

## Human Rights of Stateless People



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## **Report of the International Consultation “Towards an Ecumenical Advocacy on Rights of Stateless People”**

27 February to 1 March 2013  
Washington D.C., U.S.A

*Commission of the Churches on International Affairs  
World Council of Churches*



## HUMAN RIGHTS OF STATELESS PEOPLE

Report of the International Consultation “Towards an Ecumenical Advocacy on Rights of Stateless People”

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# Contents

<i>Introduction</i> .....	1
<i>Report of the Proceedings of the Consultation</i> Semegnish Asfaw / Nan Braunschweiger .....	3
<i>Communiqué</i> .....	13
<i>Thematic Presentations</i> .....	17
Statelessness and Human Rights of Stateless People: An Overview <i>Mathews George Chunakara</i> .....	19
Stateless Women: See Me, Hear Me <i>Rev. Aundreia Alexander</i> .....	28
Statelessness and Discrimination <i>Sarnata Reynolds</i> .....	38
Statelessness and International Law: An Overview <i>Mark Manly</i> .....	47
The Humanitarian Implications of Statelessness <i>Maureen Lynch</i> .....	57
Remarks on Government Responses to Statelessness <i>Nicole Shepardson</i> .....	61
Statelessness and Nationality Law <i>Sebastian Köhn</i> .....	67
<i>Regional Perspectives</i> .....	71
Refugees from Rakhine State of Myanmar and Urdu-Speaking Bihari Population in Bangladesh <i>Joyanta Adhikari</i> .....	73
The Voices of Stateless People, the Rohingya Ethnic Minority of Burma <i>Jonah</i> .....	80
The Haitian Diaspora <i>Bernadette Passade Cisse</i> .....	82

The Risk of Statelessness in South Sudan <i>Sarnata Reynolds</i> .....	93
Lobby and Advocacy for Stateless Roma in the Netherlands – A Road with Blockades! <i>Geesje Werkman / Roel Aalbersberg</i> .....	104
<i>Appendices</i> .....	111
Background Paper of the Consultation.....	111
Communiqué from the Dhaka Consultation on the <i>Human Rights of Stateless People</i> .....	114
List of Participants.....	120

## ***Introduction***

Statelessness is a condition of a person who is not considered as a national of any country. The rights to citizenship and nationality are essential for an individual to fully participate in a society wherever he or she lives. Nationality is a prerequisite for the enjoyment of the full range of human rights. At least twelve million people in the world are estimated to be stateless people. Every continent of the world has stateless people. A variety of reasons exist in different countries and contexts for statelessness. These reasons include discrimination against minority groups in nationality legislation, failure to include all residents within the body of citizens when a state becomes independent (state succession) and conflicts of laws between states. Their hardships vary, depending on time and place. When statelessness ultimately leads to human rights violations, stateless people are experiencing most inhuman treatments in their lives. They are denied legal identity, health care, education, social welfare means, and protection from violence and abuse.

The international community recognized the seriousness of the problem of statelessness about six decades ago. Having understood the gravity of the problem, the United Nations in 1954 adopted the Convention Relating to the Status of Stateless Persons and, subsequently in 1961, the Convention on the Reduction of Statelessness. Despite the existence of these two Conventions related to statelessness and also the complementary provisions in other human rights treaties, the international legal framework is not adequately reinforced. The low numbers of States Parties to the Statelessness Conventions show the lack of taking the issue seriously.

Although the World Council of Churches has a long history and tradition of upholding and defending the human rights of uprooted people in general, the 50th meeting of the Commission of the Churches on International Affairs (CCIA) held in Albania in October 2010 took the decision for the first time giving the mandate to the CCIA / WCC to focus on the rights of stateless people in the coming years. A Working Group formed at the Albania meeting has been addressing the concern on statelessness since the Albania meeting. The CCIA organized an

international consultation for the first time on the Human Rights of Stateless People in Dhaka, Bangladesh in December 2011. As a follow-up of the Dhaka Consultation a Study on the Situation of Statelessness in South Asia was undertaken and the report was presented to the 51st meeting of the CCIA held in the People's Republic of China in June 2012. The CCIA meeting of China mandated proposing a Public Issues Statement at the Tenth Assembly of the WCC that will be held in Bussan, Korea in October-November 2013 and also organizing a second international consultation focusing on the situations of stateless people in different parts of the world. The second international consultation was held in Washington D.C. from 27 February to 1 March 2013 at Calvary Baptist Church with the collaboration and support of the American Baptist Church in the USA (ABC). We especially thank the leadership of ABC for their assistance and support in hosting the event.

