit,” a change which intentionally targets Dominicans of Haitian descent, further eroding their access to citizenship. Before the new constitution came into force, the JCE also promulgated two internal memoranda, *Circular 017* and *Resolución 12-2007*, directing civil registry officials not to process copies of identity documents for children of “foreign parents,” opening the door to unchecked discrimination in the processing of applications. These policies and practices have resulted in many thousands of stateless persons of perceived or actual Haitian descent.

The Dominican government, however, maintains that birth registry decisions do not give rise to statelessness. Under the 2004 migration law, children determined by the civil registry to be foreign at birth receive official certifications of “foreigner live birth” (*constancias de nacido vivo extranjero(a)*) and are registered in a separate foreign registry book, ostensibly as a means of

facilitating the bearer's application for Haitian citizenship. The government thus seeks to evade objections that it is generating statelessness by postulating, in the face of factual evidence, a theoretical link to nationality in Haiti. This is the case even for individuals born to second and third generation residents.

Both the letter and the practical application of Haitian nationality law further undermine the notion that Dominicans of Haitian descent born in the Dominican Republic are Haitian nationals or could acquire nationality as a mere formality. Under the Haitian constitution, a foreign-born child can acquire nationality only if both parents are Haitian, and the child is considered as a national only after it has been registered as such – i.e. nationality is not acquired automatically for children born abroad. In order to be registered as a Haitian national, the parents of a child must provide the Haitian consulate with some form of identification demonstrating their Haitian nationality. Undocumented individuals would therefore not be able to register their children as Haitian nationals. Children born abroad to a Haitian mother and a foreign father can only apply for Haitian citizenship before a competent court in Haiti upon reaching the age of majority. Individuals who were originally registered as Dominican citizens and who now want to recover their Haitian nationality must live in Haiti for five years. These requirements present legal and practical obstacles that would likely impede access to Haitian citizenship in most cases, even where individuals may be technically entitled to nationality, giving the lie to the suggestion that persons of Haitians descent born in the Dominican Republic are or could easily become Haitian citizens.

Citizenship decisions in the Dominican Republic can only be challenged through a constitutional appeal, an expensive judicial proceeding inaccessible to the vast majority of those impacted by the Dominican regime, whether on behalf of themselves or their children.

Application of Prato Conclusions

Under the Prato Conclusions definition, Dominicans of Haitian descent who are denied Dominican identity documents at the level of the civil registries are *de jure* stateless to the extent they have no other nationality. As discussed above, acquisition of Haitian nationality by those born abroad is not automatic. The state's assertion of a theoretical claim to Haitian citizenship therefore requires careful scrutiny under the Prato Conclusions' interpretation of the Article 1(1) definition.

Because the civil registries make the critical determination for the purposes of according citizenship, they represent the relevant "competent authority" under the Prato interpretation of the Article 1(1) definition. There is no further obligation on the applicant to exhaust remedies in order to satisfy the definition.

That the Dominican government or some arm of the administrative apparatus views an applicant as presumptively of Haitian nationality does not alter the applicant's status as *de jure* stateless under Article 1(1). A theoretical claim to nationality of another state does not amount to nationality of that state.

Where civil registry officials refuse to process applications for identity documents applicants experience prolonged limbo in terms of their citizenship status. In such cases, the "viewpoint of the State" with regard to an applicant's citizenship may be established by reference to both the discriminatory policies in place, such as *Circular 017* and *Resolución 12-2007*, and by the customary practices of the State in denying access to nationality on discriminatory grounds. Based on these practices, applicants of Haitian descent without another nationality are *de jure*

stateless when, short of making a determination on citizenship, the civil registries nevertheless refuse to process the applicants' requests for identity documents.

Roma in Europe

Background

Roma make up one of the largest and most widespread groups of concern in Europe. Roma communities often endure severe restrictions on their access to housing, healthcare, education, employment and political participation. These obstacles arise in the form of both intentional discrimination and more subtle forms of exclusion. The break-up of the former Yugoslavia left hundreds of thousands of Roma stateless, a condition that only grew more acute when the former republics enacted new citizenship laws designed to exclude ethnic minorities. Despite laudable progress in securing equal rights for Roma in Europe, full access to citizenship and its attendant rights and privileges still eludes thousands across the region.

Given the diversity of conditions Roma experience in different European countries, this paper does not comprehensively address how the Prato Conclusions would apply to Roma across Europe. The following discussion offers several general points on application, then examines two specific cases: the first concerns Roma in Macedonia, and the second is related to the Justice Initiative's efforts to combat statelessness and discrimination in Italy.

General Points on Application of the Prato Conclusions

Roma who are not considered as nationals of any state are *de jure* stateless.

Roma inside their state of nationality who are undocumented are not stateless unless they are denied proof of nationality or denied rights attached to nationality of that state on the basis that they are allegedly not nationals. Denial of rights attached to citizenship based on purported lack of citizenship is *prima facie* evidence that the state does not consider them as nationals and they are thus *de jure* stateless.

Roma outside their state of nationality who cannot avail themselves of diplomatic or consular protection of that state are *de facto* stateless. If they have sought and been denied documentation of nationality on the basis that they are allegedly not nationals then they are *de jure* stateless as this is evidence that the state in question does not consider them as nationals.

