

Stateless Persons

I. Introduction

[1] Article 1 of the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) defines a stateless person as ‘a person who is not considered as a national by any State under the operation of its law’. This definition is considered

part of → customary international law (ILC [2006]). Due to methodological and political challenges surrounding data collection and reporting, there are no comprehensive statistics, but it is estimated that more than 15 million persons are stateless around the world today (Institute on Statelessness and Inclusion [2014]; *ibid.*, [2020]). Moreover, the Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that a child is born stateless every ten minutes.

1. Background

[2] Statelessness is a concept that is as old as the State itself, as it refers to the lack of any nationality, understood as the legal bond between an individual and a State (also commonly referred to as citizenship) (→ Nationality, Right to). As a global phenomenon, however, statelessness became an issue of significance after the World Wars. Because of these wars, persons were displaced without documents to prove their identity and borders were significantly redrawn, leaving persons without a country and without a nationality. The World Wars also provided the context for the first large-scale use of deprivation of nationality to ‘punish’ or exclude people, such as the denationalization of Jews by Germany. In the aftermath of World War II, States were therefore determined to address the situation of stateless persons, placing it on the agenda of the newly formed → United Nations (UN). Initially, both stateless persons and → refugees were grouped together because they were both seen to be ‘unprotected persons’ who required international assistance (UN Study of Statelessness [1949]). During the process of drafting international conventions to address their plight, however, it was nonetheless felt that refugees and stateless persons should be distinguished from each other, with the situation of non-refugee stateless persons seen as less urgent, and so the completion of the 1951 Refugee Convention was prioritized. This ultimately resulted in separate → treaties for refugees and stateless persons, and in separate definitions of these concepts (Edwards and Van Waas [2014] at 67; please also refer to Section II below).

2. Causes of statelessness

[3] A person can be born stateless or can become or be made stateless later in life. The causes vary. Statelessness can be the result of ‘technical’ problems, which relate to gaps in legislation or a

conflict between nationality laws, such as where a person is allowed to renounce his or her nationality without acquiring another nationality. State succession provides a particular context in which conflict of nationality laws can result in large numbers of people being left without a nationality, for example because they lose their original nationality but fail to acquire the nationality of (any of) the new State(s) that emerged. Furthermore, statelessness can be caused by discrimination (→ Discrimination, Prohibition of) or arbitrary deprivation of nationality. Nationality laws can be discriminatory based on gender, religion, race or ethnicity, for example not allowing → women to transfer nationality to their → children, excluding a particular ethnic group from acquiring a nationality or depriving persons of their nationality because of their religion or ethnicity. UNHCR has estimated that 75 per cent of the world’s stateless people belong to → minorities (UNHCR [2017]) – such as the Rohingya in Myanmar, Bidoon in Kuwait or Karana in Madagascar. Moreover, even if being stateless is not the same as being undocumented, a lack of documents and/or birth registration and administrative hurdles in accessing nationality can put people at risk of becoming stateless. This is a recurring issue for the Roma in Europe for example. Causes of statelessness are often inter-linked: the legacy of → colonialism and decolonization, for instance, can bring together issues of discrimination and state succession in causing statelessness. At the same time, statelessness and the causes thereof often become more pressing and difficult in a situation of (forced) displacement or in a migration context.

3. Impact of statelessness

[4] Statelessness – lack of any nationality – can have a severe impact on a person, because it affects the rights that an individual is able to enjoy (Blitz and Lynch [2011]). Stateless persons are unable to enjoy the rights that are generally associated with having a nationality and a passport, such as the → right to participate in elections and government, → freedom of movement and residence, and → diplomatic protection. A stateless person can also experience problems with or have no access to all kinds of social and economic rights, including health care (→ Health, Right to), education (→ Education, Right to), employment (→ Work, Right to) and housing (→ Housing, Right to). Statelessness thus has a clear human rights impact. Due to the exclusion, discrimination

and marginalization that are often associated with statelessness, it has a significant effect on → human security. Moreover, the issue can also have a broader impact on societies, states and international relations, causing conflict or displacement.