The Washington Consultation assessed the situation of stateless people in the world including those who are stranded and confined to refugee camps during several generations with little or no hope to aspire for. The Consultation also explored ways of bringing the issue of statelessness to the WCC Assembly and initiated a process of the preparation of a Public Issues Statement on Human Rights of Stateless People. Having listened to various presentations and reports from different contexts of statelessness, especially in the context that a large number of stateless people in the world are experiencing inhuman treatment and denial of basic human rights, the Washington Consultation tried to evolve ecumenical advocacy strategies to address the concerns of the Stateless People worldwide. A detailed report of the proceedings of the Consultation with proposals on future advocacy strategies as well as various papers and reports presented at the Consultation are included in this booklet. I hope that this publication will go some way to help understand the problem of statelessness and to reflect on how the ecumenical advocacy on this issue can be focused in future in partnership with the United Nations and civil society organizations.

*Mathew's George Chunaakara*

*Director,*

*Commission of the Churches on International Affairs, WCC*



# **Report of the Proceedings of the Consultation**

- Semegnish Asfaw / Nan Braunschweiger

The international consultation *Towards an Ecumenical Advocacy on the Rights of Stateless People* started on Wednesday 27 February with a thematic address by Dr Mathews George, Director of the Commission of the Churches on International Affairs (CCIA), on the theme *Statelessness in the World and Rights of Stateless People*. He explained that statelessness refers to the condition of an individual who is not considered as a national by any State. Stateless people are not refugees, but often they are people who have deep roots in their own societies and home countries. As these categories of people are denied the right to citizenship, they do not have the right to a nationality which has resulted in a situation of considering themselves or others as *citizens of nowhere*.

Statelessness can be perpetuated due to various reasons: lack of national legal provisions and administrative practices concerning the acquisition, change or loss of nationality which do not respect and ensure the right to a nationality, etc. In several countries, nationality laws deny women the right to pass on nationality to their children. Lack of safeguards against statelessness at birth and administrative decisions on nationality and citizenship, including punitive withdrawal of nationality, are often cited as the most important factors rendering persons stateless.

The conference then continued with a presentation from Ms Sarnata Reynolds, from Refugee International, about *Preventing Statelessness and Discrimination of Stateless People*. The primary responsibility for ending statelessness rests on governments. States have the sovereign right to determine the procedures and conditions for the acquisition and termination of citizenship, it is also the state's duty to protect the right to nationality and put in place norms that support recognition of all those who would otherwise be stateless. However, when states violate their obligations and people need protection, the task of helping the world's stateless people falls to the office of the UN High Commissioner for Refugees (UNHCR).

Statelessness is both a cause and consequence of discrimination, exploitation, and forced displacement in all regions of the world. It can

occur as a result of one or more complex factors including political change, targeted discrimination, often due to race or ethnicity, differences in the laws between countries, the transfer of territory, difficult or discriminatory laws relating to marriage and birth registration, and the expulsion of people from a territory.

These isolated and overlapping causes create many opportunities to battle statelessness globally. While the statelessness conventions may not provide a right of action, or a formal method to report violations of rights, like all others, stateless people are entitled to human rights protection through the Universal Declaration of Human Rights (UDHR) and other customary international human rights law and standards. These rights follow the stateless wherever they go and must be respected and protected by governments, employers, recruitment agents and the communities in which they live and work.

Mr Sebastian Kohn, from the Open Society Justice Initiative, shared about *Statelessness and Nationality Laws*. He recalled the Westphalia Peace Conference which marked the birth of the current state centric international system of sovereign political entities, thus leading to the beginning of citizenship as we know it today. To this day, a decision on acquisition or loss of nationality primarily lies within the sovereignty of a state.

