

SEAP

STATELESSNESS ENCYCLOPEDIA ASIA PACIFIC



Comprehensive Mapping of
Statelessness in the **Asia Pacific**



NATIONALITY FOR ALL

Advancing the right to a nationality in the Asia-Pacific region

SEAP

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List of Acronyms

CAPN	Citizenship Affected People's Network Nepal
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESF	Covid-19 Emergency Statelessness Fund
COM	Council of Minorities
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
CSPR	Coalition for the Rights of Refugees and Stateless Persons
DAJI	Development and Justice initiative
DHRRA	Development of Human Resources for Rural Areas
GCENR	Global Campaign for Equal Nationality Rights
HRWG	Human Rights Working Group Indonesia
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person
ISI	Institute on Statelessness and Inclusion
NFA	Nationality For All
OSJI	Open Society Justice Initiative
RNCN	Right to Nationality and Citizenship Network
RSN	Refugee Solidarity Network
SEAP	Statelessness Encyclopedia Asia Pacific
SNAP	Statelessness Network Asia Pacific
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WPM	Women Peace Makers

Introduction

Statelessness Encyclopedia Asia Pacific (SEAP) is the culmination of over two years of research and consultations commenced by Nationality for All (NFA) in late 2020. Originally planned as an internal research project to inform NFA's early organizational development and strategic planning, it was determined that the research should be made public and accessible. In 2022, NFA expanded on the internal mapping and sub-regional data gathered for its previous research and developed SEAP.

NFA's objectives for SEAP are as follows:

- ◆ Provide an overview of the statelessness situation in the Asia Pacific region.
- ◆ Generate more attention and advocacy on the statelessness problem in the region.
- ◆ Identify areas of collaboration among stakeholders and areas of further research on the issue.

Background

NFA was formed from the work undertaken by the Statelessness Network Asia Pacific (SNAP) over four years to build a regional civil society movement on addressing statelessness in the region. In October 2020, SNAP transitioned from a project hosted by the Malaysian NGO Development of Human Resources for Rural Areas (DHRRA) Malaysia to an organization registered in Australia under the new name of Nationality for All (NFA). To identify the strategic priorities of NFA, we conducted a desk research of the laws and situation of statelessness in the region. The main purpose of the mapping exercise was to identify countries of focus and potential partners for NFA. After the completion of the mapping process, we conducted consultations with some stakeholders. Most stakeholders expressed the need for additional research on statelessness. They shared that a database on the status of statelessness in the region similar to the Statelessness Index in Europe would be helpful to their national advocacy. Consequently, we decided to transform the mapping report into this comprehensive report.

Rationale

Across the statelessness sector the issue of the lack of accurate statistics and information is prominent. In numerous consultations and meetings held by NFA between 2020–22, the issue of a lack of data was raised by both NGOs and UN bodies as a key concern. UNHCR has recognized this issue noting that their own estimate of 4.3 million stateless people globally is likely far below the true figure. The global figure remains an undercount as data on stateless populations or those of Persons of Undetermined Nationality is missing or incomplete for many countries, including some with known stateless populations. Even though quantitative data should not be the basis to measure the scale of the statelessness problem, it can support the national advocacy campaigns

to build political will in democratic countries. This lack of reliable quantitative data continues to pose challenges to effectively addressing statelessness and advocating for solutions. This report aims to build knowledge and shed light on the Asia-Pacific which despite underreporting, reports the highest number of stateless people in the world. This report also acknowledges the existing initiatives to end statelessness and how heavily under-resourced they are. Through this report we hope to generate more attention and resources for such initiatives.

Assumptions

While reporting 4.3 million stateless people globally, UNHCR has recognized that this number is far below the true scale of statelessness noting that:

"Yet, the global figure remains an undercount as data on stateless populations or those of Persons of Undetermined Nationality is missing or incomplete for many countries, including some with known stateless populations. The lack of reliable quantitative data continues to pose challenges to effectively address statelessness and advocate for solutions."¹

The Institute on Statelessness and Inclusion (ISI) estimates that there is at least 15 million stateless people globally.² From our discussions and consultations, some of the key causes of this lack of statistical reporting on statelessness seem to be government hesitance and inaction to recognize stateless communities as well as practical difficulties of access and engaging with stateless communities. This means that gathering a clear picture of how many people are affected by statelessness and where they are located is in itself a very difficult process.

Methodology and Timeline

The research that underpins SEAP was commenced in late 2020. Through this original internal regional mapping project, we aimed to:

- ◆ Provide an overview of the statelessness situation in the Asia Pacific region.
- ◆ Gain a broad understanding of the legal and administrative frameworks as they apply to citizenship regimes of all countries across the Asia-Pacific region, and to begin to see the disjunct between these regimes on paper and in practice.
- ◆ Generate more attention to the statelessness problem in the region.
- ◆ Strengthen relationships with, and gather a database of key stakeholders at national, regional and international levels, building on the network members of SNAP but ensuring that we expanded beyond our members to include new organizations, especially those that were previously overlooked.
- ◆ Identify good practices from which we could learn, and the needs of organizations and the gaps in the current work being undertaken.
- ◆ Identify specific countries and contexts where NFA could focus on considering the scale of the problem in the region and the limited capacity of NFA.
- ◆ Identify areas of collaboration among stakeholders and areas of further research on the issue.

Both qualitative and quantitative data was gathered through a combination of desk research, consultations and bilateral meetings.

Desk Research

Commenced in December 2020, desk research was undertaken drawing on pre-existing research, reports and national mapping projects with the aim to review and summarize national and regional situations of statelessness. This included mapping relevant communities and stakeholders,

and conducting a broad analysis of legal and administrative frameworks. Through the desk research, NFA developed sub-regional reports that form the basis for SEAP.

Survey and Consultations

In November 2020, NFA launched a survey on 'Advancing Rights and Protections for Stateless Populations, Refugees, and Communities with Precarious Legal Status' drafted in collaboration with Open Society Justice Initiative (OSJI) and Refugee Solidarity Network (RSN). The survey aimed to gather information and connect to stakeholders across the region. We received 47 unique responses to the survey from respondents working across 14 different countries or regions being: Afghanistan, Australia, Bangladesh, Cambodia, India, Indonesia, International, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Southeast Asia, and Thailand. Following the survey, NFA coordinated four separate consultations in collaboration with OSJI and RSN. While each consultation had a specific thematic focus, all were part of a broader examination of good practice in the region within the framework of "Advancing Rights and Protections for Stateless Populations, Refugees, and Communities with Precarious Legal Status".

Bilateral Meetings and Partnership Building Process

Throughout 2021, NFA conducted bilateral consultations with potential partner organizations, who were identified through the regional consultation series, former SNAP members or recommended by current contacts. NFA met with over 30 potential partners based in a number of countries across the Asia-Pacific region including Bangladesh, Cambodia, India, Indonesia, Malaysia, Nepal, Pakistan, and Thailand.

From the data gathered through this process, in the second half of 2021, sub-regional on the

statelessness situation covering Australia, Asia, East Asia, Melanesia, Micronesia, Polynesia and South and Southeast Asia were drafted.

Through these summaries we aimed to gather and analyse the available literature and reports regarding stateless communities and populations across the Asia-Pacific region. This research compared the official populations number provided by states to the United Nations High Commissioner for Refugees ('UNHCR') against other publicly available data of population numbers.

Scope and Limitation of the study

The current report is the first edition of SEAP, and its geographic scope of Asia and the Pacific does not include Central Asia. Since the mapping was supposed to be an internal exercise to identify strategic priorities, the research did not cover Central Asia due to the existence of the Central Asian Network on Statelessness³. This encyclopaedia will be followed by a second edition with an expanded scope to include Central Asia along with individual country factsheets for the entire Asia-Pacific region.

A comprehensive analysis of the legal frameworks of every country in the region was outside of the scope of this research. The study covers:

- ◆ The structure of the citizenship laws of each country in the region, specifically;
 - ▶ identifying the method of acquisition of citizenship,
 - ▶ discriminatory elements, and
 - ▶ legal safeguards for foundlings and children born to stateless parents.
- ◆ A summary of treaty ratification by each state is included in this report, including reservations by states to relevant articles concerning access to nationality and non-discrimination in nationality rights.

Specifically, the treaty ratification summary covers the treaties and protocols regarding statelessness and refugees that are listed below:

- ▶ *Convention relating to the Status of Stateless Persons ('1954 Statelessness Convention')*,⁴
- ▶ *Convention on the Reduction of Statelessness ('1961 Statelessness Convention')*, and⁵
- ▶ *Convention relating to the Status of Refugees⁶ and the Protocol relating to the Status of Refugees⁷ (together the 'Refugee Convention and Protocol')*.
- ◆ Further, the summary also covers the key human rights treaties being
 - ▶ *International Covenant on Economic, Social and Cultural Rights ('ICESCR')*⁸
 - ▶ *International Covenant on Civil and Political Rights ('ICCPR')*,⁹
 - ▶ *International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD')*,¹⁰
 - ▶ *Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW')*,¹¹
 - ▶ *Convention on the Rights of the Child ('CRC')*.¹²

The report does not provide information on on naturalized citizenship or dual citizenship. The focus for this edition remains only on individuals who do not inherently have access to any nationality.

Further, the concept of birth registration in this report has been used as a cause of statelessness, while recognizing that the lack of birth registration is also a result of the existing administrative barriers. In this study, we have not analysed the causal link between birth registration and statelessness, nevertheless we acknowledge the need for research needed in the area.

Structure of SEAP

In 2022, NFA decided to utilize this internal mapping and sub-regional summaries referred

to above to develop SEAP. The objectives of SEAP were defined: to provide an overview of the statelessness situation in the Asia-Pacific region and to highlight and advocate for greater engagement with the issue. It also aims to identify areas of further collaboration among stakeholders in the field of statelessness.

SEAP includes two substantive elements: a regional overview and four sub-regional overviews (with regions defined as East Asia, Southeast Asia, South Asia and the Pacific).

Each chapter is comprised of four sections being:

1. Laws
2. Population
3. Causes of Statelessness
4. Stakeholders

Laws

This section contains two elements, first an overview of the citizenship laws of each region, sub-region and country, and second the treaty ratification rates of each region, sub-region and country.

Citizenship laws are classified based on the means of acquisition being *jus sanguinis* (citizenship by descent/blood), *jus soli* (citizenship by birth/territory) or a combination of the two. The report makes a distinction between *jus soli* and *jus sanguinis* modes of acquisitions but recognizes the overlap between the two principles. For example, states where citizenship is gained via descent and the place of an individual's birth has no impact on their citizenship are categorized as solely operating through *jus sanguinis*. Whereas, for states where descent functions as the means of acquisition but there is distinction made in the law between children born within or outside of the country, we have noted that *jus sanguinis* remains the predominant form of acquisition but that *jus soli* factors do apply. This approach is followed as a strict distinction can be difficult to attain between the two modes of acquisition.

Secondly, treaty ratification of each state is included for the eight treaties mentioned above being:

1. 1954 Statelessness Convention¹³
2. 1961 Statelessness Convention¹⁴
3. Refugee Convention and Protocol¹⁵
4. ICESCR¹⁶
5. ICCPR¹⁷
6. ICERD¹⁸
7. CEDAW¹⁹
8. CRC.²⁰

The 1954 Stateless Convention and the Refugee Convention and Protocol contain relevant definitions of "stateless person" and "refugee" (including stateless refugees), which are accepted definitions under international law (discussed further below). Both the 1954 and 1961 Stateless Conventions place obligations onto states to provide protections for stateless persons and protections against statelessness.

The relevant human rights treaties are noted for two key reasons: first for the explicit protections provided regarding the right to gain and transmit nationality without discrimination; and second, as the human rights protections within each treaty largely apply to all persons in the territory of the state, without distinction as to citizenship status. Reservations to relevant articles concerning citizenship in each of the covered human rights treaties (number four to eight above) have been noted.

The relevant articles providing protection of nationality include:

ICCPR, Article 24(2)-(3):

2. Every child shall be registered immediately after birth and shall have a name
3. Every child has the right to acquire a nationality

ICERD, Article 5(d)(iii):

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the

right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular: (iii) The right to nationality;

CEDAW, Article 9:

(1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

(2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

CRC, Article 7:

(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

(2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Populations

Data and sources

Qualitative and quantitative data have been gathered and included on populations affected by statelessness across the region. Quantitative data was drawn from the “official” populations number provided by states to the UNHCR published in the annual *Global Trends on Forced Displacement Report* (‘Global Trends’). This edition includes Global Trends data from 2021, published in June 2022. Other publicly available data of estimated or reported

population numbers are also included, sources utilized include independent reports, census counts, media releases and statements from government, media reporting and academic reports.

Qualitative data was gathered from sources including UN reports, media reporting, academic articles, independent reports and the above-mentioned consultations and bilateral meetings.

Definitions and terminology

This report categorizes population groups into five defined groups provided below

1. Stateless persons
2. Persons at risk of statelessness
3. Persons of Undetermined Nationality
4. Stateless refugees
5. Other population of note

The following definitions are adopted in this report.

Stateless person: a person “who is not considered a national by any State under the operation of its Law”²¹ *Convention relating to the Status of Stateless Persons*, article 1.

Persons at risk of statelessness: as a term without a single definition under international law, “at risk of statelessness” there are a number of interpretations of this term. This report adopts a broad definition of the term, focusing on persons and populations who lack relevant identity documents including birth registration, confirmation of citizenship or identity card (or a combination of these) that undermines their ability to meet requirements to prove their citizenship.²²

Persons of Undetermined Nationality: again, there is no absolute consensus on the definition of Persons of Undetermined Nationality under international law, UNHCR has previously utilized the term “as an umbrella expression for the classification of the nationality status as ‘unknown’, ‘undetermined’ or ‘under investigation’. The term

also covers cases where States do not classify a person as ‘stateless’, but rather use a specific term based on their domestic law.”²³

There also exist a few additional definitions for “Persons of Undetermined Nationality” including:

- ◆ UNHCR’s working definition of Persons of Undetermined Nationality - “a person who lacks proof of possession of any nationality and who at the same time has or is perceived as having links to a State other than the one he/she is living in.”²⁴
- ◆ The Expert Group on Refugee, Internally Displaced Persons and Statelessness Statistics state ‘Persons of Undetermined Nationality’ are people who lack proof of citizenship but who may possess an entitlement to nationality, and if so, could be assisted to obtain proof of citizenship by the relevant authorities. Those in the Persons of Undetermined Nationality category must lack proof of citizenship and have links to more than one country, that are real or perceived to be real by authorities, because of their place of birth, marriage, habitual residence, or descent from earlier generations who have migrated.”²⁵

Broadly, Persons of Undetermined Nationality is interpreted in this report as a term covering groups possessing a nationality status classified as “unknown” or the like, as well as groups that lack proof of citizenship but may have the entitlement to nationality under the law. While there are a number of similarities between this definition and that of “persons at risk of statelessness” a key distinguishing factor is the relevant community’s possession of perceived links to another state (including historic links).

Stateless Refugees: “any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion... who not having a nationality and being outside

of the country of his former habitual residence... is unable or, owing to such fear, is unwilling to return to it.” who is also “not considered a national by any state under the operation of its law.”²⁶

Other Populations of Note: this categorisation is applied for groups that have formally been stateless, or of Persons of Undetermined Nationality whose citizenship status has been resolved yet still experience the impacts of their former status.

Causes of statelessness

The causes of statelessness globally and across the Asia Pacific vary greatly. Several key causes have previously been identified by ISI and other stakeholders. For this report the following five identified causes were utilized as a means of categorization and differentiation. In some instances, there is a noted overlap between the causes or the presence of multiple causes that can compound or extend individual experiences of statelessness. Where this is the case, categories may be combined, or the impacts of multiple causes noted.

Discriminatory nationality laws

Discrimination towards specific gender, ethnic, racial, religious or other identities is a key cause of statelessness.²⁷ Discriminatory nationality laws violate international law protecting the right to nationality without discrimination and can also lead to greater discrimination due to an individual’s stateless status. In the case of gender discriminatory laws for example, it can cause inter-generational statelessness if women cannot confer nationality to their children on the same basis as men.

Lack of legal safeguards against childhood statelessness

Safeguards against childhood statelessness include citizenship provisions that provide immediate or easy access to citizenship for

foundlings and children born to stateless parents. Without such provisions, children who are denied the right to nationality at birth do not have legal pathways to be granted citizenship in the future.

Citizenship stripping

Citizenship stripping, or deprivation of nationality, are both used interchangeably to describe situations where the withdrawal of citizenship is initiated by the authorities of the State leading to statelessness.²⁸ It is an extreme measure facilitated variously and cumulatively by legislative measures, administrative means, policy decisions and institutional practices at the national level in multiple countries.²⁹ Citizenship deprivation can occur at time of state succession or independence as well as a punitive measure as a contemporary form of “banishment”.

Statelessness and climate change

This risk of statelessness from “disappearing states” impacted by climate-induced sea level rise currently remains a hypothetical question, with most experts agreeing that this scenario will not inevitably lead to statelessness. Before any states “disappear”, the impacts of relocation and an increase in displacement on communities and individual’s nationality status will need to be faced.³⁰ It is this climate-induced displacement across borders rather than the “disappearance” of islands that poses the greatest risk of statelessness in the future and that is examined in this report.

Administrative barriers

Administrative barriers, including improper and non-implementation of laws across regions can result in procedural hurdles in accessing or proving nationality, and in the most extreme cases statelessness.

Birth registration

The relationship between birth registration and statelessness can be complex. In some countries, birth registration functions as a prerequisite for

proving one’s identity and citizenship — including place of birth and parentage — and a lack of birth registration can lead to statelessness.³¹ However, one is not to presume that merely because a country has high rates of birth registration would automatically signify low rates of statelessness as birth registration alone does not equate to citizenship in many states. While this report includes a lack of birth registration as a cause of statelessness more research and analysis is needed in this area.

Stakeholders

Identified Stakeholders, covering both civil society and academics were identified to be gathered from three key groups:

Former SNAP members

Across the Asia Pacific there were over 200 individuals who were former SNAP members. For the region, as well as each sub-region a count was produced for the total number of relevant members and more detailed information was provided on the active SNAP members for the relevant geographical area.

Current NFA partners

Since transitioning from SNAP to NFA the organization has changed from a network to partnership structure. Organizations currently partnering with NFA were identified and included within the relevant geographical area. Currently, NFA has seven partner organizations.

Other identified organizations and advocates

Throughout the desk research that informed this report a number of other organizations, including organizations led by or comprising of persons with lived experience of statelessness were identified. Where relevant and notable, these organizations, individuals and networks are included in the report.