II. Legal framework

1. *Universal standards*

[5] After World War II, two treaties were adopted by the UN to address statelessness: the 1954 Convention and the 1961 Convention on the Reduction of Statelessness (1961 Convention). The 1954 Convention establishes a special international protection status for ‘stateless persons’ to which rights are attached – similarly to the system established for refugees by the 1951 Convention on the Status of Refugees. This instrument therefore contains the definition of a stateless person (Art 1) and sets out the minimum standard of treatment a stateless person should enjoy without discrimination. Depending on the strength of the relationship between the stateless person and the state concerned, a person’s eligibility to rights and protection increases: ‘[A] stateless person is, for example, entitled to identity papers and freedom of religion in the State in which he is physically present, but only when such presence is also lawful is the freedom of movement within the State guaranteed’ (Van Waas, *Nationality Matters* [2008] at 229). The 1954 Convention does not prescribe a specific mechanism to identify stateless persons but ‘it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment [. . . and] it is also in States’ interests to establish statelessness determination procedures’ (UNHCR [2014]). Note also that Palestinians, one of largest groups affected by statelessness in the world, are covered by the separate mandate of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). This means that those Palestinians who receive UNRWA protection and assistance are excluded from the scope of application of the 1954 Convention (Art 1(2)(i) 1954 Convention).

[6] The 1961 Convention has a different purpose: it aims to prevent and reduce statelessness, thereby supporting the fulfilment of the right to a nationality. It consolidates different principles with regard to nationality, such as non-discrimination (Art 9), as well as prescribing concrete safeguards for states to incorporate in their nationality laws so as to avoid statelessness. These include safeguards to prevent statelessness at birth where a child

would otherwise fail to acquire any nationality and to avoid statelessness later in life in cases of loss, deprivation and renunciation of nationality or in the context of state succession.

[7] Section I.3 clarified that statelessness can heavily affect the enjoyment of human rights. As such, human rights treaties, particularly those protecting social and economic rights and ensuring non-discrimination, are relevant to the protection of stateless persons. Moreover, statelessness in itself violates the right to a nationality as affirmed in Article 15 of the → Universal Declaration of Human Rights (UDHR). This provision also includes the prohibition of arbitrary deprivation of nationality. Many scholars have referred to the right to a nationality as ‘the right to have rights’, underlining the importance of effectively ensuring this right so that people are able to also enjoy other rights. The right to a nationality has subsequently been included in different treaties. For example, every child’s right to acquire a nationality has been included in Article 24(3) of the → International Covenant on Civil and Political Rights (ICCPR) and Article 7(1) of the → Convention on the Rights of the Child (CRC). Furthermore, the → International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (Art 5(d)(iii) ICERD), the → Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Art 9 CEDAW), the → International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICMW) (Art 29 ICMW) and the → Convention on the Rights of Persons with Disabilities (CRPD) (Art 18 CRPD) contain more specific provisions in line with the topic of the respective treaties on non-discrimination in the enjoyment of the right to a nationality.

2. *Regional legal frameworks*

[8] The human rights of stateless persons and the right to a nationality are also protected in regional human rights frameworks, under which there is a rich and growing body of jurisprudence on these issues. Indeed, even in systems without explicit provisions in this regard, there has been developing jurisprudence. In Europe, stateless persons have successfully asserted their rights under the → European Convention of Human Rights (ECHR) (ECtHR, *Andrejeva v Latvia* [2009]), including the obligation for states to identify and take due account of statelessness as a relevant fact in determining a person’s treatment (ECtHR, *Kim v Russia* [2014]; ECtHR, *Hoti v Croatia* [2018]).

The → European Court of Human Rights (ECtHR) has also recognized nationality to be part of a person's 'social identity' and thereby protected under the right to private life (→ Private and Family Life, Right to Respect for) (Art 8 ECHR; ECtHR, *Genovese v Malta* [2011]; ECtHR, *Menesson v France* [2014]). Furthermore, the 1997 European Convention on Nationality (ECN) and the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession deal with specific nationality matters, aiming to prevent statelessness in Europe. In Africa, cases of deprivation and denial of nationality have been addressed under both the → African Commission on Human and Peoples' Rights (ACHPR) (ACHPR, *John K Modise v Botswana* [2000]; ACtHPR, *Anudo Ochieng Anudo v Tanzania* [2018]) and the → African Charter on the Rights and Welfare of the Child (ACERWC, *Children of Nubian Descent v Kenya* [2011]; ACERWC, *PLACE v Sudan* [2018]) – the latter explicitly protecting the right of every child to a nationality under Article 6. The right to a nationality and prohibition of arbitrary deprivation of nationality are contained in Article 20 of the → American Convention on Human Rights (ACHR) and this provision has also formed the basis for jurisprudence in the region (IACtHR, *Ivcher Bronstein v Peru* [2001]; IACtHR, *Yean and Bosico v Dominican Republic* [2005]). In other regions, the legal frameworks also offer a basis for the protection of stateless persons and the prevention of statelessness, although supervisory mechanisms are lacking. The → Arab Charter on Human Rights, the Covenant on the Rights of the Child in Islam and the ASEAN Human Rights Declaration all recognize the right to a nationality.