Acquisition of nationality is the link between the individual and the state. Nationality is most commonly acquired either on the basis of the place of birth (*jus soli*) or on the basis of descent (*jus sanguinis*). Citizenship from birth can be granted either automatically or non-automatically, depending on whether the person is a national from the time of birth, regardless of whether she/he has been registered or not, or depending if nationality requires some form of registration. Citizenship can also be acquired through naturalization. Discrimination is, generally speaking, more prevalent in naturalization rules than in rules for acquisition of nationality from birth.

A number of international treaties have been adopted to guarantee that every child has a right to acquire a nationality. The Convention on the Reduction of Statelessness and the African Charter on the Rights and Welfare of the Child, for example, stipulate that children must be

granted nationality of the country where they are born if they would otherwise be stateless. Furthermore, the Convention on the Elimination of all Forms of Discrimination against Women prohibits, along with many other international treaties, sex-based discrimination.

National legislations usually prescribe criteria for loss of nationality. Loss of nationality can happen automatically, i.e., by operation of law, or through a non-automatic decision by the state with respect to an individual or a group of individuals. International law clearly prohibits arbitrary deprivation of nationality. Deprivation of nationality that results in statelessness is arguably also prohibited under customary international law, or at a minimum forbidden under the Convention on the Reduction of Statelessness.

Mark Manly, Head of Statelessness Unit, United Nations High Commission for Refugees (UNHCR) in Geneva, gave an overview of international law as it relates to statelessness. The right to a nationality is enshrined in international law. The 1961 Convention on the Reduction of Statelessness plays a major role as it establishes a legal framework for the prevention and reduction of statelessness. While this Convention gives content to the right to a nationality by setting out rules that are to be implemented through nationality laws to prevent and reduce statelessness, various administrative steps are required at the national level to ensure every person possesses a nationality.

People who have already become stateless will have their rights protected by the 1954 Convention relating to the Status of Stateless Persons and by international human rights law. There is a set of international legal standards for the protection of stateless persons and for the prevention and reduction of statelessness; however, this framework needs to be reinforced, including through additional accessions to the two UN Statelessness Conventions. On a positive note, the issue of statelessness has gained tremendous momentum, particularly during and since 2011, the 50th anniversary of the 1961 Convention, and real progress has been seen through increased accessions to the statelessness conventions and their implementation by States.

Although statelessness is primarily the responsibility of States, the United Nations High Commissioner for Refugees (UNHCR) is entrusted by the General Assembly of the United Nations with a mandate to identify and protect stateless persons and to prevent and reduce statelessness worldwide. Today, UNHCR has a global statelessness mandate which encompasses four pillars, namely the identification of stateless persons, the prevention and reduction of statelessness as well as the protection of stateless persons.

Rev. Aundreia Alexander, of the American Baptist Churches in the USA, shared about *Women and Statelessness*. A person – man or woman – without a country is a person who is certain to suffer from a perpetual violation of basic human rights and dignity. The overall wellbeing of a stateless person is impacted by the state of being invisible. Since she does not exist in the eyes of any government entity, her children may not be allowed to attend school or have access to life saving healthcare, including vaccines; she is limited, or barred, from viable employment, is not allowed to vote or own property; she cannot travel freely because she does not have proper identity documents. Travel restrictions may result in permanent or extended separation from family. Access to basic necessities of life and sustenance - food, clothing and shelter - are limited.

Stateless women and children have a higher likelihood of being victims of violence and sexual exploitation including human trafficking, domestic violence, and unreported rape. They are more likely to be exploited and trafficked for labour. Because they lack legal citizenship reporting crimes could lead to more victimization so they are often without protection of the law.

In some cases a stateless person might find herself being bounced around from country to country due to successive deportations, no country will allow her to stay. She may also be relegated to extended stays in detention centres for not having legal status in a given country. The barrage of problems that come with being stateless often results in deep depression, anxiety and even Post Traumatic Stress Disorder (PTSD). And finally even in death they are not officially documented causing problems in passing on what little may have been accumulated and having a proper meaningful process for laying a loved one to rest.