Roma may be given a status of "undetermined nationality" or "unrecognized nationality" under the laws of the state where they reside. Temporary classification in an interim status for expressly limited periods, with recourse to judicial review of such classification, may constitute an acceptable approach in some cases. At some point, however, such persons should be viewed as *de jure* stateless on the basis that no state is considering them as nationals. The Prato Conclusions support this outcome where they refer to the use of the present tense in the Article 1(1) definition.⁹ A finding that an individual is of "undetermined nationality" implies that the state making this determination does not consider the individual to be a national at the time of the determination.

⁹ See *id.* at 3, para. 16 ("[T]he test is whether a person is considered as a national at the time the case is examined and not whether he or she might be able to acquire the nationality in the future.").

Application of the Prato Conclusions in the case of Macedonia

In Macedonia, much like in other states that were formed after the break-up of Yugoslavia, minority groups and in particular the Roma were marginalized when the state determined who its nationals were. In 1991, some people who were registered as residents of the new state of Macedonia were eligible to apply for citizenship within a one-year period. They had to have lived legally on the territory for the last 15 years and be able to show that they had sufficient financial resources to support themselves. People who failed to apply that year had to go through a much lengthier naturalization procedure established in 1992.¹⁰

Many Roma – though not all – were in theory eligible for nationality in 1991, but lacked proof of residence in the territory for the last 15 years. In 2002 and 2004 new laws were introduced that reduced the excessive requirements for legal residence to eight years, but the lack of residence documentation remained an obstacle. As a result, to this day many Roma remain undocumented in Macedonia; the great majority of them have never been considered or recognized as nationals by the state. Those people are *de jure* stateless even though in theory they may be eligible for naturalization.

Application of the Prato Conclusions in Italy: The Case of Roberto Iseni

Roberto Iseni, now 23 years old, was born deaf and has lived in communities for the disabled operated by Italian social services for the past ten years. Iseni was born in Italy and has lived there his entire life. His parents, both Roma, fled the former Yugoslavia in the early 1990s. His father left soon after Iseni was born and his mother never had the means to support Iseni. His parents never registered Iseni's birth. His father has since gained Serbian nationality, and his mother Croatian, but Iseni's attempts to acquire either nationality have been unsuccessful due to residency requirements, which he cannot satisfy.

Iseni's case is typical of hundreds of Roma born in Italy to parents who fled the Yugoslav crisis of the 1990s. His case is unique, however, in that he was in the state's care when he missed an important deadline to apply for Italian citizenship. When Iseni turned 18, Italian law afforded him the opportunity to apply for citizenship within one year. Until that time, he remained in Italy under a regular stay permit as a minor. When he reapplied after turning 18, the Milan police headquarters refused to issue a new permit, on the ground that he had missed the 12-month deadline to apply for citizenship and was therefore not a citizen and not entitled to a stay permit. He then applied to the Croatian and Serbian consulates to obtain the citizenship of one of his parents, but in both cases an application cannot be accepted after an applicant reaches 18, unless the applicant meets residency requirements in the state concerned. During all relevant times, and for several years before his 18th birthday, Iseni remained a ward of the Italian state. His caretakers failed to inform him of the deadlines to apply for citizenship in Italy, Croatia and Serbia and took no other affirmative steps to regularize his status.

As an undocumented major, Iseni is also now subject to Italy's Security Package of 2008, which criminalizes irregular entry and stay in Italy; sanctions include detention and deportation. His only recourse is to apply for statelessness status so that he is not expelled from the only country in which he has ever lived. Here, then, the actions and omissions of the state itself have placed Iseni in an untenable situation, such that he is forced to surrender his efforts to gain citizenship, entering a state of prolonged legal limbo as to his citizenship status, or suffer criminal sanction including deportation.

¹⁰ For more information about stateless Roma in Macedonia, see e.g. Joanne von Selm 'Stateless Roma in Macedonia', *Forced Migration Review* (2009)

Given that the Italian authorities rejected his application for a regular stay permit on the ground that he is not an Italian citizen, Iseni is not considered by Italy as a national under the operation of Italian law. As both Serbian and Croatian nationality laws do not permit applications for citizenship from majors who do not meet residency requirements, Iseni is also not considered a national of either state; he is *de jure* stateless. Under these circumstances, Iseni is not *de facto* stateless, because he is not outside all countries of putative nationality.¹¹

Kenyan Minority Groups Subject to Vetting Committees

All children in Kenya lack proof of citizenship until they reach majority at age 18. For most children in Kenya, this practice does not present any serious difficulties. They have a reasonable expectation of gaining citizenship when they apply for a national identification card at 18 simply because their parents are Kenyan nationals and they belong to one of the “indigenous” Kenyan ethnic groups. These cards serve as proof of citizenship, and without them residents have no way of accessing a host of rights linked to nationality. Several minority groups in Kenya, however, must undergo a separate, complex vetting procedure in order to verify their nationality and obtain national ID cards, regardless of their parents’ nationality status. These groups include among others Nubians, Coastal Arabs and Kenyans of Somali descent.

Nubians and Coastal Arabs: Background and Application of the Prato Conclusions

Originally from the Nuba Mountains in present-day central Sudan, the Nubians have lived in Kenya for over a century. Still regarded as “aliens,” though they retain no ties with Sudan, Nubians experience great difficulty in accessing Kenyan nationality. There are at least 20,000 Nubians in Kenya, and they are predominantly Muslim in a country that is predominantly Christian. Most Nubians live in non-border, poverty-stricken zones, including Nairobi’s infamous Kibera slum. Because their citizenship status has never been regularized since independence, the Kenyan Nubians have no legal claim to the land granted to them by the British colonial authorities in Kibera.