III. Current challenges

[9] As Hannah Arendt famously commented, nationality provides a person with 'a place in the world which makes opinions significant and actions effective' (1951). Stateless persons have long struggled both to exercise their human rights and to re-gain this 'place in the world' through the acquisition or restitution of nationality. Today, this struggle has deepened, in particular as a result of growing ethno-nationalism and xenophobic discrimination, the securitization of citizenship policy and the general trend towards shrinking civil society space for challenging human rights abuses. The roll-out of digital identity systems in an increasing number of countries is also generating new problems, by entrenching the exclusion

stateless persons already face when it comes to the enjoyment of rights and services, as well as by exposing further populations to statelessness if they fail to establish their nationality when their data is entered into these new systems.

[10] Denationalization is (re)surfacing as a major challenge across a range of countries and contexts, leading commentators to remark that 'after decades in exile, banishment is back' (Macklin and Bauböck [2015] at 1). Numerous Western states have reformed their legislation to expand the powers of the executive or judiciary to withdraw nationality on national security grounds or as a measure to counter → terrorism. Meanwhile, 'resurgent xenophobic and racist rhetoric and policies rooted in ethno-nationalism' (Achieme [2018] at 14) are driving shifts in nationality policy and practice, calling into question the belonging of people who have, until now, been treated as citizens. The situation in Assam, India, as it unfolded in 2019 – when the updated National Register of Citizens excluded 1.9 million people from the list of Indian citizens – is one evident example of this, but the trend is a far wider one.

[11] Other global phenomena are also having an impact on the incidence of statelessness and the enjoyment of human rights by stateless persons. International migration, for example, can complicate the acquisition or retention of nationality and → migrants may be exposed to statelessness due to a higher likelihood of a conflict of nationality laws. The same is true in respect of the evolving understanding of family life and → reproductive rights, with a growth in 'non-traditional' family arrangements (for example, international surrogacy) that may not be accommodated by current nationality laws and therefore can also lead to statelessness. → Climate change has also been implicated as a potential future source of statelessness, in particular in the context of sinking island states.

IV. Trends

[12] As recently as 2011, then UN High Commissioner for Refugees António Guterres, described statelessness as 'the most forgotten human-rights problem in today's world' (Time [2011]). Indeed, statelessness only started to emerge as a distinct field of study around that time, much later than related fields such as refugee law. It was in the same period that UNHCR undertook its first significant efforts to operationalize its mandate for (non-refugee) stateless persons – a mandate it was

first bestowed in the 1970s in relation to the 1961 Convention and which has since expanded under successive UN General Assembly Resolutions. In terms of both academic study as well as international visibility and engagement, the picture has changed very rapidly. This shift is perhaps best exemplified by the establishment of scholarly communities such as the *Global PhDs on Statelessness* and a dedicated journal on statelessness (the *Statelessness and Citizenship Review*) and the UNHCR-led #IBelong campaign to end statelessness by 2024, respectively.

[13] In terms of law and policy trends, in an important contrast to the current challenges discussed in Section III, there has been significant progress in a number of areas. As a result of the growing recognition for the issue and related advocacy efforts, there has been an uptake in accessions to the 1954 and 1961 Conventions. Importantly, there has also been an increase in attention paid to implementation of international standards relating to the protection of stateless persons at the domestic level, in particular the identification of stateless persons, through the establishment of Statelessness Determination Procedures (SDPs) in a growing number of states, on which guidance is available in the UNHCR Handbook on the Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons (2014). The introduction of such procedures and statelessness-specific protection regimes helps to ensure that stateless persons in a migratory context are protected from arbitrary detention and are able to exercise their human rights. In terms of the avoidance of statelessness, the most notable trend is towards the universal acceptance of women's equal and independent nationality rights – now over 85 per cent of states globally allow women to confer nationality to their children on equal terms with men.

V. Conclusion

[14] Over 15 million stateless persons remain without any nationality today, facing numerous human rights problems. Moreover, causes of statelessness persist and challenges remain. At the same time, a tailored legal framework is in place and courts are recognising everyone's right to a nationality more and more. Furthermore, there has been true progress in addressing statelessness and in establishing statelessness as a separate field of advocacy and study in recent years.

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