Dr Maureen Lynch, International Observatory on Statelessness, informed the group about *The Humanitarian Implications of Statelessness*. It is difficult to have a sense of the condition of stateless people without even any evidence of their existence. Surveys conducted by the International Observatory on Stateless (IOS) have shown that it IS possible to quantify some of the harms resulting from the denial and deprivation of citizenship. Stateless people generally cannot access jobs in the formal sector. Statelessness has a negative impact on ability to generate income. Stateless/formerly stateless people often live in poor and overcrowded conditions, and rarely own property. Statelessness has a negative impact on natural assets. Stateless/formerly stateless women must contend with a heap of challenges – especially those in mixed marriages or in countries with inequitable nationality laws. Statelessness has a negative impact on health expectancy. Stateless communities have poor sanitation. Concerning education, it is frequently reported that stateless children cannot attend school, though certainly some of them can.

Various case studies were also presented during the conference: people of Haitian descent in the Caribbean, Rohingyas in Myanmar and Bangladesh, stateless people in Jerusalem and in the Middle-East, statelessness in the Netherlands. A presentation was also made about the risk of statelessness in new countries such as in the Republic of South Sudan.

The conference was also the opportunity to hear the voices of stateless people. These live testimonies were a concrete illustration of the burden stateless people face as a result of their lack of legal status. Being denied the possibility to claim any rights, they often are “invisible”, and therefore victims of exploitation, discrimination, and ill-treatment.

### **Recommendations from groups**

Participants of the conference were asked to break into three groups and reflect on ecumenical advocacy strategies for protecting the human rights of stateless people. The following are the findings from the group discussions at various levels: CCIA/WCC, UN Human Rights Council, UNHCR, Civil Society.

## ***Group 1***

### CCIA/WCC:

1. Support conventions 54 and 61 and advocate for states to sign them. Join forces with the Roman Catholic Church, Pentecostals and WEA to have more push in this matter
2. UNHCR will be at the assembly in Busan with a photo exhibition that can “travel” afterwards to help tell the story
3. Focus on key situations because the issue is all around. Could do it by countries with a lot of stateless people (Myanmar, Kuwait, Malaysia, Dominican Republic), by theme (gender discrimination, countries who have pledged to sign the 54.61 conventions, discriminatory nationalization laws)
4. Have a working group under CCIA on stateless people (with stateless people part of it)
5. Communicate with member churches in countries with large populations of stateless people in order to make sure they will not be persecuted if we speak out (or, make sure they are ok with strategy, etc.)
6. Pray for stateless people- specifically, write prayers and litanies that can be used in worship.
7. Educate and empower people in churches to act.
8. Develop a theology of statelessness
9. In the ecumenical prayer cycle for countries, include specific information about statelessness in those countries
10. Request the WCC to set up a programme for statelessness

### HRC:

1. At the periodic review at the UN in Geneva, feed questions and recommendations to countries (there is actually a lot of opportunity to be had here)
2. Work with organizations that are already doing this (Quakers, Refugee International, Open Justice Society)

## UNHCR:

1. Within UNHCR, we can advocate for more funding for stateless peoples
2. Follow-up on the conversation late last year that the WCC participated in with the High Commissioner - check with possible implications for stateless people.
3. Keep in mind UNHCR budgets for stateless people is determined by 5 regional bodies- this is an opportunity to influence the money in the regions that can go to certain countries for stateless issues.

## Civil Society:

1. Meet with ambassadors in countries where you are living, including those at the UN, to talk about the issue (it will help if you mention you have met with representatives and State Dept.)

## ***Group 2***

### What churches can do:

1. Churches can observe a *Day of Prayer* that focuses on stateless people of a particular group, for example, praying for stateless Haitians in the Dominican Republic. Stories of the stateless persons can be woven into the worship service.
2. Churches can ask lawyers to help train paralegals (pro bono) to register stateless people for identity cards and also advocate and ask the UN and other international agencies like USAID, foundations, UNHCR, to provide funding to train paralegals.
3. Churches can also open their facility to host a centre for paralegals to work with stateless people.
4. Churches can also educate church members and civil society about statelessness. CCIA and WCC member churches can produce worship materials that raise awareness and give voice to stateless peoples.