Regional Overview

Sub-regions Covered: South Asia, Southeast Asia, East Asia, Pacific

Laws

Citizenship Law

All citizenship laws in the Asia-Pacific region operate through the principle of *jus sanguinis*, meaning that citizenship is derived via descent. The laws of eight of the 38 countries in the region additionally contain *jus soli*, or 'birthright citizenship' provisions which grant citizenship on the basis of birth on their territory (with differing limitations). Across Asia, Bangladesh, Cambodia, Pakistan, and Thailand's citizenship laws include *jus soli* provisions.³² In the Pacific, Fiji, Kiribati, Marshall Islands, and Tuvalu have limited provisions for *jus soli* citizenship.³³

Of the 38 countries in the region, *jus sanguinis* provisions in 19 of them (Bangladesh, Cambodia, the Federated States of Micronesia, Fiji, Indonesia, Japan, the Maldives, the Marshall Islands, Nauru, Palau, Papua New Guinea, the Philippines, Thailand, Timor-Leste, Solomon Islands, South Korea, Tonga, Tuvalu, and Vanuatu) provide that children born to a citizen parent gain citizenship, with no distinction based on the location of their birth.³⁴

In 17 countries (Afghanistan, Australia, Brunei, China, India, Kiribati, Laos, Malaysia, Mongolia, Nepal, New Zealand, North Korea, Samoa, Singapore, Sri Lanka, Pakistan and Vietnam) children can gain nationality where a parent is a citizen of the relevant country, however, a distinction is made between children born within or outside of the territory.³⁵ For these countries while *jus sanguinis* is the predominant means of acquisition of nationality, *jus soli* factors come into play.

The laws of two states (Bhutan and Myanmar) provide that citizenship may be transferred to children born within or outside of the state only if both parents are considered citizens or, in the case of Myanmar, "nationals".³⁶

Brunei and Myanmar contain restrictions in their citizenship laws based on ethnicity.³⁷ The laws of the Maldives contain provisions that limit access to citizenship based on religious grounds.³⁸

The laws of five states (Brunei, Kiribati, Malaysia, Singapore and Nepal) contain provisions that inhibit the ability of women to confer nationality to their children on the same grounds as men.³⁹ Additionally, the citizenship laws of the Maldives may contain gender discriminatory provisions, however, limited information is available.⁴⁰ The laws of nine states (Bangladesh, Brunei, Kiribati, Malaysia, Nepal, Pakistan, the Philippines (for naturalized women only), Singapore and Thailand) limit the ability of married women to confer their nationality onto foreign spouses on the same basis as men.⁴¹

Ratification of Relevant Treaties

Treaty ratification is varied and inconsistent across the Asia-Pacific. Only five of the 38 countries in the Asia-Pacific (Australia, Fiji, Kiribati, the Philippines, and South Korea) have become a party to the *Convention relating to the Status of Stateless Persons* ('1954 Convention'),⁴² four of the 38 states (Australia, Kiribati, New Zealand, and the Philippines)⁴³ to the *Convention on the Reduction of Stateless Persons* ('1961 Convention'), and three to both treaties (Australia, Kiribati, and the Philippines). The region sees a slightly higher rate of accession to the *1951 Convention relating to the Status of Refugees* ('Refugee Convention'), with 15 countries (Afghanistan, Australia, Cambodia, China, Fiji, Japan, Nauru, New Zealand, Papua New Guinea, the Philippines, Samoa, Solomon Islands, South Korea, Timor-Leste and Tuvalu) in the region having accessioned to the treaty and its 1967 Refugee Convention Protocol.⁴⁴

The key human rights treaties generally see a higher rate of ratification across the region than the Statelessness and Refugee Conventions. There is universal accession to the *Convention of*

the Rights of the Child ('CRC') (38 of 38 states), with Malaysia retaining a reservation with respect to article 7 which provides the right to a nationality.⁴⁵ Near universal accession to the *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW') (36 of 38 states, Palau and Tonga being the two notable exceptions) exist in the region, with three states (Brunei, Malaysia, and South Korea) maintaining a reservation to article 9(2) which provides women with equal rights regarding the nationality of their children.⁴⁶

Over two-thirds of the states have accessioned to the other relevant human rights treaties and covenants. 27 of 38 states are party to the *International Covenant on Civil and Political Rights* ('ICCPR') (Afghanistan, Australia, Bangladesh, Cambodia, the Federated States of Micronesia, Fiji, India, Indonesia, Japan, Kiribati, Laos, Maldives, Marshall Islands, Mongolia, Nepal, New Zealand, North Korea, Pakistan, Papua New Guinea, the Philippines, Samoa, South Korea, Sri Lanka, Thailand, Timor-Leste, Vanuatu and Vietnam).⁴⁷ 26 states are party to the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') (Afghanistan, Australia, Bangladesh, Cambodia, China, Fiji, India, Indonesia, Japan, Laos, Maldives, Marshall Islands, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Papua New Guinea, the Philippines, Solomon Islands, South Korea, Sri Lanka, Thailand, Timor-Leste and Vietnam).⁴⁸ 26 states are also party to the *International Convention on the Elimination of Racial Discrimination* ('ICERD') (Afghanistan, Australia, Bangladesh, Cambodia, China, Fiji, India, Indonesia, Japan, Laos, Maldives, Marshall islands, Mongolia, Nepal, New Zealand, North Korea, Pakistan, Papua New Guinea, Philippines, Singapore, Solomon Islands, South Korea, Sri Lanka, Thailand, Tonga and Vietnam).⁴⁹

The variance between levels of ratification is notable, two states (Australia and the Philippines) are parties to all relevant conventions and three have ratified almost all the treaties (Fiji, New Zealand, and South Korea). In contrast, Palau,

TABLE 01

Status of Accession Of International Human Rights Treaties

Country	Stateless 1	Stateless 2	Refugee	ICCPR	ICESCR	ICERD	CRC	CEDAW
Afghanistan	⊖	⊖	⊕	⊕	⊕	⊕	⊕	⊕
Australia	⊕	⊕	⊕	⊕	⊕	⊕	⊕	⊕
Bangladesh	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Bhutan	⊖	⊖	⊖	⊖	⊖	⊖	⊕	⊕
Brunei	⊖	⊖	⊖	⊖	⊖	⊖	⊕	⚠
Cambodia	⊖	⊖	⊕	⊕	⊕	⊕	⊕	⊕
China (including HongKong, Taiwan)	⊖	⊖	⊕	⊖	⊕	⊕	⊕	⊕
Federated States of Micronesia	⊖	⊖	⊖	⊕	⊖	⊖	⊕	⊕
Fiji	⊕	⊖	⊕	⊕	⊕	⊕	⊕	⊕
India	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Indonesia	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Japan	⊖	⊖	⊕	⊕	⊕	⊕	⊕	⊕
Kiribati	⊕	⊕	⊖	⊕	⊖	⊖	⊕	⊕
Laos	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Malaysia	⊖	⊖	⊖	⊖	⊖	⊖	⚠	⚠
Maldives	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Marshall Islands	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Mongolia	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Myanmar	⊖	⊖	⊖	⊖	⊕	⊖	⊕	⊕
Nauru	⊖	⊖	⊕	⊖	⊖	⊖	⊕	⊕
Nepal	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
New Zealand	⊖	⊕	⊕	⊕	⊕	⊕	⊕	⊕
North Korea	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Pakistan	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Palau	⊖	⊖	⊖	⊖	⊖	⊖	⊕	⊖
Papua New Guinea	⊖	⊖	⊕	⊕	⊕	⊕	⊕	⊕
Philippines	⊕	⊕	⊕	⊕	⊕	⊕	⊕	⊕
Samoa	⊖	⊖	⊕	⊕	⊖	⊖	⊕	⊕
Singapore	⊖	⊖	⊖	⊖	⊖	⊕	⊕	⊕
Solomon Islands	⊖	⊖	⊕	⊖	⊕	⊕	⊕	⊕
South Korea	⊕	⊖	⊕	⊕	⊕	⊕	⊕	⚠
Sri Lanka	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Thailand	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Timor-Leste	⊖	⊖	⊕	⊕	⊕	⊖	⊕	⊕
Tonga	⊖	⊖	⊖	⊖	⊖	⊕	⊕	⊖
Tuvalu	⊖	⊖	⊕	⊖	⊖	⊖	⊕	⊕
Vanuatu	⊖	⊖	⊖	⊕	⊖	⊖	⊕	⊕
Vietnam	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
	5	4	15	27	26	26	38	36

⊕ Signifies that the country is a party to the convention
 ⊖ Signifies that the country is not a party to the convention
 ⚠ Signifies that the country is a party to the convention with certain reservations
 Stateless 1 - 1954 Convention relating to the Status of Stateless Persons
 Stateless 2 - 1961 Convention on the Reduction of Statelessness

Malaysia, and Brunei can be seen to have the lowest levels of ratification. Palau has the lowest level of treaty accession of any state in the Asia-Pacific, being party only to the CRC. Malaysia, while a party to two conventions (the CRC and CEDAW) has reservations to the relevant articles that protect the right to nationality. Brunei, similarly, is a party to only two conventions (CRC and CEDAW) and retains reservations to one of those two conventions (CEDAW).

Population

Reported Stateless Population

UNHCR reports 4.3 million stateless people globally. The Institute on Statelessness and Inclusion (ISI) estimates that there are at least 15 million stateless people globally. UNHCR notes that their estimate is likely far below the true figure stating:

[T]he global figure remains an undercount as data on stateless populations or those of Persons of Undetermined Nationality is missing or incomplete for many countries, including some with known stateless populations. The lack of reliable quantitative data continues to pose challenges to effectively address statelessness and advocate for solutions.⁵¹

Noting these limitations, according to UNHCR's Global Trends Report 2021 (published in June 2022), over half of the world's 4.3 million stateless persons reside in the Asia-Pacific region. In 2021 over 2.3 million stateless persons were reported to UNHCR by countries in the region.⁵² Between 2020 and 2021 the number of reported stateless persons in the Asia-Pacific region increased by over 150,000 people.⁵³

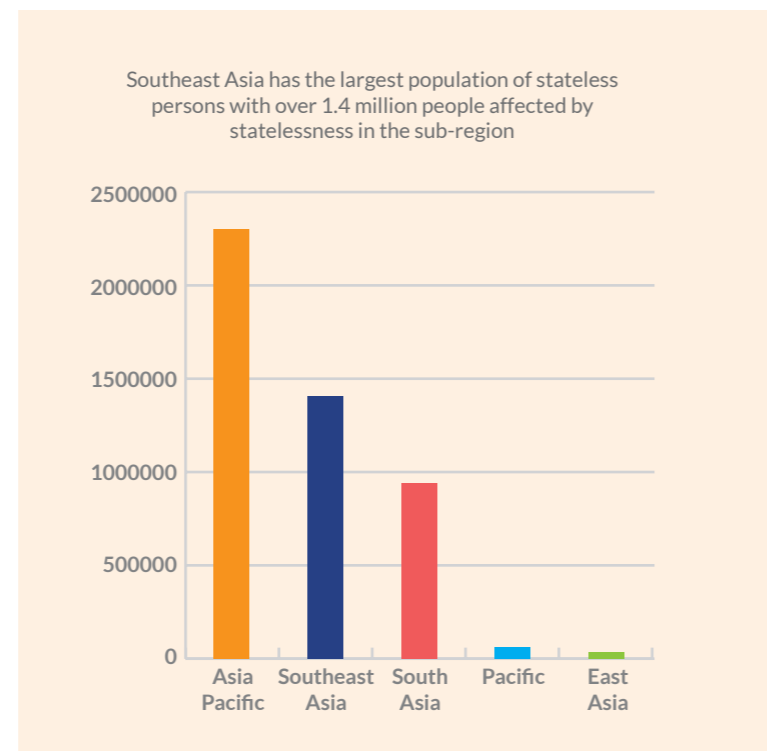
The dispersion of the stateless population across the region varies widely. The vast majority of the stateless population in the Asia-Pacific is within South and Southeast Asia. Southeast Asia has the

largest population of stateless persons with over 1.4 million people affected by statelessness in the sub-region (1,407,295).⁵⁴ South Asia has the second biggest population of reported stateless persons accounting for almost 1 million people (939,542).⁵⁵ East Asia (750) and the Pacific (7,837) have markedly smaller registered stateless populations.⁵⁶

The Asia-Pacific contains three of the five largest hosting countries globally in Bangladesh, Myanmar, and Thailand, which combined contain over 2 million stateless people.

At the same time 18 of the 38 countries in the Asia-Pacific either did not report to UNHCR or reported zero stateless persons in 2021 (Afghanistan, Bhutan, China, Federated States of Micronesia, Fiji, Kiribati, Laos, Maldives, Marshall Islands, New Zealand, North Korea, Palau, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, and

FIGURE 01
UNHCR's Global Trends Report 2021



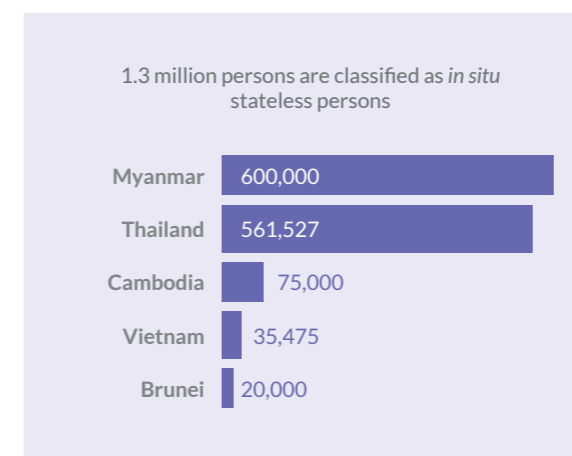
Vanuatu) with the majority of these countries (11 of 18) based within the Pacific.

Persons at Risk of Statelessness

Of the reported stateless population, 1.3 million persons are classified as *in situ* stateless persons, populations that have had multi-generational or long-term significant ties to their country of residence, with many having never left their country of birth. The largest population of *in situ* stateless people reside in states across Southeast Asia. This includes 600,000 ethnic Rohingya who remain in Myanmar, 561,527 people in Thailand (largely comprised of members of the 'Hill Tribe' communities), 75,000 persons of Vietnamese ethnicity in Cambodia, a population of 35,475 people in Vietnam (including members of the Hmong community and people of Cambodian heritage) and over 20,000 persons of Chinese heritage in Brunei.⁵⁷

UNHCR has specifically stated that for six countries in the region (Afghanistan, Bhutan, China, Nepal, Pakistan, and Sri Lanka) they have "information about stateless persons, but no reliable data".⁵⁸ It is notable that all but one of these

FIGURE 02
Persons at risk of statelessness



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

countries is situated within South Asia. Within these countries, there are a number of identified stateless populations not included in the UNHCR reporting figures including ethnic Bengalis and long-term Afghani refugees in Pakistan,⁵⁹ and the Lhostshampa of Bhutan.⁶⁰

In East Asia and the Pacific, there are no major groups of recognised *in situ* stateless populations.⁶¹

Persons of Undetermined Nationality

Four states in the Asia-Pacific (Japan, Kiribati, Laos and Vanuatu) have publicly available English-language census data from the last 10 years that categorises foreign residents within the country as having "undetermined" or "unknown" nationality.⁶² Most notably in Japan's 2020 census the nationality of 131,684 foreigners in Japan was categorised as "stateless and name of country not reported".⁶³ Smaller populations were recorded in the other three states – Kiribati (8), Laos (375), Vanuatu (27).⁶⁴

The citizenship status of several other groups across the Asia-Pacific is unclear or unconfirmed. While reported figures of stateless populations may be low in East Asia, thousands of individuals have undetermined nationalities. China's 2010 census showed that at least 13 million children lacked household registration (*hukou*) preventing them from accessing the full rights of citizens.⁶⁵ The status of ethnic minority groups in both Japan and Mongolia remains uncertain. As many as 26,312 ethnic Koreans in Japan remain categorised as "citizens of the Korean Peninsula (Korea or Chōsen)"⁶⁶ and hold the status of "special permanent residents".⁶⁷ In Mongolia, thousands of ethnic Kazakhs have faced administrative barriers to reacquiring citizenship, which they lost in the early 1990s.⁶⁸

In the Pacific as many as 10–15,000 West Papuan refugees have lived in Papua New Guinea for

as long as three decades and have lost their Indonesian citizenship. These individuals have been unable to access Papua New Guinean citizenship despite possessing the right to under the law of Papua New Guinea.⁶⁹

In South Asia, two major groups in India and Nepal hold uncertain citizenship statuses. In India the 2019 National Register of Citizens in Assam excluded over 1.9 million Assamese, leaving them labelled as foreigners and the validation of their citizenship at the hands of the foreigners' tribunals.⁷⁰ As of December 2021, 143,466 persons were declared foreigners and another 123,829 cases remain pending before the tribunals.⁷¹ In Nepal, as many as 6.7 million people lack citizenship certificates.⁷² The UNHCR has noted that “while these individuals are not all necessarily stateless, UNHCR has been working closely with the Government of Nepal and partners to address this situation.”⁷³

In Southeast Asia as many as 810,443 residents of Sabah are non-citizens.⁷⁴ This group represents the largest and most notable population of Persons of Undetermined Nationality within Southeast Asia as disagreement exists as to whether this population are stateless or should be considered citizens of either the Philippines, Malaysia, or Indonesia.⁷⁵

Stateless Refugees

Of the reported stateless population in the Asia-Pacific just over 1 million (1,051,620) are stateless refugees.⁷⁶

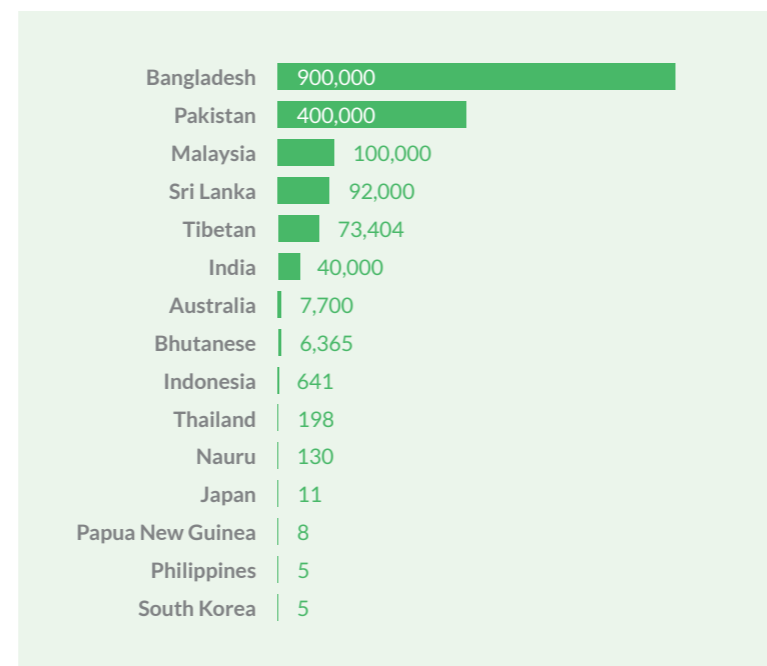
Almost the entire reported population of stateless refugees are members of the Rohingya community from Myanmar, with the vast majority hosted in South Asian states. This is reflected by the fact that the entire reported stateless population in South Asia of almost 1 million persons, are stateless refugees.⁷⁷ Bangladesh is by far the largest host country for stateless refugees, with over 900,000 Rohingya refugees within their borders.