Nubians are entitled to Kenyan nationality under Kenyan law. Under Chapter VI, Section 87-89 of the 1963 Kenyan Constitution, read together with the British Nationality Act of 1949, Kenyan Nubians who were born in Kenya before 11 December 1963 who had at least one parent born in Kenya are Kenyan citizens, as are Nubians born in Kenya after that date if at least one of their parents was a citizen at the time of their birth. Virtually all Nubians living in Kenya today fall into one of these two categories.¹²

Nubian applications are routinely subjected to scrutiny by “vetting committees,” comprised of security and immigration officials, civil servants, as well as community elders who can presumably vouch for an applicant’s identity. The very fact that people are subjected to vetting

¹¹ See Hugh Massey, *UNHCR and De Facto Statelessness*, LPPR/2010/01, April 2010, at 61 (“[A] person must be outside all of his or her putative countries of nationality before it can be established whether or not he or she is *de facto* stateless.”).

¹² Kenya amended its constitution last year. A copy of the new text may be found here: http://www.bunge.go.ke/index.php?option=com_content&view=article&id=83&Itemid=79. Under Article 13, “[e]very person who was a citizen immediately before the effective date [of the new constitution] retains the same citizenship status as of that date.” The new constitution does not provide a remedy for adults who are already stateless or who have difficulty establishing their nationality though their communities have lived in the country for generations. See, e.g., Citizenship Rights in Africa Initiative, *Comments on the Citizenship Provisions of the Draft Kenyan Constitution*, March 5, 2010, <http://www.citizenshiprightsinafrica.org/Publications/2010/CRAIKenyaSubmission.030510.pdf>; Bronwen Manby, *Citizenship Laws in Africa*, October 2010 updates, http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/citizenship_20091009/citizenship-updates_20101215.pdf.

on the basis of ethnicity implies that the state does not consider these people as nationals until they have successfully gone through the vetting process.

The Coastal Arab community has long existed on the Kenyan coast. Like the Nubians, Coastal Arabs are subject to vetting committees with corresponding difficulties in accessing national ID cards, a precursor to enjoyment of the panoply of rights attached to nationality.

These groups are *de jure* stateless because they are not considered by Kenya as Kenyan nationals. Denial of ID cards is *prima facie* evidence that the state does not consider them nationals. In the case of Kenya, the vetting requirement for certain groups means that they are not considered as nationals until they have gone through vetting. This means that all children who are subject to vetting at majority are *de jure* stateless at least until they are eligible to participate in the vetting process.

Kenyans of Somali Descent: Background and Application of the Conclusions

Kenya hosts hundreds of thousands of refugees from Somalia. As a result, the Kenyan government imposes strict registration requirements on Kenyan Somalis. The process is arbitrary and often corrupt. As in the case of both Nubians and Coastal Arabs, applicants must appear before vetting committees in order to obtain national ID cards. Individuals may be required to register in their “home” districts, despite having no actual ties to the location, which may be virtually inaccessible. They may also be required to produce a pink card from a screening process that occurred in the late 1980s, even though the process did not cover all Kenyan Somalis. Appeals from citizenship decisions may provoke police harassment or threats of detention.

Because they are also subject to vetting committees, Kenyan Somalis are in a position similar to Nubians and Coastal Arabs. In reality, Kenyan Somalis are also often mixed with more recent migrants from Somalia, including refugees. Given the porous border in North Eastern Kenya it is a real practical challenge to determine who is Kenyan of Somali descent is and who is Somali. Under the Prato Conclusions, individuals are *de jure* stateless unless considered as nationals by either Kenya or Somalia, though practical application of the Article 1(1) definition presents a particular challenge in this case.

Somalia

Background

Following the breakup of the Somali Republic in 1991, Somalia has not maintained a central government. According to the U.S. Department of State, the territory is now controlled by three distinct entities: the Transitional Federal Government (TFG) in Mogadishu; the self-declared (though universally unrecognized) Republic of Somaliland in the northwest; and the semiautonomous region of Puntland in the northeast.¹³ Formed in late 2004, the TFG’s mandate is to establish permanent, representative governmental institutions. In January 2009, the TFG extended its mandate until August 2011. A radical Islamist insurgent group commonly known as *al-Shabaab* (“the Youth”) is also believed to control most of the southern and central parts of Somalia, including portions of Mogadishu.

¹³ U.S. Dep’t of State, Bureau of Democracy, Human Rights and Labor, *2009 Country Report on Human Rights Practices: Somalia*, March 11, 2010.

Application of the Prato Conclusions

In the case of Somalia it is important, first, to consider whether or not Somalia is still a state since this is—in accordance with the Article 1(1) definition—a prerequisite to have nationals. The Prato Conclusions recognize the principles of statehood set out in the 1933 Montevideo Convention on the Rights and Duties of States (permanent population, defined territory, government, and capacity to enter into relations with other states), as well as additional criteria for statehood that have subsequently emerged (in particular the right of self-determination). All these criteria need to be satisfied for statehood to emerge; however, states rarely, if ever, cease to exist except through absorption, merger or dismemberment.¹⁴ This is relevant in the case of Somalia: while the government does not effectively control the entire territory, the state of Somalia still has a territory, a permanent population, and is capable of entering into relations with other states (at least in the sense that it still has formal relations with other states). Somalia as a result still has statehood under international law, a fact also recognized in numerous UN Security Council resolutions.¹⁵

Somalis in Somalia should be regarded as Somali nationals if their nationality has previously been recognized or if they have a clear right to nationality under the law. A frank assessment of the state's view is extremely complicated as a practical matter, and therefore it is important—in the unique case of Somalia—to look at past practices to establish a presumption of nationality in individual cases.