5. CCIA and WCC members can encourage the local churches to be a sanctuary, a refuge for stateless peoples and become a community for stateless people, a place of acceptance and solidarity.
6. CCIA and WCC member churches should allow stateless people to be at the table and be their own advocates, allowing their voices to be heard so that they can be empowered to be their own advocates.
7. WCC/CCIA can call a joint conference with churches and the UN Human Rights Council at the UN on stateless people, holding hearings on the various issues that touch stateless people, letting the UN know of our concern of this issue, and lifting up the visibility of statelessness.
8. WCC/CCIA should also partner with the Catholic Church at the highest level and with bodies like the US Conference of Catholic Bishops and similar bodies in other parts of the world where WCC member bodies reside.
9. WCC/CCIA should also partner with the Global Christian Forum.
10. WCC/CCIA and member churches should take up seriously the issue of stateless women and children and work to repeal discriminatory laws against women and their children by:
  - Connecting with women's division/groups of member churches
  - Partner with and form coalitions with interfaith groups especially for those countries where Christians are not the majority group, like Muslim countries in the Middle East and Balkan states;
  - For Myanmar, forge partnerships and coalitions with Buddhist and Muslim groups;



### ***Group 3***

1. Establishment of job creation - civil society
2. Work with donor agencies to improve the quality and delivery of health care - UNHCR
3. Design educational programmes for government officials about the purpose of national identity cards. Join and support international coordinated efforts - CCIA and Civil society
4. Make the issues of statelessness more visible in the WCC/CCIA
5. Work with partners, including governments, the World Bank, European Union, and other multi-laterals, UN agencies and UNICEF to improve education for K-12 - Civil society and UNHCR
6. Adult education and support including language education - civil society
7. Work with law enforcement agencies to improve the ability for stateless people to move about - civil society and the churches
8. Support anti-discrimination campaigns; develop theological and ethical frameworks that include issues of colourism and racism, stereotypes and perceptions - Civil society, CCIA and Churches
9. Send a communique to select stateless people groups - CCIA
10. Advocate to those governments that have not signed the UNHCR conventions - NHCR and CCIA
11. Provide greater access and information regarding citizens' rights - CCIA
12. Contribute to the universal periodic review on statelessness - Churches
13. We also recommend that intentional efforts be made to learn from stateless people to build capacity. Allow stateless people to speak for themselves. We recommend that stateless people speak at the WCC 10th Assembly. Lastly, to promote workshops on stateless people at the WCC 10th Assembly.



## **Communiqué**

from the consultation

*Towards an Ecumenical Advocacy on the Rights of Stateless People*

27 February to 1 March - Washington, D.C., United States

*In September 2012, Berlina Celsa, a nine-year-old child in the Dominican Republic, was raped and murdered. The man charged with the crime was ordered to pay a small fee to secure release from jail. When Berlina's lawyer protested the miniscule bond amount, the judge said it was appropriate because Berlina did not exist – that she did not exist legally because she was stateless. At the time she was born, Berlina was a legal citizen; however, in 2010 the government amended its nationality law and applied it retroactively, denationalizing thousands of people born to parents who were not legally residing in the state at the time of the birth. Berlina's story is one among many examples of statelessness which can be found among 12 million stateless people around the world.*

The growing number of stateless people is neither a temporary problem nor the random product of chance events. It is the predictable consequence of human rights abuses, the result of decisions made by individuals who wield power over people's lives. Discrimination and statelessness live side by side; it is no coincidence that most stateless people belong to racial, linguistic and religious minorities.

We the participants of an international consultation organized by the Commission of the Churches on International Affairs of the World Council of Churches (CCIA /WCC) on *Towards an Ecumenical Advocacy on the Rights of Stateless People*, made up of representatives from the WCC member constituencies, international organizations, civil society organizations, social and human rights activists, and policy makers, and supported by the Office of the United Nations High Commissioner for Refugees (UNHCR), have heard stories of the plight of the stateless people in different parts of the world.. We came together in Washington DC, USA from 26 February to 1 March 2013 for this international consultation of CCIA hosted by the American Baptist Churches USA (ABCUSA).

We have gathered together to assess the situation of stateless people including those who have been stranded and confined to refugee camps over several generations, to explore ways of bringing the issue of statelessness into focus as a part of global ecumenical advocacy, especially in the context of the forthcoming 10th Assembly of the WCC to be held in Busan, Korea, and to initiate discussions through a Public Issue Statement on the Human Rights of Stateless People. We also have explored ways of seeking to influence policies at the global, regional and national levels by projecting a Christian perspective rooted in ethical responses and evolving ecumenical advocacy strategies to address the concerns of stateless people worldwide.