The true scale of the Rohingya population within South Asia likely far exceeds reported figures. Estimates have placed the Rohingya population in India at 40,000 (twice the size of the reported 20,154 people)⁷⁸ and as many as 400,000 Rohingya refugees have been estimated to reside in Pakistan (compared to the reported 47).⁷⁹

Southeast Asia is the sub-region hosting the second largest reported Rohingya population, with four countries (Indonesia, Malaysia, Philippines and Thailand) reporting populations to UNHCR in 2021. Malaysia hosts over 100,000 Rohingya refugees, the largest population with Southeast Asia and the second largest reported population of any state in the Asia-Pacific behind Bangladesh, while Indonesia (641), the Philippines (5) and Thailand (198) all reported comparatively small population groups.⁸⁰

All the reported stateless population in the Pacific (7,838) are stateless refugees, asylum seekers or, in the case of Australia, persons in immigration

FIGURE 03
Stateless Refugee in the Asia Pacific



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

detention (7,700). The populations of both Nauru (130) and Papua New Guinea (8) comprise entirely of Rohingya refugees.⁸¹

Collectively states in East Asia only reported 16 stateless refugees to the UNHCR in 2021, with the figures coming from two states, Japan (11) and South Korea (5).⁸² As a region, East Asia has a small refugee population generally comparative to the other regions of Asia.

Other groups of refugees affected by statelessness include, as many as 73,404 Tibetan refugees and more than 92,000 Sri Lankan refugees in India,⁸³ approximately 1.4 million Afghani refugees in Pakistan,⁸⁴ and 6,365 Bhutanese Lhostshampa refugees in Nepal, many of whom are stateless.⁸⁵

Availability of data

Of the 8 states in the South Asia sub-region, all experience issues with availability of data. Identifying the true status of stateless persons and persons at risk of statelessness is especially difficult in Afghanistan, Bhutan, and the Maldives where no stateless persons have been officially reported. In East Asia, there is a notable lack of reliable data, with the number of officially reported stateless person in the subregion very low in comparison to the unofficial figures. The lack of available data is also noticed in the Pacific due to the limited connection NFA holds with local CSO's and other stakeholders on the ground. This disconnect between known stateless populations and officially reported figures needs to be remedied through investment in better data collection as the absence of accurate data undermines efforts to bring about positive changes.

Causes of Statelessness

Discriminatory laws

Restrictions on the basis of ethnicity

Ethnic minority groups across the Asia-Pacific

— but largely within South and Southeast Asia — are at risk of statelessness due to discriminatory applications of citizenship laws, administrative barriers to gaining documentation and social exclusion. Notable populations include Khmer Krong communities in Cambodia, Hmong in Laos and Vietnam,⁸⁷ ethnic minority groups living in border regions of India,⁸⁸ Dalit and Madheshi communities in Nepal,⁸⁹ and the sea-faring Sama Bajau in the Philippines, Malaysia and Indonesia.⁹⁰

Discriminatory nationality laws have primarily led to statelessness among population groups in South and Southeast Asia. The most conspicuous example of ethnic discrimination in nationality laws can be seen within Southeast Asian nations. Emblematic of this is the citizenship laws of Myanmar that have rendered over a million ethnic Rohingya stateless.⁹¹ Population groups outside of Myanmar have also been deeply affected by ethnically discriminatory nationality laws, for example members of nine ethnic groups often referred to as 'hill-tribe' or 'highland' communities in Thailand have faced intergenerational statelessness due to discriminatory exclusion from citizenship laws.⁹² In Brunei, limitations of nationality to certain prescribed ethnic groups, or “indigenous groups of the Malay race” is the primary cause of statelessness among residents of Chinese heritage.⁹³

In South Asia, other ethnic minority groups have been historically impacted by discriminatory nationality laws which have either indirectly excluded population groups or ignored them entirely. This includes Urdu-speaking 'Bihari' in Bangladesh⁹⁴ and the Mosuli and Jogi (or 'Magat') communities in Afghanistan.⁹⁵ Statelessness among Muslim and ethnic minority populations in India — including persons excluded by the National Register of Citizens in Assam and Rohingya refugees — is further protracted by their discriminatory exclusion from the *Citizenship Amendment Act 2019*.⁹⁶

Restrictions on the basis of gender

Gender discrimination in nationality laws has also played a fundamental role in creating statelessness in the region. In South Asia, Nepal's gender discriminatory provisions restrict the ability of women to confer nationality onto their children and may have led to the statelessness of as many as 400–500,000 persons.⁹⁷

In Southeast Asia, children born outside of Malaysia to Malaysian citizen mothers married to foreign fathers, as well as children born in Malaysia to Malaysian fathers and foreign mothers in an unregistered/unrecognised marriage may have been rendered stateless through gender discriminatory provisions.⁹⁸ While there has been extensive advocacy in recent years for the amendment of these provisions,⁹⁹ available figures on the number of children affected are not available. While the laws of the Maldives contain religious discrimination (and potentially some gender discriminatory provisions),¹⁰⁰ no statistics are available on the impact of these provisions on populations in the Maldives.¹⁰¹

As previously mentioned, none of the citizenship laws of East Asian states have gender, ethnic or religiously discriminatory provisions. In the Pacific, children born outside of the territory to mothers with Kiribati citizenship cannot access citizenship automatically.¹⁰² However, unlike other Pacific Island states, Kiribati has a small overseas population, with approximately 5,000 I-Kiribati's living in New Zealand and Australia.¹⁰³ There are no reliable statistics on the number of persons this provision has affected.

Additionally, the citizenship law of Singapore contains gender discriminatory provisions which limit the ability of mothers to confer citizenship onto children born in the state "...whose fathers are diplomats or members of foreign forces during times of war".¹⁰⁴ Both ethnic and gender discrimination were seen in the Philippines' citizenship laws between the 1930s and 1970s

that rendered persons born to Japanese fathers and Filipino mothers, and their descendants, stateless.¹⁰⁵

Citizenship Stripping

Citizenship stripping by states has wide ranging impacts across the Asia-Pacific region. In East Asia, following the end of the Second World War, and Japan's colonial rule over the Korean peninsula approximately 52,000 ethnic Koreans were stripped of Japanese citizenship.¹⁰⁶ In 2021, more than 26,000 persons and their descendants have not had their citizenship status resolved.¹⁰⁷

In both Taiwan and South Korea, foreign spouses whose marriage is determined to be a 'sham' or 'fraudulent' have been stripped of their citizenship and rendered stateless (as both states have required the renunciation of one's former nationality prior to gaining the nationality of their spouse).¹⁰⁸ This has had implications for Southeast Asian states as the majority of marriage migrants in East Asia originate from Vietnam, and have returned to Vietnam stateless following relationship breakdowns.¹⁰⁹

In Southeast Asia (with implications in the Pacific), prior to amendment in 2006, under the citizenship laws of Indonesia persons residing outside of the territory for more than 5 years without registration were stripped of their Indonesian citizenship.¹¹⁰ This law is estimated to have affected an estimated 10–15,000 West Papuans in Papua New Guinea and at least 6,000 Indonesian migrants in the Philippines.¹¹¹ While steps have been taken to resolve statelessness among these population groups, especially in the Philippines, thousands may remain stateless.¹¹² Within South Asia, members of ethnic Nepali communities known as 'Lhotshampas' living in the south of the country were stripped of their Bhutanese citizenship in the late 1980s and expelled from the country with as many as 100,000 refugees arriving in Nepal during the 1990s.¹¹³ Within India, the

final National Register of citizenship published in 2019 excluded 1.9 million residents from the list – essentially stripping them of their citizenship. Persons excluded from the National Register of Citizens must in turn apply to the government or foreigners' tribunal to have their citizenship status verified, with those unable to verify their status as citizens rendered stateless.¹¹⁴ In Sri Lanka, Hill Country Tamils were indirectly stripped of their citizenship at Sri Lankan independence in 1948 who have since been granted citizenship.¹¹⁵

Childhood Statelessness

Legal safeguards against childhood statelessness including the protection of foundlings and children born to stateless parents are not universal across the Asia-Pacific region. The citizenship laws of less than half of the states in the region (15 states: Australia, Cambodia, Fiji, Indonesia, Japan, Laos, Mongolia, New Zealand, North Korea, Papua New Guinea, Philippines, Singapore, South Korea, Tuvalu and Vietnam) explicitly provide that foundling children will be considered citizens.

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The citizenship laws of 10 states (Afghanistan, Bangladesh, Kiribati, Malaysia, the Marshall Islands, Nepal, Pakistan, Thailand, Timor-Leste and Sri Lanka) provide some/limited protection for foundling children under their law.

Laws of 13 states (Bhutan, Brunei, China, India, Federated States of Micronesia, the Maldives, Myanmar, Nauru, Palau, Samoa, Solomon Islands, Tonga and Vanuatu) there is no explicit protection for foundling children to gain citizenship.

Mongolia, New Zealand, North Korea, Papua New Guinea, Philippines, Singapore, South Korea, Tuvalu and Vietnam) explicitly provide that foundling children will be considered citizens.¹¹⁶ The citizenship laws of 10 states (Afghanistan, Bangladesh, Kiribati, Malaysia, the Marshall Islands, Nepal, Pakistan, Thailand, Timor-Leste and Sri Lanka) provide some/limited protection for foundling children under their law.¹¹⁷ Under the laws of 13 states (Bhutan, Brunei, China, India, Federated States of Micronesia, the Maldives, Myanmar, Nauru, Palau, Samoa, Solomon Islands, Tonga and Vanuatu) there is no explicit protection for foundling children to gain citizenship.

Similarly, less than half of the states (13 states: Australia, China, Fiji, Indonesia, Japan, Kiribati, the Marshall Islands, Nauru, New Zealand, North Korea, South Korea, Timor-Leste and Tuvalu) provide citizenship to children born on their territories who would otherwise be stateless.¹¹⁸ There is also limited protection provided under the laws of 10 states (Afghanistan, Bangladesh, Cambodia, Laos, Malaysia, Mongolia, Pakistan, Papua New Guinea, Thailand, Samoa and Vietnam) to stateless persons born on the territory.¹¹⁹ However, there is no protection under the laws of the remaining 14 states (Bhutan, Brunei, India, the Maldives, Federated States of Micronesia, Myanmar, Nepal, Palau, the Philippines, Singapore, the Solomon Islands, Sri Lanka, Tonga and Vanuatu).

Myanmar is the only state in the region that explicitly provides differentiated categories of citizenship (outside of naturalized/non-naturalized citizenship distinctions).¹²¹

Differential treatment between persons classified as citizens by descent or citizens by birth, including limitations of citizens by descent to pass on citizenship to children exist in four states

(Nepal, New Zealand, Samoa, and Singapore) in the region.¹²⁰

Administrative Barriers

Administrative barriers to accessing citizenship have rendered a vast number of populations stateless or with uncertain nationality statuses even in states across the Asia-Pacific where citizenship laws provide protection. In East Asia, the central role played by household registration in verifying one's citizenship and realising the associated rights cannot be overstated. The impact of these systems on the realisation of citizenship is specifically notable in China, Japan and South Korea among children of migrants, ethnic minority groups and those of uncertain nationalities.¹²²

Notably, within South Asia, administrative practice and policy have led to the citizenship laws of Bangladesh shifting in application from *jus soli* to *jus sanguinis* in their application.¹²³ This 'paradigmatic policy shift'¹²⁴ has compounded intergenerational statelessness among children born in the country, especially among the estimated 75,000 children of Rohingya refugees.¹²⁵ Similar lack of implementation of *jus soli* provisions has been seen in Pakistan where children born to foreigners do not automatically acquire Pakistani citizenship.¹²⁶

In Southeast Asia, in the past decades the provision and withdrawal of civil registration documents has been complex, discriminatory and a key component of the persecution of the Rohingya population in Myanmar.¹²⁷ Ethnic minority groups in Brunei, Cambodia, the Philippines and Vietnam have also faced barriers to gaining civil registration and citizenship, with such barriers leading to protracted and intergenerational statelessness.¹²⁸

Administrative barriers to nationality appear to be less prevalent in the Pacific compared to areas such as East Asia where household registration

plays a vital evidentiary role for citizenship, or South and Southeast Asia where exclusion from civil registration has been used as a tool of ethnic discrimination.¹²⁹

Statelessness and Climate Change

As a region, the Pacific faces some of the greatest risks and has seen the greatest attention regarding the threat of climate-induced statelessness. Kiribati, the Marshall Islands and Tuvalu as low-lying states are expected to be impacted to the greatest extent from climate-induced sea-level rise.¹³⁰ The risk of statelessness from 'disappearing states' currently remains a hypothetical question, with most experts agreeing that this scenario will not inevitably lead to statelessness.¹³¹ Before any states 'disappear', the impacts of relocation and an increase in displacement on communities and individual's nationality status will need to be faced.¹³² It is this displacement across borders rather than the 'disappearance' of islands that poses the greatest risk of statelessness in the future.

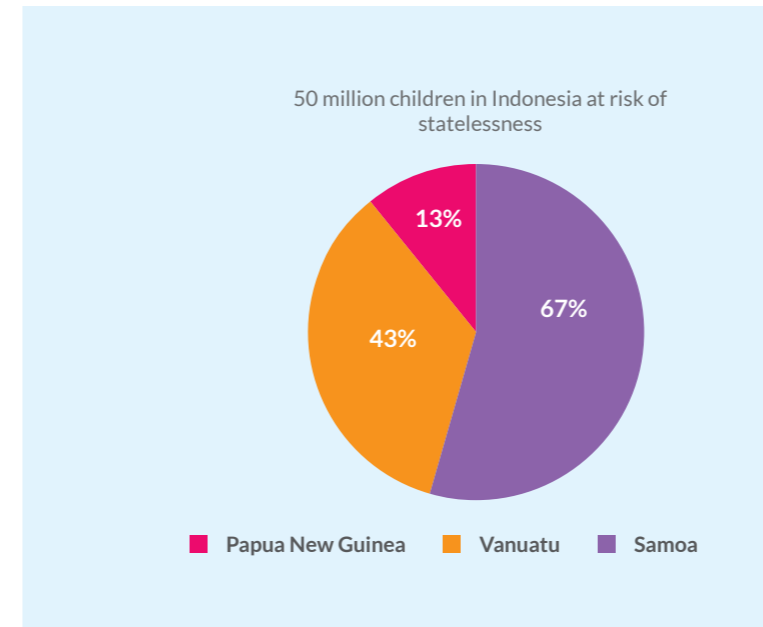
Less attention has been paid to the potential impacts of climate change on other regions in the Asia-Pacific.¹³³

Birth registration

In South Asia, discriminatory administrative and practical barriers have fundamentally limited the ability of women and minority groups in Afghanistan and Nepal to gain identity documentation and to confirm their status as citizens.¹³⁴ Barriers to ethnic minority groups accessing birth registration and documentation have deeply affected populations in India and Pakistan.¹³⁵ In the case of the ethnic Bengali population in Pakistan, such barriers have embedded statelessness for hundreds of thousands of people across generations.¹³⁶

The denial of civil registration documents and arbitrary and discriminatory applications of policy

FIGURE 04
Low rates of birth registration in the Pacific



Source: UN Statistics Division, 'Coverage of Birth and Death Registration', February 2021

have played a key role in causing and compounding statelessness in Southeast Asia. For example, *low birth registration rates and barriers to birth registration especially among children of migrant workers and communities living in poverty have placed as many as 50 million children in Indonesia at risk of statelessness.*¹³⁷ *Administrative and practical barriers to accessing birth registration have placed as many as 130,000 Sama Bajau (or 'Bajut Laut') community members – who reside in the Philippines, Malaysia and Indonesia – at risk of statelessness.*¹³⁸

Low rates of birth registration across several countries in the Pacific – notably Papua New Guinea (13%), Vanuatu (43%) and Samoa (67%)¹³⁹ – place some isolated and minority groups at risk of statelessness.

While all states in East Asia have high reported rates of birth registration between 90-100%,¹⁴⁰ the central role played by household registration systems in evidencing citizenship places children of irregular migrants at risk of statelessness.¹⁴¹

Stakeholders in the Asia-Pacific

Approximately 200 former SNAP members operated from countries across the Asia-Pacific. Over half of these members (101), including 33 active members, were operating from countries within Southeast Asia. Connections across the region vary with high concentrations of SNAP membership in Malaysia, Myanmar and Thailand and notably low membership concentration in states such as Timor-Leste and Vietnam. While at least 50 former SNAP members were either based in or focused on statelessness in the Pacific, almost the entirety of these members were based within Australia (the exception being two based in New Zealand) and only seven members were active. 26 former SNAP members were based in South Asia, however, 20 were active members. Ten former SNAP members were based in East Asia, with six being active members of the network.

Current NFA partners

NFA has six partner organizations with whom we are working closely. All the six organizations are working on the statelessness issue. The partner organizations are listed below:

1. Council of Minorities - Bangladesh
2. Citizenship Affected People's Network (CAPN) - Nepal
3. Development and Justice Initiative (DAJI) - India
4. Family Frontiers - Malaysia
5. Human Rights Working Group (HRWG) - Indonesia
6. Women Peace Makers (WPM) - Cambodia

Stateless and affected person led organisations and networks

Japan appears to be the only country within East Asia with a network of persons with lived experience, with the Japanese Stateless Network formed in 2009 and registered in 2011.

REGIONAL OVERVIEW

In Southeast Asia, Family Frontiers (formerly Foreign Spouses Support Group), operates as an organisation led by an affected mother, focused on advocacy and empowerment of persons affected by Malaysia's gender discriminatory citizenship laws. Within and outside of Myanmar a number of organisations are led by the lived-experience Rohingya activists including the Rohingya Project and Rohingya Human Rights Initiative to name a few.

In South Asia the Council of Minorities, operates to promote the rights of minority populations within Bangladesh and is led by Khalid Hussain, a formerly stateless member of the Urdu-speaking community. Within Nepal the Citizenship Affected People's Network Nepal is led by and comprised of persons affected by Nepal's gender discriminatory citizenship laws, including organisation President Deepti Gurung.