Somalis abroad would fall under the definition of *de facto* stateless, since Somalia is unable to provide consular assistance and diplomatic protection. This could change if the situation in Somalia stabilizes.

Somaliland. If Somaliland has acquired statehood under international law then it has nationals and people from Somaliland would be nationals of Somaliland to the extent that they are considered as such, although if abroad they may be *de facto* stateless if Somaliland cannot provide protection. If Somaliland is not a state they are probably in the same position as other Somalis on the territory of the former Somali Republic. While the question of statehood in this case has not been finally settled, currently Somaliland most probably is not a state. Its inhabitants should as a result be considered as Somali nationals.

Banyarwanda in the Democratic Republic of the Congo (DRC)

Background

The DRC boasts incredible ethnic diversity, with several hundred distinct groups in a population estimated at around 60 million. The term Banyarwanda refers collectively to a number of different ethnic minorities living in the eastern provinces of North and South Kivu, all of whom speak Kinyarwanda, the Rwandan language. The question of which, if any, of these minorities may be described as indigenous ("*authoctone*") to the DRC remains unresolved and highly contentious. Some have lived for centuries on land once subject to the pre-colonial Rwandan king, but became citizens of King Leopold II's Congo Free State in 1885, others were transplanted from the territory of Rwanda and Burundi by the Belgian Congo colonial administrators after 1925. The Banyamulenge, another Banyarwandan subgroup, migrated to the area of Mulenge in present-day South Kivu in the 18th and 19th centuries or even earlier. Another series of Banyarwanda have periodically arrived after fleeing outbreaks of violence in

¹⁴ See Malcolm Shaw, *International Law*, 5th ed., p. 186 (2003); see also Prato Conclusions at p. 5, para. 26.

¹⁵ See, for instance, Security Council resolutions 751 (1992); 767 (1992); 794 (1992); 837 (1993); 865 (1993); 885 (1993).

Rwanda and Burundi, including an influx of hundreds of thousands in the wake of the Rwandan genocide beginning in April 1994.

After two conflicts that raged in large part over issues connected to citizenship and ethnic identity (1996-1997 and 1998-2003), the DRC emerged as a skeletal state plagued by a debilitating humanitarian crisis and without resolving the citizenship status of millions of war-ravaged inhabitants. A 2004 nationality law adopted by the transitional parliament re-established the reference date for nationality as 1960, but links nationality to ethnic identity as opposed to birth, residence or parentage. Specifically, the law defines Congolese nationals by origin as those descended from “ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence.”¹⁶ At the end of 2004 the interim parliament also passed a law governing electoral registration for the upcoming constitutional referendum and national elections. Voter registration entailed producing five previously registered witnesses who had resided in one district for at least five years. Discrimination permeated the process, with many, including Banyarwanda and other ethnic minorities, ultimately excluded from participating in the elections.

In 2006, a new constitution came into force, after wide approval in a December 2005 referendum. Article 10 contains similar ethnicity-based language in defining which groups were present at the time of independence, lending constitutional authority to the inherently vague language of the 2004 nationality law.

Application of the Prato Conclusions

The law of the DRC explicitly excludes certain groups of people from a right to citizenship, and unless there is evidence to the contrary, these people should be regarded as *de jure* stateless. According to the Prato Conclusions, ethnic minorities in the DRC, including but not limited to the Banyarwanda, who have attempted to regularize their citizenship status without success are *de jure* stateless if they are not nationals of another state.

Banyarwanda and other ethnic groups denied voter registration because they could not prove their entitlement to vote should likewise fall under the Article 1(1) definition. While a decision regarding an individual’s eligibility to vote is not, in all cases, indicative of the state’s view on that individual’s citizenship status,¹⁷ the specific case of Banyarwanda in the DRC requires a more refined application of the Article 1(1) definition. Given its basis in the language of the 2004 nationality law and the 2006 constitution, which specifically exclude certain ethnic groups from access to *citizenship*, a denial of admission to the voter registry to individuals *on the ground that they are member of these specific ethnic groups* should be considered as *prima facie* evidence of the state’s view that the individuals concerned are not nationals.

Eritrea and Ethiopia

Background

In 1993, Eritrea peacefully seceded from Ethiopia following a referendum on independence. Tensions mounted between the two countries in the years after the referendum, fueled by

¹⁶ See Bronwen Manby, *Struggles for Citizenship in Africa*. p. 78 (2009).

¹⁷ For example, laws permanently disenfranchising convicted criminals or denying voting rights to persons under guardianship for mental incapacity do not tend to indicate that the state views the individuals affected as non-nationals. In general, such laws derive instead from a range of policy considerations that do not purport to call into question the citizenship status of the populations concerned. See also Prato Conclusions, at 3, para. 11 (noting that different categories of “national” may exist in a given state and that, for the purposes of applying Article 1(1), these persons are regarded as nationals even if their enjoyment of rights is restricted).

border disputes and quarrels over access to ports and currency exchange. Armed conflict erupted in 1998, and in its wake Ethiopia denationalized and deported Ethiopians of Eritrean origin who supposedly renounced their Ethiopian citizenship and acquired Eritrean nationality by voting in the 1993 referendum on Eritrean independence. An estimated 75,000 were deported to Eritrea. Many Eritreans still living in Ethiopia subsequently reacquired Ethiopian citizenship under a 2003 nationality proclamation, though problems persist in obtaining national identification cards. Families of mixed Ethiopian-Eritrean families often find themselves unable to gain nationality in either country.