We affirm these cardinal universal principles and values: that every person has the right to life, liberty and security. Every person has the right to education, the right to equal protection of the law, the right not to be enslaved and to be free from torture. Every person has the right to freedom of thought, conscience, and religion. Every person has the right to opinion and expression. Every person has the right to nationality. Stateless persons are denied all of these rights. 'To be stateless is to be without nationality or citizenship.' The United Nations 1954 Convention relating to the Status of Stateless Persons sets out the definition of a stateless person as one "who is not considered as a national by any State under the operation of its law."

The UNHCR estimates that there are up to 12 million people in the world who are stateless and many more are at risk of becoming stateless. Statelessness can occur as a result of one or more complex factors including political change, differences in the laws between countries, laws relating to marriage and birth registration, the transfer of territory and targeted discrimination often due to race, ethnicity, gender or religion.

The impact of statelessness is manifold: lack of access to viable employment and education, the disintegration of families, and denial of basic necessities of life. Stateless persons may consider themselves as citizens of nowhere and therefore people without value. This notion of being invisible leads to a debilitating sense of worthlessness and desperation, to higher incidences of addiction, violence and suicide, all

of which subject stateless people to exploitation in such forms as human trafficking, kidnapping etc. As a result of their plight, many stateless persons are forced to cross international borders and become refugees.

Jesus Christ, in his teaching ministry, linked the command to love God with all one's heart (Deuteronomy 6:5) with the command to love one's neighbour as oneself (Leviticus 19:18; Mark 12:33). By placing these two commands in immediate juxtaposition, Jesus asks us to understand each in light of the other. This is a consistent trend throughout the gospels and also the writings of St Paul; as he writes to the Galatians: "Through love be servants of one another. For the whole law is fulfilled in one word, 'you shall love your neighbour as yourself'" (Galatians 5:13-14). The ways we love our neighbour reveal the authenticity of our faith in God in the most concrete terms (1 John 3:16-18).

In the story of the last judgment, the Son of Man, the King, the shepherd, the Son of the Father, the exalted Lord identifies himself with the hungry, the thirsty, the strangers, the naked, the sick and the prisoners of all times and all nations. He bestows the ultimate dignity upon the destitute and marginalized by giving himself to them and being unreservedly identified with them. "Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me" (Matthew 25:40). In word and in deed, Jesus takes to himself, in a very special way, the ill and the sinners, the despised and the abandoned, and treats them as his equals, making their cause his own. So too, he says now that whatever was done to the helpless was done to him.

The underlying theological assumption of active concern for those who are suffering is the belief that all people created by God constitute an inextricable unity. Solidarity and compassion are virtues that all Christians are called to practice, regardless of their possessions, as signs of their Christian discipleship. Compassion and care for one another and acknowledging the image of God in all humanity is at the core of our Christian identity and an expression of Christian discipleship. Humanitarian conduct is an essential part of the gospel. The commandment of love, the greatest commandment of our Lord Jesus Christ, is to love God and to love one another.

Living in communion with God is sustained, nourished and actualized in the church by hearing and proclaiming God's word, the sharing of the body and blood of Christ, and a life of active compassion and care toward the disenfranchised. Caring for stateless women, men, boys and girls, the refugees and marginalized people is a sacramental act that unites Christians with God, since God has identified with them and demands we serve with acts of justice, compassion and care. God is with them as God is in the liturgy, and in the proclamation of the gospel.

The issue of statelessness must be addressed in a comprehensive manner. The states must confer citizenship to prevent and reduce statelessness and protect the basic human rights of citizens and stateless people alike. Faith communities, civil societies, NGOs and stateless persons will work together to advocate for the remedy and prevention of future statelessness. It is within the power of God the creator, the God of salvation and the Spirit of God that infuses us, to bring justice and peace to stateless persons.