Sub-Regional Overview: East Asia

Countries Covered: China, Japan, Mongolia, North Korea and South Korea

Laws

Citizenship Law

All the nationality laws in East Asia operate through a *jus sanguinis* structure.¹⁴² In two states (Japan and South Korea) children born to a national parent or parents will be considered citizens, no distinction is made between children born within or outside the country.¹⁴³ The citizenship laws of three states (China, Mongolia and North Korea) provide some differential treatment between children born within or outside the country.¹⁴⁴

The application of citizenship laws in East Asia is further complicated by household registration systems which simultaneously operate, the impact of these systems on the realization of citizenship is specifically notable in China and Japan.¹⁴⁵ This extra administrative layer complicates the task of mapping laws within these countries as citizenship laws form only a component of a larger web of laws and policies that impact an individual's ability to gain and prove their citizenship.

East Asia is the only sub-region in the Asia-Pacific without discriminatory provisions (either ethnic or gender based) present in the citizenship laws of any state.

Ratification of Relevant Treaties

South Korea is the only country in the region party to either of the Stateless Conventions, having ratified the 1954 Convention relating to the Status of Stateless Persons.¹⁴⁶ Three states, China, Japan and South Korea are all contracting states to the Refugee Convention and Protocol.¹⁴⁷ All states are party to ICESCR, ICERD, CEDAW and CRC.¹⁴⁸

TABLE 02

Status of Accession Of International Human Rights Treaties

Country	Stateless 1	Stateless 2	Refugee	ICCPR	ICESCR	ICERD	CRC	CEDAW
China (including HongKong, Taiwan)	⊖	⊖	✓	⊖	✓	✓	✓	✓
Japan	⊖	⊖	✓	✓	✓	✓	✓	✓
Mongolia	⊖	⊖	⊖	✓	✓	✓	✓	✓
North Korea	⊖	⊖	⊖	✓	✓	✓	✓	✓
South Korea	✓	⊖	✓	✓	✓	✓	✓	⚠

✓ Signifies that the country is a party to the convention
 ⊖ Signifies that the country is not a party to the convention
 ⚠ Signifies that the country is a party to the convention with certain reservations

Stateless 1 - 1954 Convention relating to the Status of Stateless Persons
 Stateless 2 - 1961 Convention on the Reduction of Statelessness

Despite ratification of CEDAW, South Korea retains a reservation against article 9 which provides for the equal right to acquire, change or retain nationality for women and the equal right to pass nationality onto their children.¹⁴⁹ The ICCPR is ratified by all states except China. In 1997 North Korea attempted to withdraw from the ICCPR, this act was rejected by the Secretary-General due to the Covenant’s lack of withdrawal provision.¹⁵⁰

Population

Reported Stateless Population

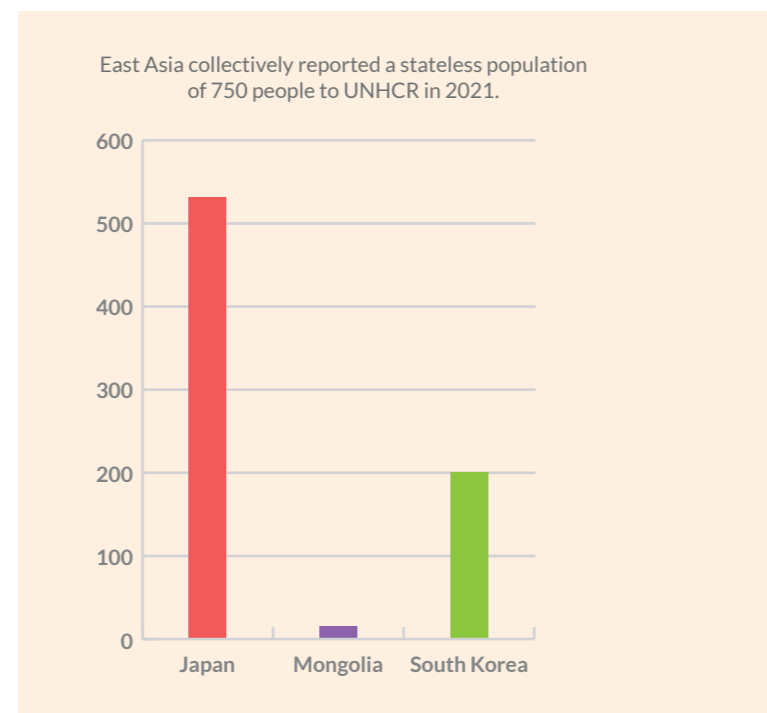
Countries in East Asia collectively reported a stateless population of 750 people to UNHCR in 2021. East Asia is the *only sub-region* to see a reduction in their stateless population with 160 fewer stateless persons reported compared to 2020.¹⁵¹ Three of the five countries in the region reported small populations — Japan (531), Mongolia (17) and South Korea (202) — while China reported zero persons and North Korea was not included in the report.¹⁵² Despite the low figures reported by South Korea to UNHCR, a recent mapping report found that as many 10,032 stateless persons could be residing within South Korea.¹⁵³ UNHCR has specifically noted China as a country in which they have information regarding stateless people but no reliable data.¹⁵⁴

Undetermined Nationalities

While reported figures of stateless populations may be low in East Asia, thousands of individuals remain with undetermined nationalities. China’s 2010 census showed that at least 13 million children lacked household registration (*hukou*)

FIGURE 05

Stateless persons reported to the UNHCR



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

FIGURE 06

Ethnic Minorities and foreigners in Japan



Statistics Bureau of Japan, June 2021

Foreigners in Japan are categorized as stateless and the status ethnic minorities remain uncertain. preventing them from accessing the full rights of citizens.¹⁵⁵ In Japan’s 2020 census the nationality of 131,684 foreigners in Japan was categorized as “stateless and name of country not reported”.¹⁵⁶ Japan is the only country in East Asia with English-language and publicly accessible census statistics that include a “stateless/undetermined citizenship” status for foreigners.¹⁵⁷

The status of ethnic minority groups in both Japan and Mongolia remains uncertain. As many as 26,312 ethnic Koreans in Japan remain categorized as “citizens of the Korean Peninsula (Korea or Chōsen)”¹⁵⁸ and hold the status of “special permanent residents”.¹⁵⁹ In Mongolia, thousands of ethnic Kazakhs have faced administrative barriers to reacquiring citizenship, which they lost in the early 1990s.¹⁶⁰

Stateless Refugees

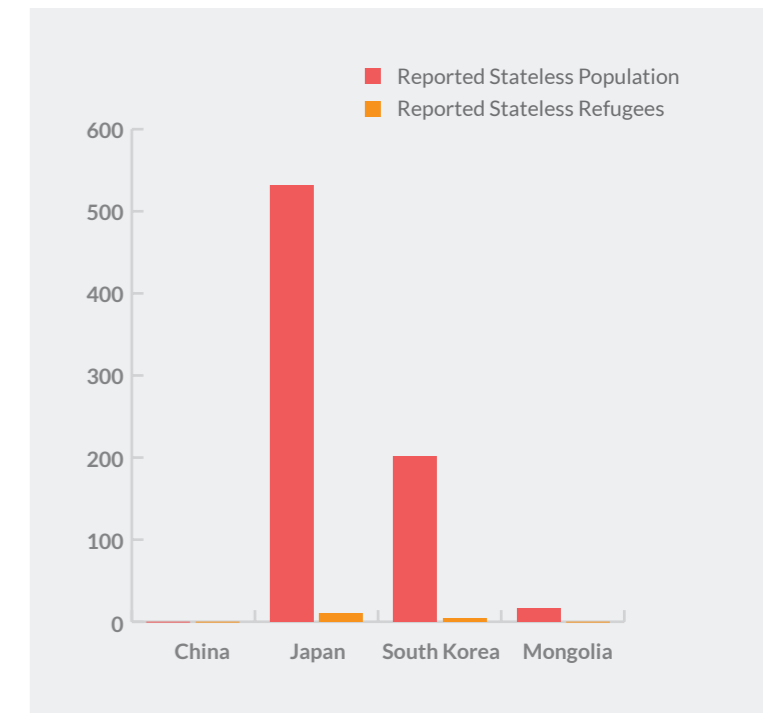
Collectively states in East Asia only reported 16 stateless refugees to the UNHCR in 2021, with the figures coming from two states, Japan (11) and South Korea (5).¹⁶¹ As a region, East Asia has a small refugee population compared to the other subregions of the Asia-Pacific.

Availability of Data

There is limited data reported on the stateless population in the East Asia subregion. Due to the lack of reliable data, the number of reported

FIGURE 07

Reported Stateless Population and Stateless Refugees in East Asia



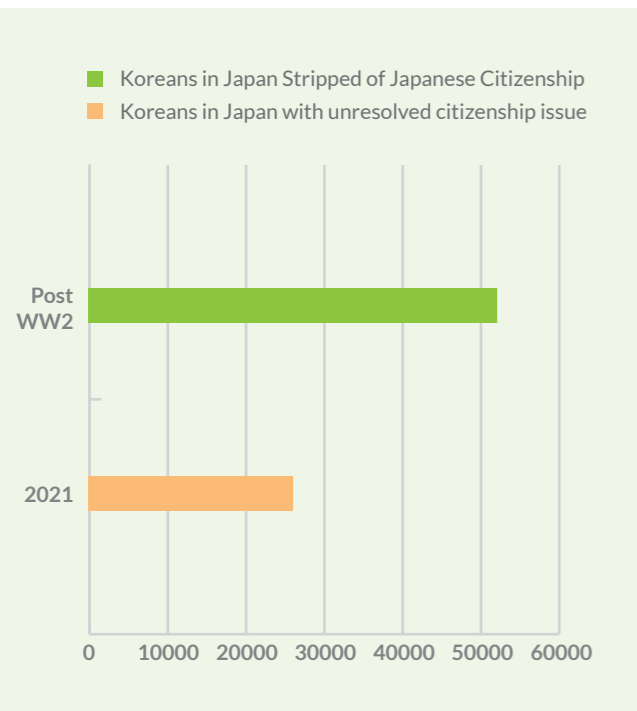
UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

stateless person in the subregion is very low in comparison to the unreported figures (e.g., in South Korea the reported figure of 202 stateless persons compared to the unreported figure of 10,032). This underreporting fails to provide CSOs and government with an accurate view of the situation. Stateless people may be left unattended and the gravity of the stateless situation in the country may not be realized. The absence of accurate data undermines efforts to bring about positive changes and legislative amendments in support of stateless people.

Causes of Statelessness

Citizenship Stripping

Following the end of the Second World War and Japan’s colonial rule over the Korean peninsula, approximately 52,000 ethnic Koreans in Japan

FIGURE 08**People of Korean Descent in Japan with Unresolved Citizenship Status**

Typology of Stateless Persons in Japan, UNHCR (2017)

were stripped of Japanese citizenship.¹⁶² In 2021, more than 26,000 persons and their descendants have not had their citizenship status resolved.¹⁶³

In both Taiwan and South Korea, foreign spouses whose marriage is determined to be a 'sham' or 'fraudulent' have been stripped of their citizenship and rendered stateless (as both states have required the renunciation of one's former nationality prior to gaining the nationality of their spouse).¹⁶⁴

Childhood Statelessness

Protections exist in the nationality laws of all five countries in East Asia which provide citizenship to children born to stateless parents. Under the nationality laws of China, Japan, North Korea and South Korea these children are entitled to an automatic grant of nationality,¹⁶⁵ in Mongolia they can access Mongolian citizenship after reaching 16 years of age.¹⁶⁶

Foundlings have the right to citizenship at birth in Japan, Mongolia, North Korea and South Korea.¹⁶⁷ No protection is provided for foundlings under the citizenship law of China. Prior to the dissolution of China's one child policy the country had over 500,000 registered orphans, in 2021, this figure had reduced to 190,000.¹⁶⁸

In Mongolia, a lack of legal safeguards around renunciation of nationality, and the bar on dual nationality¹⁶⁹ has left many ethnic Kazakh stateless.¹⁷⁰

Administrative Barriers

While protection may exist in the citizenship laws of most states, administrative barriers to accessing citizenship and the application of citizenship laws in East Asia is fundamentally complicated by household registration systems which simultaneously operate. The central role played by household registration in verifying one's citizenship and realizing the associated rights cannot be overstated. The impact of these systems on the realization of citizenship is specifically notable in China, Japan and South Korea among children of migrants, ethnic minority groups and those of uncertain nationalities.¹⁷¹

Birth Registration

As of May 2022, Japan, Mongolia, and North Korea each reported a birth registration rate of 100%.¹⁷² There is no recent verifiable birth registration data reported from China or South Korea.¹⁷³

Foundlings have the right to citizenship at birth in Japan, Mongolia, North Korea and South Korea. No protection is provided for foundlings under the citizenship law of China.

Stakeholders in East Asia

Fifteen former SNAP members were based in the East Asia subregion. Eight of the fifteen members were active members, including:

- ◆ Pillkyu Hwang, Korean Public Interest Lawyers Group (GONGGAM) (South Korea)
- ◆ Il lee, Advocates for Public Interest Law (South Korea)
- ◆ Clarence, Taiwan Association for Human Rights (Taiwan)
- ◆ Zita Jeng, Union of Undocumented Immigrants (Taiwan)
- ◆ Dr Guofu Liu School of Law, Beijing Institute of Technology (China)
- ◆ Wawine Yamashita, Japan Stateless Research Group (Japan)
- ◆ Hajime Akiyama, Japan Society for the Promotion of Science (Japan)
- ◆ Osamu Arakaki, International Christian University (ICU) (Japan)

South Korea has a strong research and civil society sector working with stateless populations and those at risk of statelessness. NFA has one partner based in South Korea being Jeannie Kim, Duroo (association of Public Interest Law/Universal Birth Registration Network).

Website: <http://www.duroo.org>

Japan appears to be the only country within East Asia with a network of persons with lived experience, with the Japanese Stateless Network formed in 2009 and registered in 2011.

Website: <https://stateless-network.com>

Sub-Regional Overview: The Pacific

Countries Covered: Australia, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

Laws

It is important to note from the outset of this chapter that historically the Pacific conceptions of borders, nationhood and states were much less defined and travel between islands was common and largely free. As the Tongan scholar Epeli Hau'ofa wrote:

*The world of our ancestors was a large sea full of places to explore, to make their homes in, to breed generations of seafarers like themselves. ... Theirs was a large world in which peoples and cultures moved and mingled unhindered by boundaries of the kind erected much later by imperial powers. From one island to another they sailed to trade and to marry, thereby expanding social networks for greater flow of wealth.*¹⁷⁴

The structure and operation of citizenship laws across the Pacific today are varied and fundamentally shaped by colonial legacies.¹⁷⁵

Citizenship Law

The citizenship laws of seven states (the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, the Solomon Islands, Tonga and Vanuatu) all operate through *jus sanguinis* provisions with children born either within or outside of the states automatically considered citizens if one of their parents is a citizen of the relevant state.¹⁷⁶ There are similarities in the laws of Papua New Guinea, the Solomon Islands and Vanuatu who all gained independence from colonial powers between 1975 and 1980 and drafted new constitutions containing citizenship provisions. The citizenship laws of three states (Australia, New Zealand and Samoa) also operate broadly through *jus sanguinis* structures with some variance between citizens born in and

outside of the territories.¹⁷⁷ For these countries while *jus sanguinis* is the predominant means of transferal of nationality, *jus soli* factors come into play. For New Zealand and Samoa there is differential treatment of persons classified as citizens by descent compared to citizens via birth, with limitation on the ability of citizens by descent to confer citizenship onto their children.¹⁷⁸

The citizenship laws of four states (Fiji, Kiribati, the Marshall Islands and Tuvalu) operate through a combined *jus soli* and *jus sanguinis* structure.¹⁷⁹ All children born in Fiji and Tuvalu are considered citizens at birth unless one parent is a foreign diplomat and neither parent is a citizen of the relevant state.¹⁸⁰ Children born in the Marshall Islands are automatically considered citizens if they are not entitled to any other citizenship.¹⁸¹ Children born to citizen parents within or outside of Fiji, the Marshall Islands and Tuvalu can also access citizenship through *jus sanguinis* provisions.¹⁸²

Persons born in Kiribati of I-Kiribati descent are automatically entitled to citizenship, those born in Kiribati who are not of I-Kiribati descent are automatically entitled to citizenship if they are not entitled to any other citizenship.¹⁸³ Citizenship by descent is limited to children whose fathers are Kiribati citizens.¹⁸⁴ Children born outside of Kiribati to mothers who are Kiribati citizens are not able to acquire Kiribati citizenship. In 2014, 2017 and 2018, Vanuatu, Nauru and the Solomon Islands respectively amended their citizenship laws to remove gender discriminatory provisions.¹⁸⁵

Ratification of Relevant Treaties

Treaty accession is highly varied across the Pacific. Australia, New Zealand and Fiji have perfect, or near perfect ratification rates. Comparatively Palau has the lowest rates of treaty accession to the relevant treaties of any state in the Asia

TABLE 03

Ratification of International laws relating to statelessness by the countries the Pacific

Country	Stateless 1	Stateless 2	Refugee	ICCPR	ICESCR	ICERD	CRC	CEDAW
Australia	✓	✓	✓	✓	✓	✓	✓	✓
Federated States of Micronesia	✗	✗	✗	✓	✗	✗	✓	✓
Fiji	✓	✗	✓	✓	✓	✓	✓	✓
Kiribati	✓	✓	✗	✓	✗	✗	✓	✓
Marshall Islands	✗	✗	✗	✓	✓	✓	✓	✓
Nauru	✗	✗	✓	✗	✗	✗	✓	✓
New Zealand	✗	✓	✓	✓	✓	✓	✓	✓
Palau	✗	✗	✗	✗	✗	✗	✓	✗
Papua New Guinea	✗	✗	✓	✓	✓	✓	✓	✓
Samoa	✗	✗	✓	✓	✗	✗	✓	✓
Solomon Islands	✗	✗	✓	✗	✓	✓	✓	✓
Tonga	✗	✗	✗	✗	✗	✓	✓	✗
Tuvalu	✗	✗	✓	✗	✗	✗	✓	✓
Vanuatu	✗	✗	✗	✓	✗	✗	✓	✓

✓ Signifies that the country is a party to the convention
 ✗ Signifies that the country is not a party to the convention
 ⚠ Signifies that the country is a party to the convention with certain reservations
 Stateless 1 - 1954 Convention relating to the Status of Stateless Persons
 Stateless 2 - 1961 Convention on the Reduction of Statelessness

Pacific region. Tonga, Tuvalu, Vanuatu and Samoa all have below average rates of treaty accession. No countries in the region have formalized statelessness determination procedures.