Approximately 10,000 to 15,000 Ethiopian nationals reside in Eritrea, most of whom do not have permanent residency or Eritrean citizenship status.¹⁸ Nearly 20 years after Eritreans voted for independence, nationality rights in both states remain an unresolved and potentially volatile subject.¹⁹

Application of the Prato Conclusions

Eritreans living in Ethiopia who were stripped of their Ethiopian citizenship during the 1998-2001 war are *de jure* stateless if they have been unable to reacquire citizenship in any state. Although the 2003 nationality proclamation purports to restore citizenship to those stripped of nationality during the war, protracted denial of national identification cards should, after a reasonable period of time, be taken as *prima facie* evidence that the state does not view the individual as a national and, if lacking another nationality, the individual is *de jure* stateless.

Members of mixed Eritrean-Ethiopian families whose nationality is denied by both states are *de jure* stateless if they possess no other nationality.

Ethiopians in Eritrea who do not have Ethiopian nationality (regardless of whether or not they can theoretically obtain it) are *de jure* stateless if Eritrea does not consider them as nationals.

These populations may be *de jure* stateless even though international standards with respect to nationality and state succession may suggest that they are not. The relevant test is the view of the state or states concerned, as determined by domestic law and practice. A decision by the state of putative nationality that an individual is not a citizen brings that individual within the Article 1(1) definition if she has no other nationality.

Where citizens of either state find themselves outside their country of nationality (whether in Ethiopia, Eritrea or a third country) and unable to access proof of citizenship or otherwise seek protection, they are *de facto* stateless so long as their nationality is not questioned. If they are denied documentation of citizenship *because* they are not citizens, they are *de jure* stateless.

Côte d'Ivoire

Background

Articles 6 and 7 of the Ivorian nationality code convey citizenship to everyone born on the territory of Côte d'Ivoire to at least one "Ivoirian" parent. "Ivoirian," the critical legal term governing the application of this rule, is nowhere defined in Ivorian law. In the years following independence, Côte d'Ivoire encouraged immigration and there was little incentive for residents

¹⁸ See Refugees International, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, March 2009, p. 30.

¹⁹ See *Id.*; for more information about statelessness in the Ethiopia-Eritrea context, see e.g. Katherine Southwick, 'Ethiopia-Eritrea: statelessness and state succession', *Forced Migration Review* (2009)

to establish their nationality vis-à-vis the Ivoirian state. Côte d'Ivoire gained independence from France on August 7, 1960. Prior to this date, none of those living on the territory possessed Ivoirian nationality. At independence, many failed to receive Ivoirian citizenship because they missed the one-year deadline for applying, contained in Article 105 of the nationality code of 1961. Today, the descendants of those who missed this deadline have no way of asserting their nationality and the inherent vagueness of the term "Ivoirian" has permitted a damaging degree of discretion in citizenship determination. In fact, discrimination in access to nationality was a root cause of the civil war that began in 2002.²⁰

In practice, longtime residents often experience protracted delays or outright rejection in their efforts to confirm citizenship, whether these efforts have taken the form of seeking to secure a national ID card, to have their children attend university or to be included in the national electoral rolls. These burdens fall disproportionately on residents of northern Côte d'Ivoire. Often the relevant authority justifies denial by asserting that the applicant is a "foreigner" with citizenship in a neighboring state. Authorities often make such determinations based on the names and appearance of applicants alone, without any attempt to confirm citizenship in another state prior to denial of access to documentation of Ivoirian citizenship. Recourse to judicial review may theoretically be available, but in reality few rejected applicants have the resources necessary to attempt such a challenge.

In 2007, the Ivoirian government launched an initiative to issue birth certificates to residents across the country, through proceedings known as *audiences foraines* (mobile courts). The *audiences foraines* were convened as part of a broader effort to identify Côte d'Ivoire's voting population leading up to the November 2010 elections, as envisioned in the 2007 Ouagadougou Peace Agreement. Relaxed standards of proof applied, with oral testimony alone sufficing to demonstrate birth on Ivoirian soil. The proceedings were widely perceived as fair and reasonable. Unfortunately, the certificates issued through the *audiences foraines* (called *jugements supplétifs d'actes de naissance*) did not confer citizenship. The *audiences foraines* themselves concluded in late 2009, further limiting their impact. As a result, while the *audiences foraines* presented a meaningful opportunity to put habitual residents on an accelerated path to citizenship, the Ivoirian government effectively side-stepped the citizenship issue.

Application of the Conclusions

Residents of Côte d'Ivoire with no citizenship in another state are *de jure* stateless when their attempts to confirm citizenship with the Ivoirian authorities fail. This is the case when, for example, individuals' names are removed from voter rolls, when they are denied national identity cards and when they are denied Ivoirian birth certificates.

As in the case of Dominicans of Haitian descent, the fact that the Ivoirian authority in question posits a theoretical right to citizenship in another state has no bearing on whether the individual in question satisfies the Article 1(1) definition, unless the individual actually possesses another nationality.