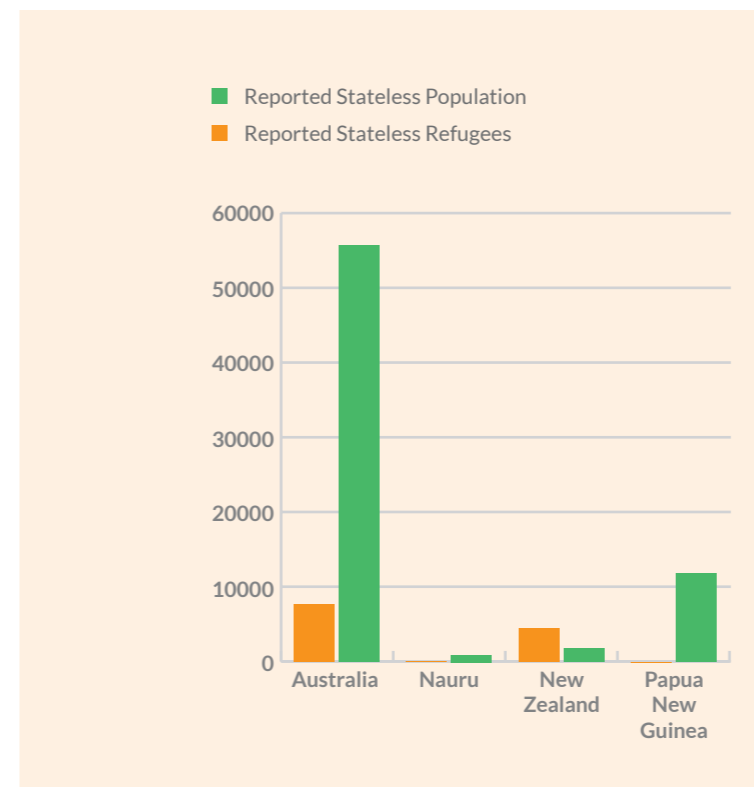
Population

Reported Stateless Population

Only three states in the Pacific reported stateless populations to UNHCR in 2021, with a combined figure totaling 7,838 (Australia (7,700), Nauru (130) and Papua New Guinea (8)).¹⁸⁶ In 2021 the stateless population in the region increased by 2,468, with this population increase entirely within Australia's portion.¹⁸⁷

FIGURE 9

Reported Stateless Persons in the Pacific



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

Persons at Risk of Statelessness

Many Pacific Island states are at risk of “disappearing” or becoming uninhabitable due to climate-induced sea level rises. Extensive research has been undertaken into the impacts of climate change on statehood, citizenship and the risk of statelessness.¹⁸⁸ Populations of Kiribati, Tuvalu and the Marshall Islands are seen to be particularly vulnerable to sea-level rises. If the entire population of these islands were displaced, UNHCR has estimated that as many as 600,000 persons may be at risk of statelessness.¹⁸⁹ Climate change has already led some individuals to seek refuge in other nations. For example in 2021 UNHCR recorded 7 refugees whose country of origin was the Marshall Islands.¹⁹⁰ While communities have internally (and in some instances, externally)¹⁹¹ relocated due to these impacts the fundamental questions regarding loss of nationality and statehood remain largely hypothetical.

Undetermined Nationalities

Kiribati and Vanuatu are the only states in the Pacific to have publicly available census data that captures persons of “undetermined” or “unknown” nationality, with the 2020 Censuses of each country reporting eight and 27 persons respectively.¹⁹²

As many as 10–15,000 West Papuan refugees have lived in Papua New Guinea for as long as three decades, who due to absence from West Papua have lost their Indonesian citizenship and have been unable to access Papua New Guinean citizenship through naturalization, despite possessing the right to under the law of Papua New Guinea.¹⁹³ Some Australians born in Papua New Guinea prior to its independence from Australia have had their Australian citizenship questioned and applications for the renewal of passports have been denied in recent years despite living decades of their life as Australian

citizens.¹⁹⁴ One such affected person successfully had their Australian citizenship recognized by the Federal Court of Australian in 2020, however the implication of this decision on others in similar circumstances is unclear.¹⁹⁵

Stateless Refugees

All the reported stateless population in the Pacific are stateless refugees, asylum seekers or, in the case of Australia persons in immigration detention. The populations of both Nauru and Papua New Guinea comprise entirely of Rohingya refugees.¹⁹⁶ While many Pacific Island states are not large refugee-receiving countries – frequently reporting zero or single figure refugee populations – New Zealand reported over 2,500 refugees and asylum seekers to UNCHR in 2021.¹⁹⁷ It is possible that some of this refugee population is stateless,¹⁹⁸ however no mapping or statistics are available.

Stateless persons born in Australia are eligible for citizenship under the laws of Australia, however stateless persons born outside of Australia cannot access citizenship under these provisions. Australia has provided temporary protection visas to some refugee cohorts since 1999, and all refugees who arrived in Australia without a valid visa since 2014. Persons on temporary visas were not entitled to apply for permanent residency (except in very limited circumstances) or citizenship, providing almost no avenues for stateless refugees to gain citizenship. In March

2023, the government of Australia introduced a new permanent visa pathway for approximately 19,000 refugees in Australia on temporary visas. This amendment will provide pathways to citizenship through naturalization for stateless refugees within Australia who were previously barred due to their visa status.

Availability of data

The absence of stakeholders in many of the nations in the Pacific is a hurdle to understanding the statelessness situation in the region. Within the Pacific most of the former SNAP members are based in Australia and less so in New Zealand. NFA's work has not focused on the countries in the Pacific yet. As such, there are no stakeholder partners on the ground in other countries. There is a lack of data generally and this lack of connection with local CSOs raises questions on the reliability of the data that is available. Moreover, the absence of local CSOs is also problematic in contextualizing citizenship laws and prevalent statelessness problem in these countries.

Causes of Statelessness

Statelessness and climate change

As a region, the Pacific faces some of the greatest risks of climate-induced statelessness. There are a number of articles and reports written on the risk of statelessness faced by citizens of

The nationality laws of seven states (Federated States of Micronesia, Nauru, Palau, Samoa, Solomon Islands, Tonga and Vanuatu) have no explicit protection for foundlings born on their territory.

The citizenship laws of four states (Australia, Fiji, New Zealand and Tuvalu) provide citizenship to foundlings born on their territory. Foundling children in both Australia and New Zealand are automatically considered citizens.

low-lying Pacific states including Kiribati, the Marshall Islands and Tuvalu due to the impact of climate-induced sea-level rise.¹⁹⁹ This risk of statelessness from “disappearing states” currently remains a hypothetical question, with most experts agreeing that this scenario will not inevitably lead to statelessness.²⁰⁰ Further, before any states disappear, the impact of relocation and increased displacement on communities and individual's nationality status will need to be faced.²⁰¹ It is this displacement across borders rather than the disappearance of islands that poses the most immediate risk of statelessness in the future. Due to the legal frameworks of some states in the Pacific some persons who relocate from their home countries are at risk of losing their citizenship or being unable to pass on their citizenship to their children.²⁰² For example, under Tuvaluan laws, climate-induced relocation places naturalized citizens at risk of losing their Tuvaluan citizenship due to the existing citizenship loss provisions based on residence abroad.²⁰³

Discriminatory laws

Restrictions on the basis of gender

Kiribati is the only country in the Pacific with gender discriminatory nationality laws that limit or inhibit the ability of women to pass on their citizenship to children. Children born outside of the territory to mothers with Kiribati citizenship cannot access citizenship automatically.²⁰⁴ Compared to other Pacific Island states (such as Tonga), Kiribati has a smaller overseas population, with approximately 5,000 I-Kiribati's living in New

Kiribati is also the only nation in the Pacific that contains gender discriminatory laws that limit the ability of married women to confer their nationality onto foreign spouses on the same basis as men.

Zealand and Australia.²⁰⁵ There are no reliable statistics on the number of persons this provision has affected. Kiribati is also the only nation in the Pacific that contains gender discriminatory laws that limit the ability of married women to confer their nationality onto foreign spouses on the same basis as men.²⁰⁶

Citizenship Stripping

Concerns have been expressed by UNHCR and independent NGO's regarding the potential statelessness of West Papuan refugees in Papua New Guinea, who due to absence from West Papua have lost their Indonesian citizenship and have been unable to access Papua New Guinean citizenship through naturalization. The Immigration and Citizenship Authority of Papua New Guinea has estimated that there are between 10–15,000 Indonesian Papuans living in the country.²⁰⁷ While there have been reports in recent years of some West Papuan refugees accessing citizenship, this does not appear to be universal.²⁰⁸ In 2021, the US Department of State reported that no Indonesian Papuans had been granted citizenship that year.²⁰⁹

Citizenship stripping is a concern in the context of Australia as well. Since 2015, Australian citizenship law has provided Ministerial powers to strip citizenship from dual nationals who have engaged in or were convicted of engaging in terrorist offences which demonstrated a “repudiation” of their allegiance to Australia.²¹⁰ These provisions operate extra-territorially, and frequently persons stripped of citizenship have been unaware of the occurrence. At least twelve persons have been stripped of their Australian citizenship under these provisions, however the total number is likely much higher.²¹¹ While this provision only applies to dual citizens, and contains protections against statelessness, in at least one instance the purported dual citizenship was denied by the second state and the legality of the citizenship deprivation

questioned.²¹² Additionally, in June 2022 the High Court of Australia found some of the citizenship deprivation provisions to be unlawful.²¹³ The status of those stripped of Australian citizenship prior to this decision remains uncertain.²¹⁴

Childhood Statelessness

The nationality laws of seven states (Federated States of Micronesia, Nauru, Palau, Samoa, Solomon Islands, Tonga and Vanuatu) have no explicit protection for foundlings born on their territory. The citizenship laws of four states (Australia, Fiji, New Zealand and Tuvalu) provide citizenship to foundlings born on their territory. Foundling children in both Australia and New Zealand are automatically considered citizens.²¹⁵ The laws of Tuvalu and Fiji provide the presumption that foundlings are considered to have been born in the country and in turn able to access citizenship through each state's *jus soli* provisions.²¹⁶ Three states (Kiribati, Marshall Islands and Papua New Guinea) provide limited protections for foundlings. The limited *jus soli* provisions in the laws of Kiribati and the Marshall Islands while structurally similar to those of Fiji and Tuvalu, do not explicitly provide that abandoned children are considered to be born in Kiribati or the Marshall Islands.²¹⁷ As such, it is less clear how easily foundling children can access citizenship. The Constitution of Papua New Guinea provides foundlings automatic access to citizenship by descent by deeming them to be the child of a Papua New Guinean citizen.²¹⁸

Seven states (Australia, Fiji, Kiribati, the Marshall Islands, Nauru, New Zealand and Tuvalu) provide citizenship to children born on their territories who would otherwise be stateless.²¹⁹ There is limited protection provided under the laws of Samoa (at Ministerial discretion) and Papua New Guinea to stateless persons born on the territory.²²⁰ There is no protection under the laws of the remaining six states (Federated States of Micronesia, Palau, the Solomon Islands, Tonga and Vanuatu).

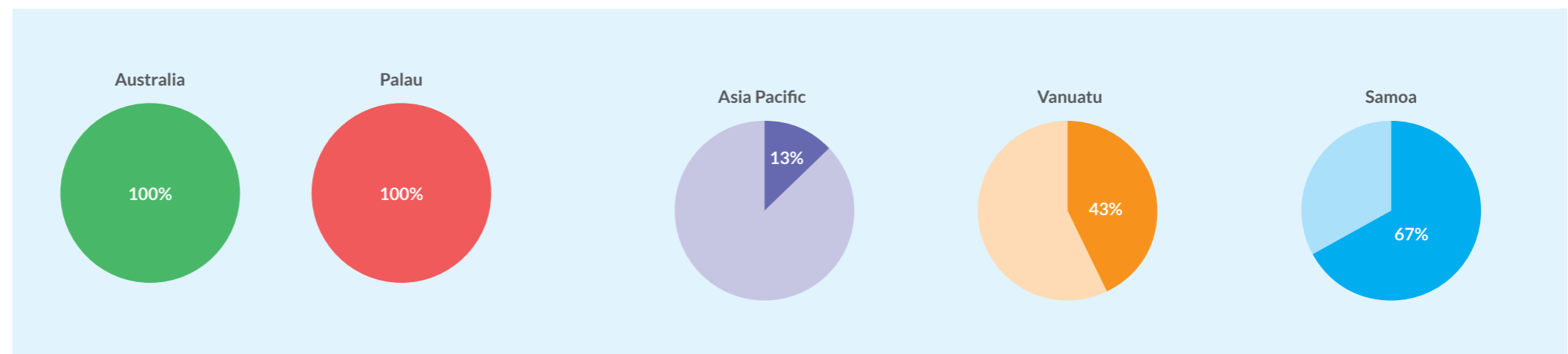
Administrative Barriers

Administrative barriers to nationality appear to be less prevalent in the Pacific region compared to areas such as East Asia where household registration plays a vital evidentiary role for citizenship. This does not mean that administrative barriers are non-existent. For example, in Papua New Guinea children of refugee fathers and Papua New Guinean mothers continue to face both legal and administrative barriers to gaining birth certificates and citizenship.²²¹ A nuisance and contextualized understandings of the practical applications of laws and policies across the Pacific is limited by our lack of country partners in the subregion.

Birth Registration

Birth registration rates across the Pacific are varied. Australia and Palau have both reported birth registration rates of 100%, while Papua New Guinea has reported the lowest rates of any state in the Asia Pacific at 13%, Vanuatu (43%) and Samoa (67%) have notably low rates of birth registration.²²² While birth registration rates are extremely low in some countries, due to the

FIGURE 10
Birth registration rates across the Pacific



UN Statistics Division, 'Coverage of Birth and Death Registration', (Feb 2021)

lack of available data it is unclear due whether this correlates with an increase in stateless populations.

Stakeholders in the Pacific

Wilai Foundation:

In 2014, one of the Wilai Foundation Ltd.'s founding members met a young girl in Thailand who was both orphaned and stateless. Seeking assistance for the girl through NGOs, they discovered that existing organizations all worked with villages, making finding help for an individual living under complicated and difficult circumstances impossible. As a result, the Wilai Foundation Ltd. was formed in 2016 as a registered Australian charity with the goal of providing support for young stateless and orphaned girls in Thailand and being the village for them. The foundation's members have traveled extensively throughout Thailand, visiting organizations that work towards ending statelessness, equipping them to educate others on the consequences and solutions of statelessness and raising awareness. The Wilai Foundation Ltd. directly funds the sustenance and education of girls who are stateless and orphaned, and regularly consults with authorities and lawyers to problem-solve and assist in obtaining citizenship for the girls. Additionally, the

Wilai Foundation Ltd. offers support to Bann Unrak (translates to "The Home of Joy") in Sangkhlaburi, Thailand which provides housing, food, education, emotional support, and opportunities to vulnerable children on the ThaiMyanmar border.

Peter McMullin Centre on Statelessness (from website)

Melbourne Law School's Peter McMullin Centre on Statelessness was established in 2018 with the objective of undertaking research, teaching and engagement activities aimed at reducing statelessness and protecting the rights of stateless people in Australia, the Asia Pacific region, and as appropriate more broadly.

The focus of the Centre is to develop teaching, research and engagement projects with three major aims:

To properly understand the scope, scale and reasons for statelessness in order to develop targeted and effective responses to it; To work towards reducing and, over time, eliminating statelessness; and Until statelessness is eliminated, working to protect the human rights of stateless people within the countries in which they reside.

Website: <https://law.unimelb.edu.au/centres/statelessness>



हमको
वदुता

समयको प्रयास फलदायक प्रयत्न
विहित सचय
नागरिकता "सत्यमेव जयते"
श्री १२

कानून बनिसकेपछि पनि
नागरिकता नदिने बडा
अध्यक्ष र CDO
होसियार ।

दोहोरो नागरिकता
लिनेलाई कारवाही
गर ।

दोहोरो नागरिकता
लिनेलाई

नागरिकता
बन्द गर

Sub-Regional Overview: South Asia

Countries Covered: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka

Laws

Citizenship Law

The citizenship laws of six states (Afghanistan, Bhutan, India, the Maldives, Nepal and Sri Lanka) operate through a *jus sanguinis* structures. While the laws of all of these states are underpinned by the same principle of citizenship by descent, there is a great variance in the structure of their laws, with many containing complex limitations on the grant of citizenship.

Two states (Bangladesh and Pakistan) have combined *jus soli* and *jus sanguinis* structures to their citizenship laws. The *jus soli* provisions of both of these countries on paper provide citizenship to all children born in their territory, except those whose fathers have diplomatic immunity, or are enemy aliens.²²³ In practice, the *jus soli* laws of Pakistan remain largely unimplemented and that of Bangladesh appear to only be provided when a child is born in Bangladesh to two Bangladeshi citizen parents.²²⁴ Further, Pakistan's *jus sanguinis* provisions provide that a child born outside of Pakistan to a Pakistani citizen by birth automatically acquire Pakistani citizenship while those born to a citizen by descent must register the birth.²²⁵ The *jus sanguinis* provision of the Bangladeshi citizenship law provides that a child born either within or outside of Bangladesh to a Bangladeshi citizen automatically acquires citizenship by descent.²²⁶

The laws of two states — Afghanistan and Bhutan — provide an automatic grant of citizenship where a child is born within or outside of the state to two citizen parents.²²⁷ While the citizenship law of Afghanistan also provides avenues for children born to one citizen parent and a foreign national, Bhutan's *jus sanguinis* provisions require both parents to be Bhutanese citizens.²²⁸ India and Sri Lanka's citizenship laws operate through *jus sanguinis* structures but provide some differential treatment between children born within or outside of the country. Children

born in India are only considered citizens by birth if both parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant.²²⁹ Children born outside of India to at least one Indian parent are considered citizens by descent so long as their birth is registered, and they are not also considered a citizen of another country.²³⁰ Sri Lanka's *jus sanguinis* provisions provide for automatic citizenship for children born in Sri Lanka to a Sri Lankan citizen parent.²³¹ For children born outside of Sri Lanka to a citizen parent, their birth must be registered in order for their citizenship to be recognised.²³² As such, for both countries while *jus sanguinis* is the predominant means of transfer of nationality, *jus soli* factors have some effect.

The Maldives' *jus sanguinis* provisions provide automatic citizenship to a child born to a citizen of the Maldives regardless of their place of birth, as long as they identify as Muslim.²³³ While the 2015 Nepali Constitution provides that a person with permanent domicile in Nepal who is born to a Nepali father or mother shall have citizenship by descent, it further provides that when a child is born to a Nepali citizen mother, the child will only gain citizenship by descent when the father is not identified.²³⁴ Further, when a child is born to a citizen mother and a foreign father, citizenship

can only be acquired through naturalisation with an additional condition that the child has to be born in Nepal.²³⁵ There is no equivalent provision for a national father and foreign mother.

Bhutanese, Indian, Maldivian, Nepali, and Sri Lankan citizenship laws do not address access to citizenship for children of stateless parents. While there is no specific provision for access of citizenship for stateless children at birth in Afghanistan, under the citizenship laws of the country, stateless persons may obtain citizenship at the age of 18.²³⁶ In the case of Pakistan and Bangladesh, the *jus soli* provision, in theory, may mean that stateless children or children of stateless parents are entitled to citizenship.

Ratification of Relevant Treaties

No South Asian state has ratified either Stateless Convention. Only one state (Afghanistan) is a contracting state to the Refugee Convention and its Protocol.²³⁷ However, there is a high rate of ratification of the key human rights treaties, with all eight states in the region party to the CRC and CEDAW and seven states (all states apart from Bhutan) to the ICCPR, ICESCR, and ICERD.²³⁸ There are no relevant reservations to note.

TABLE 04

Ratification of International laws relating to statelessness by the countries in South Asia

Country	Stateless 1	Stateless 2	Refugee	ICCPR	ICESCR	ICERD	CRC	CEDAW
Afghanistan	⊖	⊖	⊕	⊕	⊕	⊕	⊕	⊕
Bangladesh	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Bhutan	⊖	⊖	⊖	⊖	⊖	⊖	⊕	⊕
India	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Maldives	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Nepal	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Pakistan	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕
Sri Lanka	⊖	⊖	⊖	⊕	⊕	⊕	⊕	⊕

⊕ Signifies that the country is a party to the convention
 ⊖ Signifies that the country is not a party to the convention
 ⚠ Signifies that the country is a party to the convention with certain reservations

Stateless 1 - 1954 Convention relating to the Status of Stateless Persons
 Stateless 2 - 1961 Convention on the Reduction of Statelessness

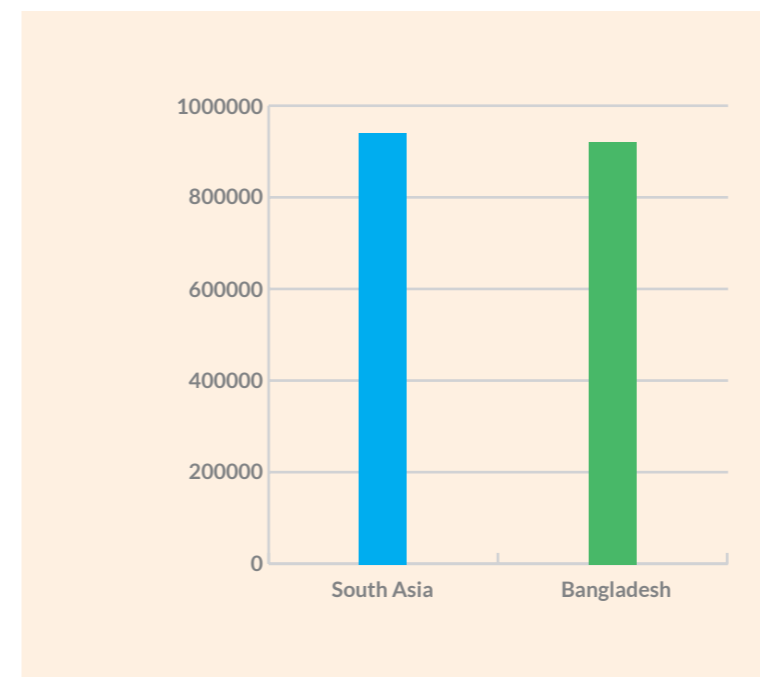
Population

Reported Stateless Population

In 2021, states in South Asia reported 939,542 stateless persons to UNHCR representing an increase of over 50,000 persons in the last year.²³⁹ Bangladesh is the largest hosting country both within South Asia and the Asia Pacific broadly with a population of 918,841 stateless persons.²⁴⁰ Identifying stateless persons and persons at risk of statelessness is especially difficult in Afghanistan, Bhutan, and the Maldives where no stateless persons were reported. All other states (Bangladesh, India, Nepal, Pakistan and Sri Lanka) only provided statistics covering forcibly displaced (refugee) stateless populations, with no states providing figures on *in situ* stateless populations. UNHCR has noted that regarding Afghanistan, Bhutan, Nepal, Pakistan and Sri Lanka “UNHCR has information about stateless persons but no reliable data.”²⁴¹ Known stateless populations not

FIGURE 11

Reported Stateless Persons in Bangladesh



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

included in UNHCR reporting figures include the Lhostshampa of Bhutan²⁴² and ethnic Bengalis and long-term Afghani refugees in Pakistan.²⁴³

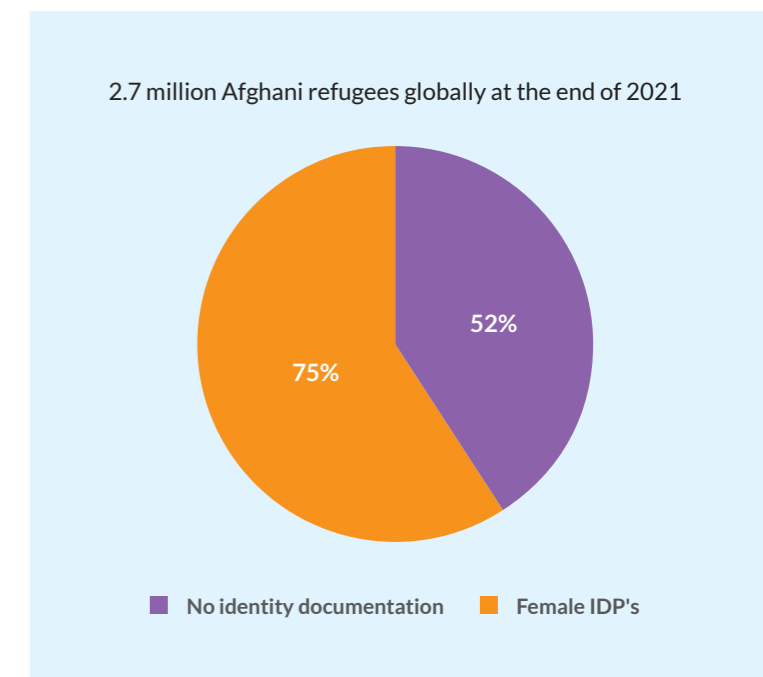
Persons at Risk of Statelessness

Millions of Afghans have fled Afghanistan due to wars and persecution in the country, with 2.7 million Afghani refugees globally at the end of 2021.²⁴⁴ Due to loss or denial of identity documents, the children of many Afghani refugees and asylum seekers are at risk of statelessness.²⁴⁵ Further, issues with accessing identity documentation have rendered potentially millions of women in Afghanistan at risk of statelessness. A 2016 study found that 52% of women in general held no identity documentation, with this rate increasing to 75% among female IDP's.²⁴⁶

There are several different population groups in India at risk of statelessness including Tibetan and Sri Lankan refugees, ethnic minority groups living

FIGURE 12

Women in Afghanistan at Risk of Statelessness



Norwegian Refugee Council, 'Access to Tazkera and other Civil Documentation' (2016)

in border regions (including the Chakma, Hjong and Kutchi communities) and former Kashmiri militants.²⁴⁷ Ethnic minority groups in Nepal include Dalit and Madheshi communities, who face issues of accessing citizenship and identity documents, are also at risk of statelessness.²⁴⁸

Undetermined Nationalities

In 2019 India's National Register of Citizens in Assam excluded over 1.9 million Assamese, leaving them labelled as foreigners or 'D voters' and the validation of their citizenship at the hands of the foreigners' tribunals.²⁴⁹ As of December 2021, 143,466 persons were declared foreigners by the foreigners' tribunals and 121,598 persons were declared as Indian citizens. Another 123,829 cases remain pending before the tribunals.²⁵⁰ UNHCR has noted that "various studies estimate that a large number of individuals lack citizenship certificates in Nepal. While these individuals are not necessarily stateless, UNHCR has been working closely with the Government of Nepal and partners to address this situation."²⁵¹ In 2016 the Forum for Women, Law and Development projected that by 2021 as many as 6.7 million people would be without citizenship certificates.²⁵² In Pakistan, Ethnic Bihari communities also hold an uncertain status with limited information available on their citizenship status. The

FIGURE 13
National Register of Citizens- India



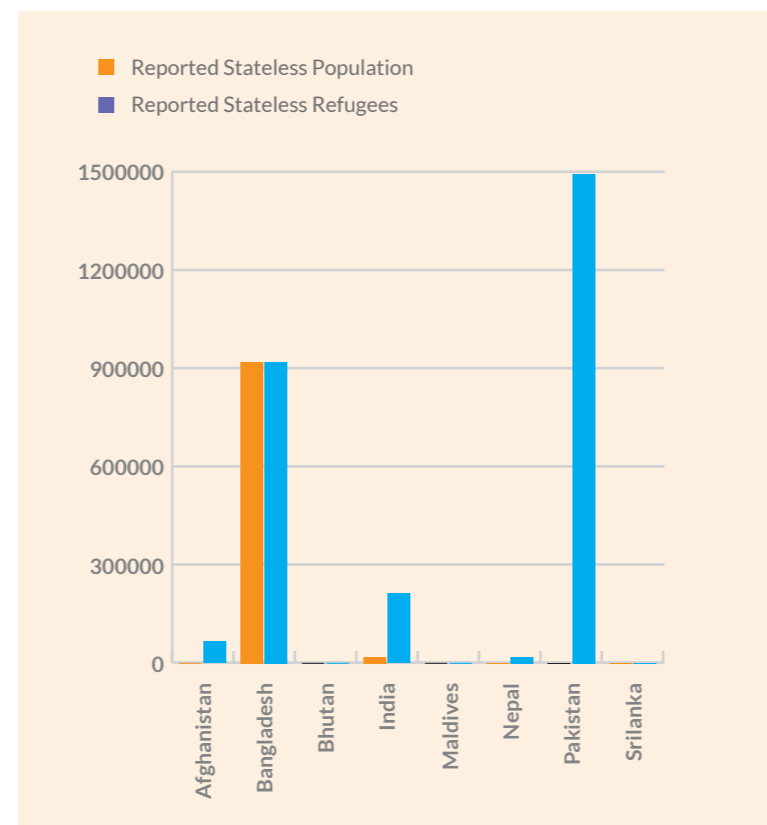
Times of India (Feb 2022)

community largely comprises of persons repatriated to Pakistan following Bangladeshi independence (and their descendants), some of whom hold passports and documentation, yet continue to face discrimination and exclusion.²⁵³

Stateless Refugees

The entire reported stateless population in South Asia are stateless refugees. While UNHCR has noted that the reported stateless refugee populations in India (20,154) and Nepal (465) are Rohingya refugees, this is not explicitly stated for the other countries in the sub-region. There has been an extensive focus on Rohingya in Bangladesh by UN bodies, academics and NGOs, specifically since the mass displacement which occurred in

FIGURE 14
Reported Stateless and Stateless Refugee Population in South Asia



2017.²⁵⁴ Most of the more than 900,000 Rohingya refugees in Bangladesh reside within refugee camps in Cox's Bazaar, and face limited access to health and social services, education and living in conditions that have been condemned by residents, international organisations and NGOs.²⁵⁵

The true scale of the Rohingya refugee population in South Asia is estimated to be thousands higher than reported figures. Human Rights Watch has estimated that Rohingyas registered with UNHCR in India (20,154) represent half of the total population of 40,000 Rohingya refugees in the country.²⁵⁶ A recent statement by a spokesperson for the Pakistani Foreign Office suggested that as many as 400,000 Rohingya refugees may be in Pakistan (compared to the reported 47).²⁵⁷

Other groups of refugees affected by statelessness include as many as 73,404 Tibetan refugees and more than 92,000 Sri Lankan refugees in India.²⁵⁸ 6,365 Bhutanese Lhostshampa refugees are in Nepal, many of whom are stateless.²⁵⁹

Other Populations of Note

It is important to note two population groups within South Asia who have had their stateless status 'solved' in recent decades yet continue to face discrimination and social exclusion. The Urdu-speaking (Bihari) community have resided in Bangladesh since independence,²⁶⁰ yet were only recognised as citizens from the early 2000s. Despite the recognition, the 300,000 people of the Urdu-speaking community continue to face discrimination and marginalisation through the denial of passports, physical isolation in refugee-like camps and denial of services.²⁶¹ The granting of citizenship to the 'Hill Country' (or 'Up-Country') Tamil population in Sri Lanka in 2003, who had been deprived of citizenship since 1948, has both been held up as a success story of 'solving' statelessness and analysed for the continuing discrimination faced by the population group despite their citizenship status being resolved.²⁶²

The Urdu-speaking (Bihari) community have resided in Bangladesh since independence, yet were only recognised as citizens from the early 2000s. Despite the recognition, the 300,000 people of the Urdu-speaking community continue to face discrimination and marginalisation through the denial of passports, physical isolation in refugee-like camps and denial of services.

Availability of data

Underreporting is present in all states in the South Asia sub-region, where Afghanistan, Bhutan, and the Maldives, reported no stateless populations and all other states in the sub-region did not report numbers for *in situ* stateless populations. UNHCR recognizes this underreporting and notes the specific known populations in all states in the sub-region apart from the Maldives that are missing from their reported figures.²⁶³ Further, the only reported stateless population is categorized as stateless refugees, which excludes other existing stateless populations in the sub-region. Even among this group underreporting is present with the true scale of the Rohingya population across the sub-region estimated to be much higher than reported figures.

Causes of statelessness

Discriminatory laws

Restrictions on the basis of ethnicity

As outlined in the Southeast Asia chapters, the statelessness of the Rohingya community present across the South Asia sub-region is largely caused by ethnic discrimination embedded in the citizenship laws of Myanmar.²⁶⁴ Ethnic minority groups including the Mosuli and Jogi (or 'Magat') communities who have lived semi-nomadic

existences in Afghanistan for generations have been largely excluded from the operation of citizenship laws due to ethnic discrimination based on their historic connections to neighbouring countries.²⁶⁵ Other ethnic minority groups have been impacted by discriminatory nationality laws which either indirectly excluded population groups or ignored them entirely. Urdu-speaking 'Bihari' communities were excluded from accession of Bangladeshi citizenship until court intervention in 2008 due to discriminatory interpretations of the citizenship law.²⁶⁶ Even though many have gained citizenship, the community continues to face the same discrimination experienced while stateless.

Restrictions on the basis of gender

The laws of Nepal, Bangladesh, and Pakistan contain gender discriminatory provisions which deny citizenship under certain conditions.²⁶⁷ In Nepal, limitations within the citizenship laws mean that children born to a mother who holds citizenship by descent can only gain citizenship by descent when the father is not identified or is a Nepali citizen too.²⁶⁸ Further, in instances where a child is born to a citizen mother and a foreign father, citizenship can only be acquired through naturalisation (where children born to citizen fathers gain citizenship by descent). As many as 400–500,000 persons are estimated to have been rendered stateless due to these discriminatory provisions in Nepal.²⁶⁹ Bangladesh, Nepal and Pakistan's laws also contain gender discriminatory provisions that limit the ability of married women to transfer their nationality to foreign spouses on the same basis as men.²⁷⁰

Restrictions on the basis of religion

The laws of the Maldives contain religious discrimination (and potentially some gender discriminatory provisions).²⁷¹ The Maldives citizenship law bars non-Muslims from being recognised as citizens of the Maldives.²⁷² Statelessness among Muslim and ethnic minority populations in India — including persons excluded by the National Register of Citizens in Assam and

Rohingya refugees — is further protracted by their discriminatory exclusion from the *Citizenship Amendment Act 2019*.²⁷³ The Citizenship Amendment Act notably includes a pathway to citizenship for persons of all religions except for the Islamic faith, an act labelled by numerous commentators as being discriminatory on the grounds of religion.²⁷⁴

Citizenship Stripping

In Pakistan, the introduction of digitized ID cards along with continued government discrimination stripped members of the ethnic Bengali community of their citizenship as it labelled them aliens.²⁷⁵ 1.9 million residents were stripped of citizenship in Assam, India due to the National Register of Citizens, which declared the residents to be foreigners.²⁷⁶ Those unable to verify their status as citizens before the foreigners tribunal have been rendered stateless.²⁷⁷ In Bhutan, members of ethnic Nepali communities known as 'Lhotshampas' living in the south of the country were stripped of Bhutanese citizenship in the 1980s, being labelled as non-citizens through a census count.²⁷⁸

Childhood Statelessness

There is a lack of proper provisions regarding access to citizenship for foundlings in the laws of Bhutan, India, and the Maldives and only limited protections in Afghanistan, Nepal, and Sri Lanka.²⁷⁹ This lack of safeguard leaves children — particularly members of ethnic minority groups who have been denied citizenship — vulnerable to statelessness. In Afghan citizenship law a child found in Afghanistan will be considered a citizen of Afghanistan if documentation of their parent's citizenship is not available.²⁸⁰ Similarly, the citizenship laws of Sri Lanka provide that a foundling child of unknown and unascertained parentage will be considered a citizen of Sri Lanka until the contrary can be proven.²⁸¹ The citizenship law of Nepal provides that foundling children are considered citizens by descent until their father

or mother is identified.²⁸² None of the countries in South Asia provide explicit protection for children born to stateless parents.