The fact that an avenue for judicial review exists to challenge citizenship determinations also does not alter the status of individuals under Article 1(1). They are *de jure* stateless upon the initial decision denying citizenship under Ivoirian law and remain so until they acquire a nationality.

²⁰ See, e.g., Abu Bakarr Bah, Democracy and Civil War: Citizenship and Peacemaking in Côte d'Ivoire, 109/437 African Affairs 597 (2010).

Resident non-nationals of Côte d'Ivoire who are nationals of another state may be *de facto* stateless if they cannot acquire protection from their state of nationality. If they seek and are denied documentation of nationality on the ground that they lack citizenship, they are *de jure* stateless.

Mauritania

Background

Beginning in April 1989 the government of Mauritania started expelling dark-skinned Mauritians belonging to sub-Saharan African ethnic groups as part of an official Arabization policy led by then-president Maaouya Ould Sid'Ahmed Taya. Over the next year, between 75,000 and 100,000 Mauritanian citizens were systematically expelled to Senegal and Mali. Many expellees were black Mauritanian civil servants, though most were herders and farmers in the Senegal River valley, dispossessed of their land and forced to relinquish their identity cards. At the time, the government claimed the expellees were of Senegalese nationality.

The Ould Taya government was overthrown in 2005 and democratically elected Sidi Mohamed Ould Cheikh Abdallahi became president in 2007. With this democratic turn came renewed efforts to repatriate the expellees, tens of thousands of whom still lived in deplorable conditions in several sites in northern Senegal and Mali. A bloodless coup in August 2009 interrupted concerted efforts by the government and the UNHCR to begin repatriations under a 2007 tripartite agreement between Senegal, Mauritania and the UNHCR. Formal repatriations under the tripartite agreement recommenced in October 2010 and officially ended on December 31, 2010. However, in December 2009, the Mauritanian government suspended issuance of national identity cards, citing the need to organize and conduct a national census to ensure that only nationals receive documentation of their citizenship. This action caused significant setbacks in the facilitated return efforts under the tripartite agreement. In one instance, approximately 900 refugees rejected facilitated return altogether in reaction to the government's policy.

Application of the Prato Conclusions

Mauritians stripped of their citizenship, who hold no other nationality, are *de jure* stateless. At the time of the expulsions, this is thought to have included most of those who were denationalized. Mauritians currently living in Senegal and Mali who still cannot obtain proof of citizenship are *prima facie* stateless and appear to fall under Article 1(1). Repatriated Mauritians who, lacking another nationality, are denied national identity cards or otherwise denied proof of Mauritanian citizenship remain *de jure* stateless despite the state's promise to restore their nationality. This is particularly true after 2009, when the Mauritanian government stopped the issuing national identity cards. The government intends to carry out a national census as early as this year. In the meantime, from the government's perspective, the legal status of those who do not currently hold identity cards is unclear. Given the current uncertainty surrounding how the government intends to proceed, refugees who have *already* received identity cards might have their documents declared invalid. Denial of a national identity card on the ground that an individual is not a national would render the individual *de jure* stateless under the Prato Conclusions' interpretation of Article 1(1).

Western Sahara

Background

The protracted standoff over the status of Western Sahara showcases well the real life complexities associated with assigning nationality in regions where statehood itself has fueled decades of conflict. A term that refers to various groups living on or originating from the territory of Western Sahara, Sahrawi means “people of the desert” in Arabic.

Morocco invaded Western Sahara shortly after Spanish colonization ended in 1975, driving tens of thousands of Sahrawis into neighboring Algeria, where an estimated 160,000 refugees remain today, living in camps in southwest Algeria. Morocco occupies and administers approximately 85 percent of the disputed territory and constructed a 1,250 mile “berm” or sand and stone wall, along the territory’s length in the late 1980s.²¹

After Morocco invaded, a guerrilla war erupted with a group called the Polisario Front (*Frente Popular de Liberación de Saguía el Hamra y Río de Oro*). The dispute over control persists today, despite a ceasefire brokered in 1991 and multiple rounds of face-to-face negotiations. The 1991 ceasefire contemplated an eventual referendum on independence, but disagreements over voter lists have, to date, prevented the vote from taking place. The U.N. Mission for the Referendum in Western Sahara (MINURSO) has monitored the ceasefire since 1991.

In a 1975 Advisory Opinion, the International Court of Justice found that no state exerted sovereign rights over the territory. The UN considers Western Sahara an occupied territory. In 1976, Polisario declared a government-in-exile, the Sahrawi Arab Democratic Republic (SADR), which is headquartered in a refugee camp in Tindouf, Algeria. The SADR has been recognized by several states, primarily in Africa. No country currently recognizes Morocco’s rule.

In December 2007, the Spanish Supreme Court ruled that a Sahrawi man who had no Spanish, Moroccan or Algerian nationality and who was denied the right to renew an Algerian passport was a stateless person entitled to rights and benefits under Spanish law.

Application of the Prato Conclusions

Morocco cannot impose nationality on the Sahrawis because it does not exert sovereignty over Western Sahara.²² Involuntary imposition of nationality in an occupied territory should also be viewed as a violation of Article 27 of the Fourth Geneva Convention, and should not be recognized by other states.²³

The Prato Conclusions are clear on the status of persons who are “citizens” of a non-state entity: “In situations where a State does not exist under international law, the persons are *ipso facto* considered to be stateless unless they possess another nationality.”²⁴ To the extent Sahrawis do not possess another nationality, they are *de jure* stateless. Many Sahrawis are also refugees,

²¹ U.S. Dep’t of State, Bureau of Democracy, Human Rights and Labor, *2009 Country Report on Human Rights Practices: Western Sahara*, March 11, 2010.