The *jus soli* provision in the citizenship laws of two countries (Bangladeshi and Pakistani) may provide foundling children access to citizenship, however the practical application of these laws are less generous.²⁸³ For example, Pakistan's *jus soli* provisions on paper provide citizenship to all children born in the territory of Pakistan, except those whose fathers have diplomatic immunity, or are enemy or aliens.²⁸⁴ However, the children of Afghan refugees who have resided in Pakistan for decades have explicitly been excluded from the operation of these *jus soli* provisions with the High Court of Pakistan labelling Afghan refugees as foreigners and aliens.²⁸⁵

Additionally, the requirement under the citizenship law of Bhutan that both parents possess Bhutanese nationality has reportedly left some children born to unwed mothers, who were unable to prove the identity of the father, stateless.²⁸⁶

Administrative Barriers

Issues with implementation of citizenship laws were found in Afghanistan, Bangladesh, India, Nepal, and Sri Lanka. Administrative and practical barriers, including security concerns, restrictions imposed by male family members and lack of financial means have fundamentally limited the ability of women in Afghanistan to gain identity documentation and to confirm their status as citizens.²⁸⁷

In Nepal, Dalit and Madheshi communities experience barriers to accessing citizenship and identity documents due to discrimination.²⁸⁸ Children born to citizen mothers and members of the LGBTQ+ community in Nepal also experience administrative barriers in gaining citizenship certificates.²⁸⁹ In Sri Lanka, historic statelessness among Hill Country Tamils was largely based on

the discriminatory implementation of citizenship laws at the time of Sri Lankan independence in 1948 which indirectly excluded Hill Country Tamils from being able to obtain citizenship.²⁹⁰ Additionally, Sri Lankan refugees outside of the country have also faced administrative barriers to regaining Sri Lankan citizenship.²⁹¹

In Bangladesh, inconsistent policy implementation has led to the country's citizenship laws shifting in application from *jus soli* to *jus sanguinis* in operation.²⁹² This "paradigmatic policy shift"²⁹³ has compounded intergenerational statelessness among children born in the country, especially among Rohingya refugees. Discriminatory administrative barriers are also largely the cause of statelessness among ethnic Bengali communities in Pakistan. Despite their right to citizenship existing under the written law,²⁹⁴ it is estimated that 70–80% of the Bengali population in Pakistan do not have identity documents.²⁹⁵

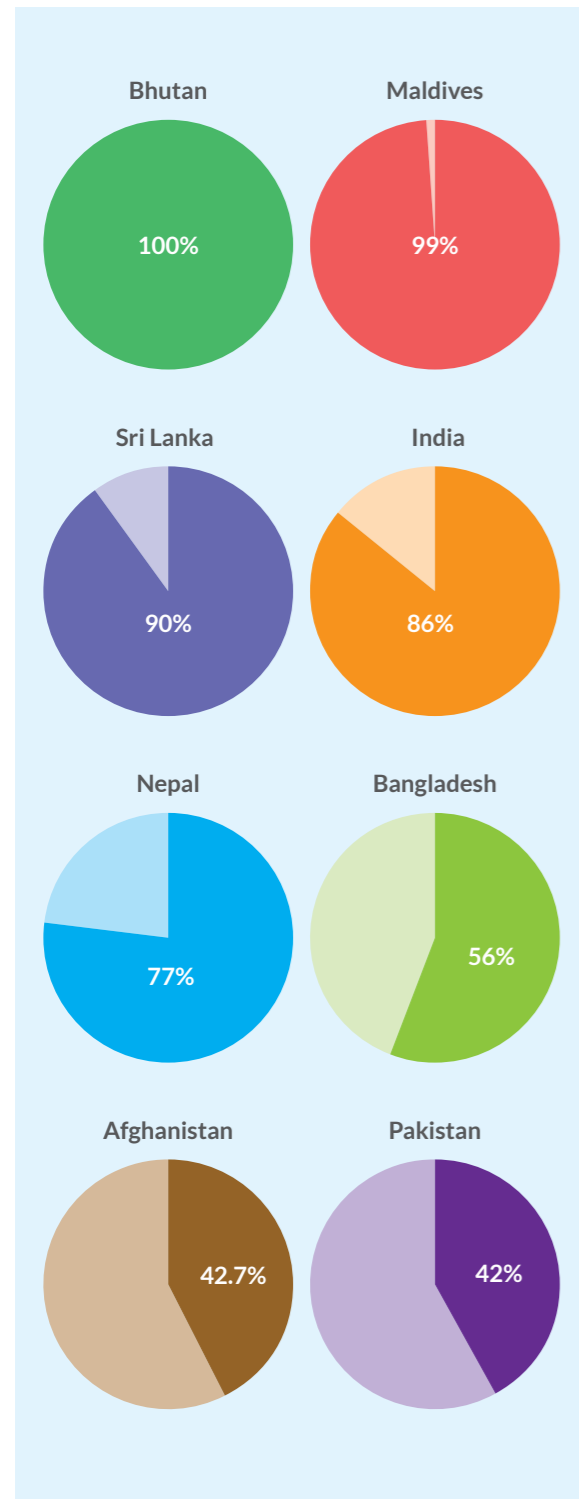
Birth Registration

In India, birth registration rate were reported to be 86% as of 2016, however barriers to birth registration among Sri Lankan refugee populations and ethnic minority groups including the Kutchi community residing in border regions of the country places these populations at risk of statelessness.²⁹⁶ Bhutan and the Maldives report high rates of birth registration at 100% and 99% respectively.²⁹⁷ For Sri Lanka, the latest statistics as of 2009 shows 90% or more birth registration in the country.²⁹⁸

The remaining South Asian states have notably lower rates of birth registration. The latest data of birth registration in Pakistan from 2018, shows rates of only 42% of births being registered. In Bangladesh, recent data from 2022 shows that 56% of births are registered. The most recent count of birth registration in Afghanistan from May 2022 show registration rates of 42.7%. In Nepal, birth registration was reported in 2019 at 77%.²⁹⁹

FIGURE 15

Status of Birth Registration in South Asia between 2009-2022



Source: UNICEF, 'Birth Registration Data Set'

Stakeholders in South Asia

Twenty-six former SNAP members were based in South Asia, with twenty being active members. This included:

- ◆ Chowdhury Abrar, Refugee and Migratory Movements Research Unit (RMMRU), University of Dhaka (Bangladesh)
- ◆ Khalid Hussain, Council on Minorities (Bangladesh)
- ◆ Hasan Mohammad, Al-Falah (Bangladesh)
- ◆ Kamrun Nahar, Naripokkho (Bangladesh)
- ◆ Manzoor Hasan, BRAC University (Bangladesh)
- ◆ K.M. Parivelan, Tata Institute of Social Sciences (India)
- ◆ Sanoj Rajan, Ansal University New Delhi (India)
- ◆ Saud Tahir, Socio-Legal Information Centre (Human Rights Law Network)/ Refugee Rights Initiative (India)
- ◆ Ravi Hemadri, Development and Justice Initiative (India)
- ◆ Sabin Shrestha, Forum for Women Law and Development (Nepal)
- ◆ Neetu Pokharel, Alliance on Social Dialogue (Nepal)
- ◆ Sanulal Maharjan, Center to Assist & Protect Child Rights (Nepal)
- ◆ Imran Laghari, Human Rights Alliance (Pakistan)
- ◆ Ali Ahmed Palh, RightsNow Pakistan (Pakistan)
- ◆ Hina Tabassum, Children and Women's Trust (Pakistan)
- ◆ Syed Nadeem Farhat, Institute of Policy Studies (Pakistan)
- ◆ Muhammad Haider Imtiaz, Aurat Foundation/ Faraz, Haider, Moazzam & Co. (Pakistan)
- ◆ Ashok Xavier Gladston, Independent (Sri Lanka)
- ◆ Nadine Vanniasinkam, International Centre for Ethnic Studies (Sri Lanka)

NFA has continued to work with a number of organisations in Bangladesh and has established a close partnership with the Council of Minorities, CSOs promoting the rights of minority populations within Bangladesh led by Khalid Hussain, a formerly stateless member of the Urdu-speaking community.

Website: <https://www.com-bd.org>

In India, first SNAP and now NFA have worked closely with the Development and Justice initiative (DAJI). DAJI has undertaken extensive work in Assam, mapping statelessness and documenting exclusion while providing support to people excluded by the National Register of Citizens.

Website: <https://www.daji.org.in>

In 2020, the Right to Nationality and Citizenship Network (RNCN) was formed as a coalition of

individuals and CSOs aiming to raise awareness and advocate for people's right to nationality within India. NFA has worked closely with the network and its members.

Website: <https://www.right2nationality.in>

Crucially, NFA has continued to grow our relationship with organisations working within Nepal including the Citizenship Affected People's Network Nepal led by and comprised of persons affected by Nepal's gender discriminatory citizenship laws, including organisation President Deepti Gurung. Internationally, the Global Campaign for Equal Nationality Rights has undertaken extensive work on the impact of gender discriminatory citizenship laws within Nepal.

NFA has partnered with two organisations in Pakistan, Musawi³⁰⁰ and Imkaan Welfare Organisation.³⁰¹

Sub-Regional Overview: Southeast Asia

Countries Covered: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste, Vietnam

Laws

Citizenship Law

All the eleven countries in this sub-region operate through a *jus sanguinis* structure with Cambodia allowing *jus soli* citizenship and Thailand allowing conditional acquisition of *jus soli* citizenship.³⁰² The citizenship laws of Indonesia, the Philippines, and Timor-Leste operate through a solely *jus sanguinis* structure and provide that children born to a citizen parent within or outside of the country can gain citizenship without distinction.³⁰³ Laos, Malaysia, Singapore and Vietnam have separate citizenship acquisition provisions for persons born within and outside of the country,³⁰⁴ meaning that while *jus sanguinis* in operation *jus soli* principles have some effect.

Of particular note, the citizenship law of Malaysia does not allow women to confer their nationality to their children if they are born outside of the territory of Malaysia.³⁰⁵

The laws of Brunei, Malaysia, the Philippines (for naturalized women only), Thailand and Singapore limit the ability of married women to confer their nationality onto foreign spouses on the same basis as men.³⁰⁷

The citizenship law of Singapore also limits the ability of mothers to confer citizenship onto children born in the state whose "...fathers are diplomats or members of foreign forces during times of war."³⁰⁶

In the case of Brunei and Myanmar, *jus sanguinis* citizenship is restricted to certain ethnicities, with the laws of Brunei also containing gender-discriminatory provisions. Persons born in Brunei who “are commonly accepted as belonging to” one of the seven “indigenous groups of the Malay race” are automatically considered citizens of Brunei if their father or both parents are citizens of Brunei.³⁰⁸ Further, children born outside of Brunei to a father who was born in Brunei and belonged to one of the seven Indigenous groups are considered citizens (but not those born to Bruneian mother).³⁰⁹ Children who have both a father and mother born in Brunei and who are a member of one of an additional 15 ethnic groups “considered to be Indigenous” to Brunei are considered citizens of Brunei whether they were born in or outside of the country.³¹⁰

Citizenship in Myanmar is defined largely upon ethnic grounds as citizenship is provided to certain defined ethnic groups who have been said to resided in Myanmar since 1823.³¹¹ Further, the citizenship law of Myanmar provides for two additional categories of citizenship – associate

citizenship and naturalized citizenship, which the government may confer on any person “in the interest of the State”.³¹²

In the case of Cambodia, in addition to *jus sanguinis* citizenship, children born in Cambodia to parents who are both foreigners and were both born and living legally in Cambodia can gain Khmer nationality/citizenship as well.³¹³ The limited *jus soli* provision in Thailand provides that children born in Thailand can automatically acquire Thai citizenship unless they are born to alien parents, one of whom is a temporary resident, residing in Thailand illegally, or a diplomat.³¹⁴

Ratification of Relevant Treaties

There is varied ratification of treaties across Southeast Asia, with some states – including Cambodia, Indonesia, Laos, the Philippines, Thailand, Timor-Leste, and Vietnam – having very high rates of ratification, while others – Brunei, Malaysia, Myanmar, and Singapore – have very low rates. The Philippines is the only state in Southeast Asia, which is a party to

TABLE 05

Ratification of International laws relating to statelessness by the countries in Southeast Asia

Country	Stateless 1	Stateless 2	Refugee	ICCPR	ICESCR	ICERD	CRC	CEDAW
Brunei	⊖	⊖	⊖	⊖	⊖	⊖	✓	⚠
Cambodia	⊖	⊖	✓	✓	✓	✓	✓	✓
Indonesia	⊖	⊖	⊖	✓	✓	✓	✓	✓
Laos	⊖	⊖	⊖	✓	✓	✓	✓	✓
Malaysia	⊖	⊖	⊖	⊖	⊖	⊖	⚠	⚠
Myanmar	⊖	⊖	⊖	⊖	✓	⊖	✓	✓
Philippines	✓	✓	✓	✓	✓	✓	✓	✓
Singapore	⊖	⊖	⊖	⊖	⊖	✓	✓	✓
Thailand	⊖	⊖	⊖	✓	✓	✓	✓	✓
Timor-Leste	⊖	⊖	✓	✓	✓	⊖	✓	✓
Vietnam	⊖	⊖	⊖	✓	✓	✓	✓	✓

✓ Signifies that the country is a party to the convention
 ⊖ Signifies that the country is not a party to the convention
 ⚠ Signifies that the country is a party to the convention with certain reservations

Stateless 1 - 1954 Convention relating to the Status of Stateless Persons
 Stateless 2 - 1961 Convention on the Reduction of Statelessness

either the 1954 and 1961 Stateless Conventions, being party to both.³¹⁵ Three states (Cambodia, the Philippines, and Timor-Leste) are parties to the Refugee Convention and its Protocol.³¹⁶

All states are parties to CEDAW and CRC. Brunei and Malaysia maintain reservations to article 9(2) of CEDAW which provides women with equal rights regarding the nationality of their children. Malaysia has also retained a reservation with respect to article 7 of the CRC which provides the right to a nationality.³¹⁷

Eight of the eleven states in the sub-region are parties to the ICESCR (Cambodia, Indonesia, Laos, Myanmar, the Philippines, Thailand, Timor-Leste, and Vietnam) and seven states have accessioned the ICCPR (Cambodia, Indonesia, Laos, the Philippines, Thailand, Timor-Leste, and Vietnam).³¹⁸ Six states (Cambodia, Indonesia, Laos, the Philippines, Thailand, and Vietnam) are also all parties to ICERD.³¹⁹

Population

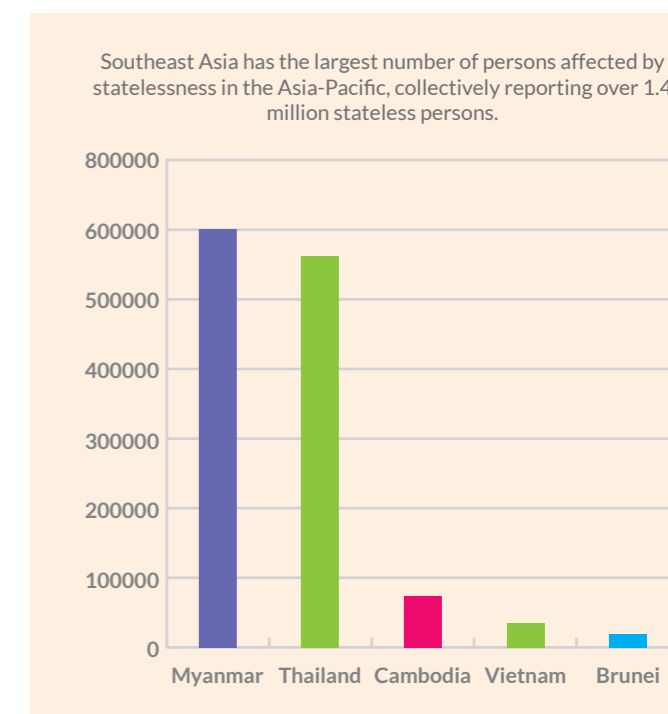
Reported Stateless Population

Based on statistics reported to UNHCR, Southeast Asia is the sub-region with the largest number of persons affected by statelessness in the Asia-Pacific, collectively reporting over 1.4 million stateless persons.³²⁰ All countries apart from Laos and Timor-Leste have reported figures on stateless persons in 2021 to UNHCR. Most identified stateless populations within Southeast Asia comprise of *in situ* ethnic minority groups who have experienced protracted and intergenerational statelessness.

In the region Myanmar has the largest reported stateless population, reporting 600,000 stateless persons to UNHCR in 2021.³²¹ The UNHCR notes that the figure of 600,000 persons represents their higher range estimate of the number of stateless Rohingya both in Rakhine State and internally displaced.³²²

FIGURE 16

Reported Stateless Persons in Southeast Asia



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

Various reports claim that ethnic minority groups in Brunei, Cambodia, Indonesia, the Philippines, Thailand, and Vietnam also face protracted and intergenerational statelessness.³²³ The largest of these populations officially reported to UNHCR includes 561,527 people in Thailand (largely comprised of members of the ‘Hill Tribe’ communities), 75,000 persons of Vietnamese ethnicity in Cambodia, a population of 35,475 people in Vietnam (including members of the Hmong community, and people of Cambodian heritage) and over 20,000 persons of Chinese heritage in Brunei.³²⁴

Persons at Risk of Statelessness

Within the Philippines, six population groups have been identified as being at risk of statelessness being: indigenous sea-faring Sama Bajau, persons of Indonesian Descent (the status of most of this population group has been resolved in recent

years), foundlings, unregistered children who have been forcibly displaced due to armed conflict, and persons of Japanese descent.³²⁵ It is estimated that as many as 130,000 Sama Bajau (Bajau Laut) community members – who also reside in Malaysia and Indonesia – are at risk of statelessness.³²⁶ Additionally, a lack of documentation, specifically among older populations in Singapore, has left persons stateless since the country's independence in 1965.³²⁷

Within Malaysia, multiple populations have also been identified as at risk of statelessness including persons who have resided in Malaysia since pre-independence as well as their descendants (including individuals of Tamil ethnicity), children of mixed-nationality marriages (through the impact of gender discriminatory nationality laws), indigenous persons (including mobile maritime populations and Orang Asli communities), refugees and irregular migrants (and their children) in Sabah (East Malaysia), as well as persons lacking documentation and foundling children.³²⁸

Undetermined Nationalities

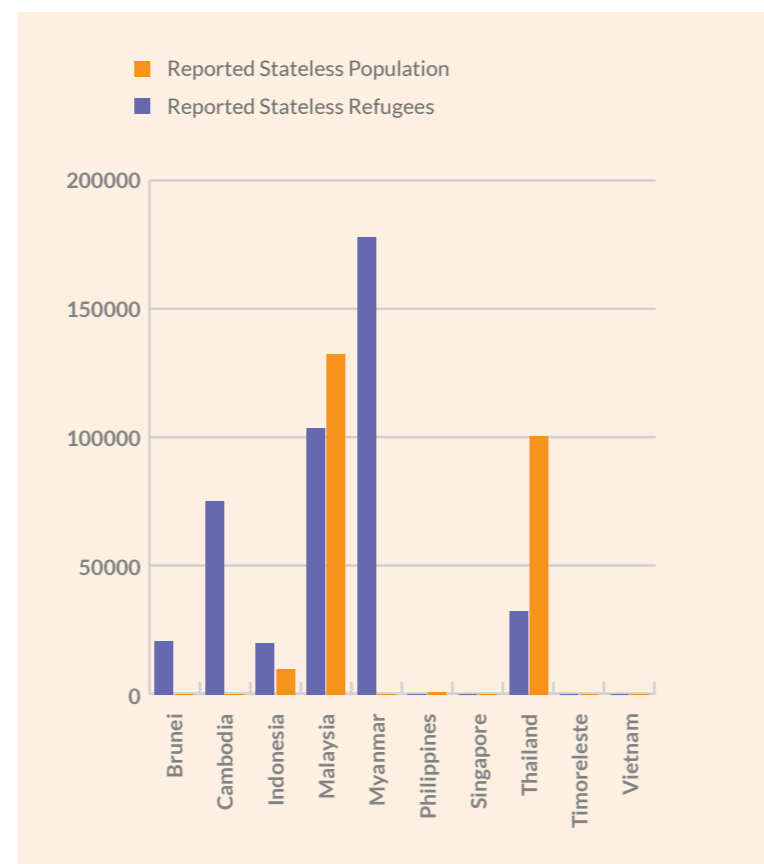
Within the Sabha region of Malaysia as many as 810,443 residents of Sabah are seen to be non-citizens.³²⁹ This group represents the largest and most notable population of Persons of Undetermined Nationality within Southeast Asia as disagreement exists as to whether this population is stateless or should be considered citizens of either the Philippines, Malaysia, or Indonesia.³³⁰

In Cambodia, the situation of potential hundreds of thousands of persons of Vietnamese descent remains uncertain. While some ethnic Vietnamese have gained identity documentation and have been “integrated” into society, a large number of ethnic Vietnamese living in Cambodia remain unregistered and reside within floating villages on the Tonle Sap Lake.³³¹ This population has faced frequent attempts by the Cambodian government

to displace their communities, for example in June 2021 some 700 families were ordered to relocate.³³² While the Cambodian government since 2019 has reported stateless persons to UNHCR (with the reported population increasing from 57,444 in 2019 to 75,000 in 2021) the true size of the population of ethnic Vietnamese in Cambodia without citizenship has been estimated by CSOs such as the Minority Rights Organization to be higher, ranging between 400–700,000 persons.³³³

Members of “highland” communities in Thailand face barriers to acquire citizenship leaving their status uncertain.³³⁴ The citizenship status of other

FIGURE 17
Reported Stateless and Stateless Refugee Population in Southeast Asia



UNHCR, 'Global Trends: Forced Displacement in 2021' (June 2022)

population groups including children of returned marriage migrants in Vietnam³³⁵ and persons of Chinese, Indian and Nepali descent in Myanmar³³⁶ remains uncertain.

Stateless Refugees

Four countries (Indonesia, Malaysia, the Philippines, and Thailand) in the region reported populations of stateless refugees to UNHCR in 2021. All of the reported stateless refugees are Rohingya from Myanmar, with Malaysia reporting the largest population (103,380), while Indonesia (641), the Philippines (5), and Thailand (198) all reported comparatively small population groups.³³⁷

Causes of statelessness

Discriminatory Laws

Restrictions on the basis of ethnicity

The interrelation between ethnicity and citizenship is notable in Southeast Asia, specifically in Brunei, Cambodia, and Myanmar.

The citizenship laws of Brunei contain both racial and gender discriminatory provisions. The limitation of nationality to certain prescribed ethnic groups, or “indigenous groups of the Malay race” is the primary cause of statelessness in Brunei.³³⁸ The largest registered stateless group in the country is persons of Chinese descent who do not fall under one of the prescribed groups.³³⁹

The most conspicuous example of this is the ethnic discrimination present in the nationality law of Myanmar that has rendered at least a million ethnic Rohingya stateless.³⁴⁰ Denial of citizenship to the Rohingya, as codified in the 1982 citizenship law, has been a key component of the systemic oppression and persecution of the Rohingya people by the government and military of Myanmar prior to the 2021 military coup.³⁴¹

Additionally, ethnic discrimination affects a number of other populations across Southeast Asia. For example, in the process of Thailand nation-building in the 20th century, Thai ethnicity and citizenship were deeply entwined. Members of nine ethnic groups often referred to as ‘hill-tribe’ or ‘highland’ communities living in the northwest of the country have faced intergenerational statelessness due to social exclusion.³⁴² The complicated history of colonisation, war and tensions between Vietnam and Cambodia has led to ethnic Vietnamese residents in Cambodia facing discrimination, social exclusion and denial of citizenship, despite many being entitled to nationality under the letter of the law.³⁴³

Restrictions on the basis of gender

Gender-discriminatory nationality laws place a number of children at risk of statelessness in Malaysia and Brunei. Notably, children born outside of Malaysia to Malaysian citizen mothers and foreign fathers do not automatically gain Malaysian citizenship.³⁴⁴ Children born in Malaysia out of wedlock (or *in situations* where the marriage is not recognized by the state, notably non-Islamic customary or religious marriages) to a Malaysian citizen father and a mother who is stateless or whose citizenship cannot be ascertained, are also at risk of statelessness due to discriminatory provision that disallows the transfer of nationality from a father outside of wedlock.³⁴⁵

Gender discriminatory provisions limit a female citizen of Brunei to pass on her nationality to her children, requiring a registration process to be undertaken for citizenship to be recognized (whereas children born to male citizens receive automatic citizenship).³⁴⁶ Women are also limited in their ability to confer nationality onto foreign husbands (while male citizens of Brunei can pass on nationality to foreign wives).³⁴⁷

Additionally, a combination of ethnic discrimination and gender discrimination

provisions (since repealed) also rendered stateless persons of Japanese descent who were born in the Philippines between the 1930s and 1970s (as well as their descendants) to Filipino mothers and Japanese fathers.³⁴⁸

Citizenship Stripping

Citizenship stripping is a less prevalent cause of statelessness within Southeast Asia compared to other sub-regions in the Asia-Pacific, however, three countries (Indonesia, the Philippines, and Vietnam) have notable instances of citizenship stripping. Under the operation of the 1958 citizenship law, persons residing outside of Indonesia for a period of more than five years without registration lost their Indonesian citizenship (with no protection from statelessness). While the law was reformed in 2006, there remains a small number of persons of Indonesian descent who resided in the Philippines and were stripped of their Indonesian citizenship.³⁴⁹ Additionally, in February 2020, the government of Indonesia disallowed over 1,000 Indonesian citizens who had left Indonesia and joined the Islamic State from returning to the country. While not officially stripping these individuals (who include family members of fighters) of their citizenship, concerns have been raised over the risk of future statelessness faced by this population group.³⁵⁰

Due to barriers to dual nationality in the laws of receiving countries, marriage migrants from Vietnam have to relinquish citizenship to naturalize as citizens, however, where a relationship is determined to be a “sham” or “fraudulent” women have been stripped of their nationality without protections from statelessness.³⁵¹

Childhood Statelessness

The citizenship laws of six states (Cambodia, Indonesia, Laos, the Philippines, Singapore and Vietnam) explicitly provide that foundling

children will be considered citizens.³⁵² The citizenship laws of Malaysia, Thailand and Timor-Leste provide some protection for foundling children under their law. Malaysian law considers those born in Malaysia who are not born citizens of another country to be Malaysian citizens.³⁵³ Timor-Leste’s citizenship laws provide that a child of “incognito parents” will be considered an original citizen of Timor-Leste.³⁵⁴ While the law is unclear as to whether Thailand’s *jus soli* provisions could provide access to citizenship for foundling children, a government resolution provides that abandoned children can apply for Thai nationality given that they have 10 years of residency certified by the Ministry of Social Development and Human Security.³⁵⁵ Brunei and Myanmar provide no protection for foundling children to gain citizenship.

Brunei, Myanmar, the Philippines and Singapore do not provide any explicit protection for children born to stateless parents. The citizenship laws of Indonesia, Laos, Timor-Leste, and Vietnam explicitly provide that children born to stateless parents can be considered citizens.³⁵⁶ In Vietnam, the parents of stateless children must have a “permanent residence” in Vietnam to access this provisions.³⁵⁷ Laotian citizenship similarly provides that children born to stateless parents are considered Laotian citizens if their parents are permanently residing in Laos and have “integrated into the Laos society and culture”.³⁵⁸ The Malaysian Constitution provides that every person born in Malaysia who is “not born a citizen of any country” will be considered as a citizen of Malaysia.³⁵⁹

Thailand’s *jus soli* citizenship provisions may provide an avenue to citizenship to children of stateless parents who have a regularized stay in Thailand.³⁶⁰ Children whose parents have not regularized, but are residing in Thailand, therefore, do not have an avenue for citizenship under these provisions. The *jus soli* provisions of Cambodian citizenship law similarly may provide protection to children born to stateless parents

in limited circumstances where those parents were born and resided legally in Cambodia and were considered “foreigners”.³⁶¹ While this provision may provide some protection from inter-generational statelessness in Cambodia, its scope is limited. Children born to parents who themselves were born outside of the country or who were born within the country but are considered to be “illegally” residing in the country will not be able to gain citizenship.³⁶²

Administrative Barriers

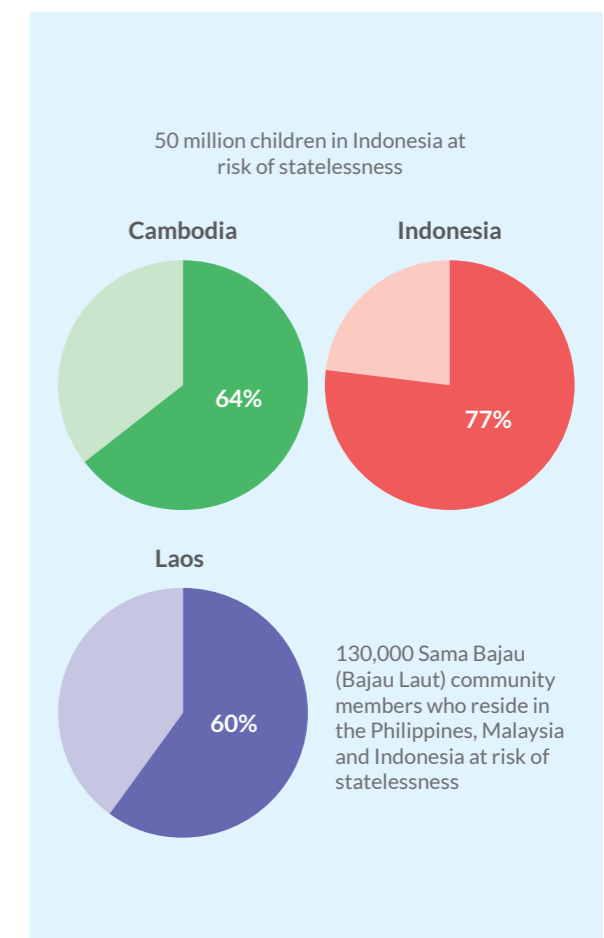
The denial of civil registration documents and arbitrary and discriminatory applications of policy have played a key role in causing and compounding statelessness in Southeast Asia. Ethnic minority groups in Brunei, Cambodia, the Philippines, Malaysia, and Vietnam face barriers to gaining civil registration and citizenship, with such barriers leading to protracted and intergenerational statelessness.³⁶³ Ethnic Vietnamese populations in Cambodia have also faced discriminatory barriers to both recognition of citizenship and access to citizenship through naturalization.³⁶⁴ Notably, administrative barriers have continued to limit the ability of members of ‘highland’ communities in Thailand to gain citizenship. Differentiation in treatment by officials, lack of documentation, ingrained concepts of communities as ‘mobile’, and physical/geographic barriers to accessing communities have complicated the citizenship application/verification process for these communities.³⁶⁵

In the past decades, the provision and withdrawal of civil registration documents have been complex, discriminatory, and a key component of the persecution of the Rohingya population in Myanmar.³⁶⁶ Additionally, the failure of the government of Myanmar to facilitate the naturalization of Rohingya populations, and the degradation of the documented status of Rohingya are also key causes of statelessness within Myanmar.³⁶⁷

Birth Registration

In Cambodia, Indonesia, Laos, and Thailand low rates of birth registration among certain populations have exposed potentially millions of children to the risk of statelessness,³⁶⁸ with children of migrant workers and ethnic minorities left particularly vulnerable to the risk of statelessness.³⁶⁹ For example, low birth registration rates and barriers to birth registration especially among children of migrant workers and communities living in poverty have placed as many as 50 million children in Indonesia at risk of statelessness.³⁷⁰ This risk is compounded across Cambodia, Indonesia, and Laos by notably

FIGURE 18
Birth registration rates across the Southeast Asia



UNICEF, ‘Birth Registration Data Set’ (May 2022)

low population-wide rates of birth registration with the states recording rates of 64%, 77% and 60% respectively.³⁷¹ Administrative and practical barriers to accessing birth registration have also placed as many as 130,000 Sama Bajau (Bajau Laut) community members – who reside in the Philippines, Malaysia and Indonesia – at risk of statelessness.³⁷²

Stakeholders in Southeast Asia

101 former SNAP members were based in countries within Southeast Asia, including 33 active members. The variance of connections across the region is notable, with high rates of SNAP membership in Malaysia, Myanmar, and Thailand and notably low (or no) membership in states including Timor-Leste and Vietnam. All the former SNAP members continue to actively work to address citizenship issues in different capacities.

Coalitions exist within Indonesia and Thailand. In May 2018, SUAKA was formed in Indonesia as a coalition of civil society organisations working on Refugee Rights Protection, including the rights

of stateless refugees. In Thailand, the Coalition for the Rights of Refugees and Stateless Persons (CSPR) largely focuses on the rights of refugees in the country but undertakes advocacy regarding refugees affected by statelessness. In June 2020, SNAP participated in an exploratory meeting on the creation of a civil society network on statelessness in the Philippines. The network has been formed and is gradually becoming functional.

NFA has one key partner based in Indonesia, Human Rights Working Group Indonesia (HRWG). HRWG functions as a network of more than 48 civil society organisation working across Indonesia to promote human rights. NFA has developed a strong partner in Cambodia in Women Peace Makers (WPM). WPM has spearheaded facilitated listening techniques to work with ethnic minority groups in Cambodia to develop research and peace-building advocacy. NFA has further developed a partnership with Family Frontiers (which Foreign Spouses Support Group is a program under), an organisation led by Bina Ramanand, which focuses on advocacy and strengthening the capacity and confidence of persons affected by Malaysia's gender-discriminatory citizenship laws.



Braveheart Foundation

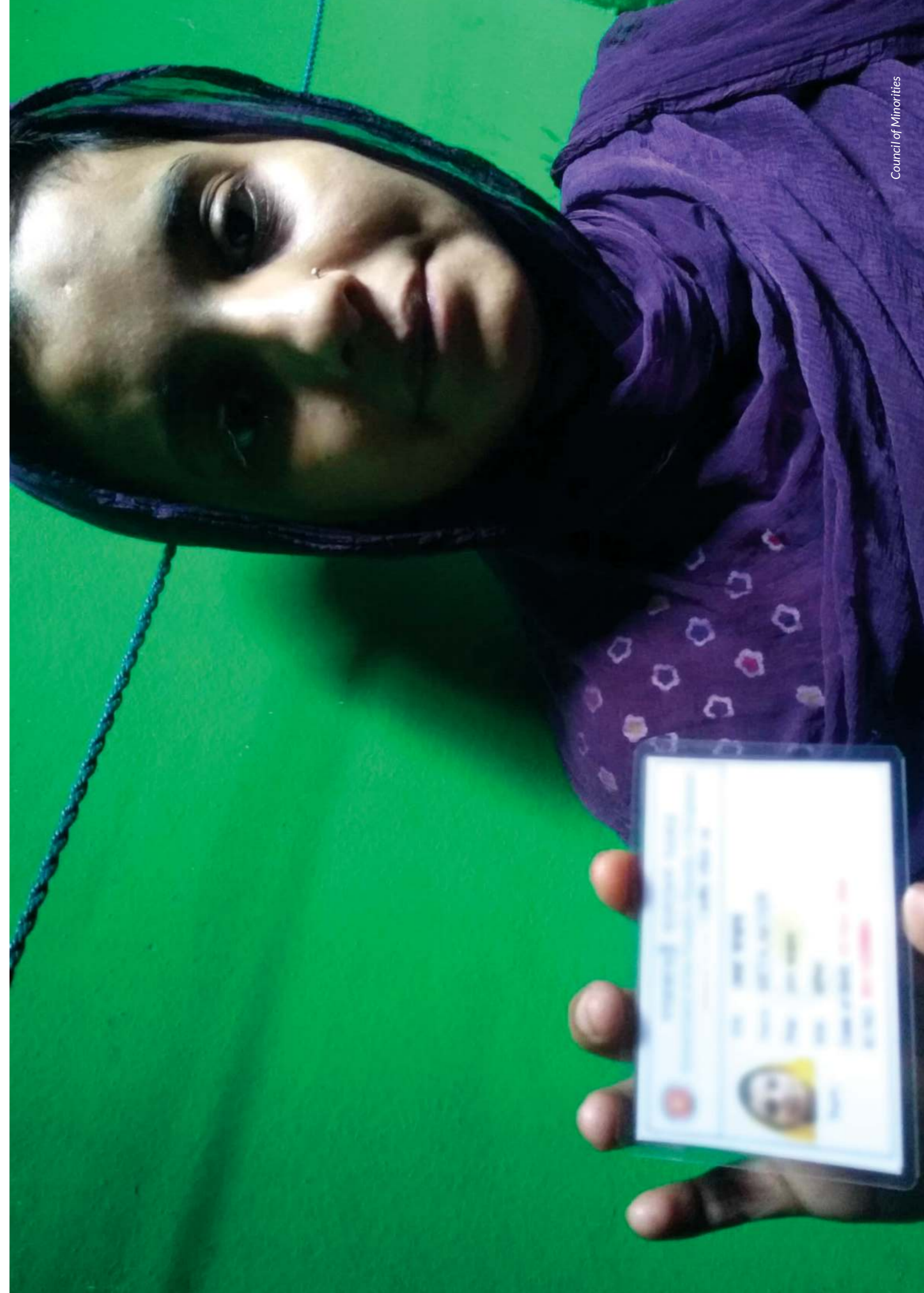
Concluding Remarks

Statelessness is far-reaching and pervasive, adversely impacting all aspects of life for individuals and communities across the region. In conducting research for this report, we found statelessness to be not only a product of, but also a catalyst for discrimination. Our hope is that this encyclopedia will highlight and bring attention to the growing issue of statelessness in the Asia-Pacific region and serve as a roadmap for stakeholders working in the field.

The aim of this report is to combine existing data and research on statelessness across the Asia-Pacific into a comprehensive overview of the ongoing situation of statelessness in the region. The lack of research and data on statelessness in the region, as such, is a clear limitation to knowledge production. Through our consultations, the scarcity of funding and resources was found to be a pervasive barrier to organizations working on statelessness. This report endeavors to invite further research and financial investment to support organizations working for individuals

and communities experiencing statelessness. The rising disconnect between the existence of known stateless populations and figures of zero (or near zero) officially reported stateless persons needs to be ended by investing in better quantitative research. In addition, further qualitative research on the experiences of stateless persons would substantially improve public understanding of how statelessness is experienced across the region. Such research is crucial in highlighting the ways in which statelessness significantly impact peoples' lives and limit their access to fundamental rights.

This first edition of the Statelessness Encyclopedia Asia Pacific (SEAP) represents the foundational research on which future editions will be built. With the second edition of the SEAP, we will broaden the scope and depth of research, and the geographical coverage of the report will expand to include Central Asia. We aim to produce individual fact-sheets for each country in the Asia-Pacific region and provide a deeper examination of naturalized and dual citizenship.



Endnotes

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