²² See *also id.*, at 6, para. 25 (raising the obligations of third states where purported statehood may come about through violations of *jus cogens* norms, including the prohibition on the use of force).

²³ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Arts. 4, 27, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. See *also Prosecutor v. Aleksovski*, Case No. IT-95-14/1, Judgment, ¶¶ 151-52 (Mar. 24, 2000) (construing the nationality of a civilian population under the Convention so as to afford broad protection, as opposed to applying a strict reading of nationality laws at play).

²⁴ See Prato Conclusions, at 2, para. 7 (general consideration applicable to stateless persons as defined in the 1954 Convention and international law).

living in the Tindouf camps. Because Algerian law makes acquisition of citizenship by marriage difficult, particularly for women, it is unlikely that many have acquired Algerian nationality.

Rohingya

Background

The Rohingya are a Muslim minority group from western Burma. The ruling military regime does not consider the Rohingya to be citizens and restricts all basic human rights, including prohibiting them from leaving the geographically isolated area where they live. Under the 1982 Citizenship Law, Rohingya are official defined as “non-nationals.”²⁵ In the 1990s, nearly a quarter of a million Rohingya fled into neighboring Bangladesh in hopes of escaping persecution in Burma. The government of Bangladesh declared the Rohingya illegal immigrants and placed them in refugee camps.

As many as one million Rohingya live in Bangladesh, Thailand, Malaysia and other receiving countries. Since the mass exodus two decades ago, nearly 30,000 Rohingya still live in official camps in Bangladesh, with another 17,000 living without support in nearby makeshift camps. An estimated 200,000 more are living as “illegal economic migrants” in cities in Bangladesh. As many as 70,000 Rohingya have fled to Malaysia since 1984. While Malaysia’s constitution provides that stateless children born on the territory have a right to Malaysian citizenship, in practice this provision is not extended to Rohingya children. Similarly, in Thailand, Rohingya children born in refugee camps do not acquire Thai citizenship even though they would otherwise be stateless.²⁶

Specific Applications of the Prato Conclusions

The Rohingya are almost exclusively *de jure* stateless. They are also refugees and should receive protection as such.

Malaysia. Many children born in Malaysia remain unregistered throughout their childhood and are unable to provide proof of their place of birth and parentage. Under the Prato definition, these children, if they seek to have their citizenship confirmed, would be *de jure* stateless if their application is rejected for lack of proof. Failure to issue the requisite proof of citizenship is likewise *prima facie* evidence of *de jure* statelessness under Article 1(1).

Thailand. Rohingya living in Thailand lacking another nationality are *de jure* stateless. The children of stateless Rohingya born in Thailand are not granted Thai citizenship, leading to increased *de jure* statelessness among the population.

Bangladesh. Bangladesh continues to marginalize the more than 200,000 Rohingya living in unofficial camps, refusing to provide any services, let alone a path to citizenship. In the event that the government undertakes initiatives to regularize the citizenship status of the 28,000 Rohingya living in official camps, the larger, unrecognized population will remain *de jure* stateless until permitted to enjoy such benefits.

Burma. As noted above, Rohingya in Burma are considered as non-nationals by the state. The fact that the Burmese government claims the Rohingya are Bangladeshi does not alter the fact

²⁵ See, e.g., Refugees International, *Futures Denied*, p. 17 (2008)

²⁶ See generally, Refugees International, *Field Report, Rohingya: Burma’s Forgotten Minority*, December 19, 2008.

that they are *de jure* stateless unless they actually possess Bangladeshi or another nationality. Given the context, only those who hold undisputed proof of Burmese nationality can be considered as nationals.

Hill Tribes in Thailand

Background

Thailand's northern Hill Tribe people, a population of approximately 2 million, include members of the Akna, Lanu, Lisu, Yao, Shan, Hmong, and Karen ethnic communities. Up to half of the total population lacks citizenship, though the individuals concerned may not even be aware of their citizenship status until they attempt to leave their village or apply for government services.

The Thai government's position is that many residents of these areas are not stateless at all, but are in fact migrants from other Southeast Asian states in search of work and benefits. The power to grant citizenship rests with local authorities and is recognized by rights groups as corrupt and discriminatory. In order to prove citizenship, applicants must demonstrate that they were born in Thailand and that at least one parent was also born there, such evidence is hard to come by in the remote areas where the hill tribes live.²⁷

Application of the Prato Conclusions

Persons from the Hill Tribes are *de jure* stateless if, as commonly happens, they are denied proof of nationality on the basis that they are allegedly not nationals. Generally, until they have proven that they were born in Thailand they appear to be considered as non-nationals by the authorities and thus fall under Article 1(1) unless they hold another nationality.

Bidoon in Kuwait

Background

Bidoon jinsiya ("without citizenship"), shortened to *bidoon* ("without"), is the Arabic term used to describe a population of approximately 90,000²⁸ longtime residents of Kuwait who are stateless. Many bidoon are descended from nomadic Bedouin tribes who once traveled freely between present day Kuwait, Saudi Arabia, Syria and Iraq.

Under Kuwait's 1959 Nationality Law, all those present in Kuwait prior to 1920 who maintained permanent residence leading up to that law's publication were entitled to citizenship. Under this regime, approximately one third of the population, many of whom were legally entitled to citizenship, were instead classified as *bidoon jinsiya*. Subsequent amendments to Kuwait's nationality laws have served only to deepen the problem, placing further restrictions on access to nationality and the rights associated with nationality. In the mid-1980s and after the Iraqi occupation of Kuwait ended in 1991, *bidoon* were summarily fired from their traditional positions in the military and police forces and denied any severance pay unless they left the country. Beginning in 1985, some *bidoon* could obtain travel documents under very limited circumstances. For most however, a travel document was only issued provided that they

²⁷ See Refugees International, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, March 2009, at 39.

²⁸ See Refugees International, *Kuwait: Still Stalling on Statelessness*, May 11, 2010, available at <http://www.refugeesinternational.org/policy/field-report/kuwait-still-stalling-statelessness>. Other estimates range from 80,000 to 120,000. See, e.g., Foreign Policy Digest, *Statelessness in Kuwait: Kuwait's Bidoon*, June 1, 2010, available at [http://www.foreignpolicydigest.org/2010/06/01/statelessness-in-kuwait-kuwaits-bidoon/\(80,000\)](http://www.foreignpolicydigest.org/2010/06/01/statelessness-in-kuwait-kuwaits-bidoon/(80,000)); Human Rights Watch, Press Release, *Kuwait: Deliver Promised Rights Reform*, May 12, 2010, available at <http://www.hrw.org/en/news/2010/05/12/kuwait-deliver-promised-rights-reform> (120,000).

officially surrendered their right to return to Kuwait. *Bidoon* have no right to petition a court for adjudication of their citizenship claims.²⁹

Mothers do not pass Kuwaiti citizenship to their children under current Kuwaiti law, only fathers are able to do so. The child of a Kuwaiti mother and a *bidoon* father will therefore be *bidoon*, creating a new generation of stateless children.

Application of the Prato Conclusions

The *bidoon* of Kuwait, assuming they possess no other nationality, are *de jure* stateless according to the Prato Conclusions, on the basis that they are not considered as nationals under the operation of Kuwaiti law.

While many *bidoon* may have claims to nationality under the plain meaning of the 1959 Nationality Law, they were declared non-citizens under that law and have retained this status for generations; in line with the Article 1(1) definition this is an issue of the *operation* of the law, rather than the letter of the law. Similarly, although the Prato Conclusions acknowledge the ability of a state to establish separate categories of nationals with differing access to rights associated with nationality,³⁰ a category expressly defined as “without citizenship” can hardly be said to possess nationality in the view of the state. Other customary rules and practices that effectively strip *bidoon* of passports, right to education, and public employment on the ground that they are non-nationals present *prima facie* evidence of the state’s view that the *bidoon* are not nationals under the operation of its law.

Nepal

Background

Nepal once had relatively liberal citizenship laws, but beginning in the 1960s policies grew increasingly restrictive and tied to the concept of “Nepalese origin” and the ability to speak and write Nepali. The 1990 constitution abolished citizenship by birth and restricted citizenship to descendants of Nepali men. By 1995, Nepal had a stateless population estimated at 3.4 million. Beginning in 2006, Nepal undertook a major effort to address this problem, issuing citizenship certificates to nearly 2.6 million people. Under the 2006 Citizenship Act, all those born in Nepal before April 1990 who permanently reside there were entitled to citizenship and could apply for a citizenship certificate. Without a citizenship certificate, access to rights associated with nationality is severely limited, if not impossible.

The proof required to obtain a citizenship certificate often presents too high a bar for many applicants. Some forms of documentation required include proof of land ownership or other proof of length of residence, which may be unavailable or very difficult to obtain. The applications must also be made to the District Administrative Officers, requiring repeated travel over long distances and inviting local prejudices to interfere in the fair processing of applications. Discrimination in the administration of citizenship applications disproportionately impacts women and girls, in the context of an already openly discriminatory citizenship regime:

²⁹ See Refugees International, *Kuwait: Still Stalling on Statelessness*, May 11, 2010, available at <http://www.refugeesinternational.org/policy/field-report/kuwait-still-stalling-statelessness>; Refugees International, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, March 2009, at 52.

³⁰ See Prato Conclusions, at 3, para. 11.

women married to foreigners cannot pass citizenship to their children and women must have approval of their husband or father-in-law to apply for citizenship certificates.

Tibetan refugees living in Nepal number approximately 20,000. While under Nepal's Citizenship Act Tibetan refugees are theoretically eligible to apply for citizenship, officials deny citizenship on the ground that Tibetans never relinquished Chinese citizenship.³¹

Application of the Prato Conclusions

Residents of Nepal with no other nationality who are denied citizenship certificates are *de jure* stateless. This includes those who fail in the application process owing to proof problems and those refused on discriminatory grounds. In fact, in the case of Nepal, it would appear that most adults who lack citizenship certificates are not considered as nationals by the state. In other words, those who have yet to apply for citizenship—even though they may in theory have a right to it—are *de jure* stateless until such point that the state considers them as nationals, as evidence, for example, by issuance of a national identity document.

Tibetan refugees denied citizenship on the ground that they never renounced Chinese citizenship are *de jure* stateless unless and until they actually possess another nationality.

³¹ See Refugees International, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, March 2009, at 41.