# ***Thematic Presentations***





## **Statelessness and Human Rights of Stateless People: An Overview**

- *Mathews George Chunakara*

The state of being stateless is a most miserable situation a person can face in his or her life. Statelessness refers to the condition of an individual who is not considered as a national by any State. To be stateless is to be without nationality or citizenship. Stateless people of this world come under the classification of people who are rejected by their countries of birth and unwelcome everywhere else, they are called “the stateless”. The 1954 Convention relating to the Status of Stateless Persons sets out the definition of a stateless person as one “who is not considered as a national by any State under the operation of its law.” If people remain stateless, they are forced to live in the midst of a range of problems, depending on where they live and why they became stateless. Statelessness was first recognized as a global problem during the first half of the 20th century. Now it is recognized that every region of the world is not free of the problems that lead to statelessness. However, the precise number of stateless persons around the world is unknown, but it is estimated that there are more than 12 million stateless people in the world and they are forced to live in vulnerable contexts. As the UNHCR says, it cannot provide definitive statistics on the number of stateless people around the world, but the number estimated by the UNHCR two years ago included 3.5 million in the 65 countries for which there were reliable statistics. States are often unwilling or unable to provide accurate data as they have no proper mechanisms for registering stateless persons. Additionally, there is no clear requirement for a State to identify or report on the numbers of stateless persons living in their territories. In the past twenty years, growing numbers of persons have been deprived of their nationality or have not been able to gain an effective citizenship.

A series of reasons for statelessness have been identified: from disputes between States about the legal identity of individuals, State succession, protracted marginalization of specific groups within society, or from stripping individuals or groups of their nationality. The redrawing of

international borders, the manipulation of political systems by national leaders with the aim of achieving questionable political ends, or the denial or deprivation of nationality to exclude and marginalize unpopular racial, religious, or ethnic minorities have resulted in statelessness in every region of the world.

### **Stateless people: “citizens of nowhere”**

The stateless people are not refugees, but often they are people who have deep roots in their own societies and home countries. In some contexts, these people belong to second or third generations. As these categories of people are denied the right to citizenship, they do not have the right to a nationality which has resulted in a situation of considering themselves or others as “citizens of nowhere”.

When we say that twelve million people in the world are stateless, one may think that this is not a big number when it is compared to millions or billions of people in different countries. Most people in the world may not often think about their nationality because they acquire it automatically when they are born. There are two most common principles for granting citizenship which operate at the moment of birth: in legal terminology these are known as *jus soli* and *jus sanguinis*, the “law of the soil” and the “law of blood”, respectively. The principle of *jus soli* provides that those born in the territory of a country have the right to citizenship of that country, except for a few common exceptions such as children of foreign diplomats. *Jus sanguinis* confers citizenship on children whose parents are citizens of a given country. Statelessness is prohibited under international law. However, international law has not historically expressed a preference for one principle for granting citizenship over the other.

There exists not only a lack of systematic attention given to recording reliable statistics but also a lack of consensus on whom to be listed when recording stateless people. The people who come under the classical definition of stateless are not the only people who are denied nationality. There are thousands of others also in this world who have not been formally denied or deprived of nationality but who lack the ability to prove their nationality. They are *de facto* stateless persons. Anyone who is unable to establish their nationality or whose nationality is either

disputed or ineffective may be considered *de facto* stateless. As a result, the term “statelessness” is once again being used to describe a wide variety of unprotected persons. The group of *de facto* stateless persons is normally regarded as persons who do possess a nationality, but do not possess the protection of his State of nationality and who reside outside the territory of that State. This kind of statelessness arises for persons in the countries of desired nationality in situations where there is prolonged non-cooperation by competent authorities with an individual’s efforts to clarify his or her citizenship status. Although this category of people, technically, hold a nationality they do not receive any of the benefits generally associated with nationality or national protection. For all practical purposes, they are stateless as they cannot rely on the state of which they are citizens for protection. This is due to the laws in certain countries where there are only limited opportunities to acquire citizenship.

### **Stateless people of the world**

Every continent of the world has stateless people. Their hardships vary depending on time and place: lack of access to health care, school, denial of official documents such as a birth certificate, a passport or a driver’s license. As the stateless people lack access to identification papers to prove their citizenship, they are not eligible to vote and participate in political processes, unable to obtain travel documents and unable to access a range of government services and employment. In the European Union (EU), for example, stateless people are not able to vote and are even barred from certain public sector jobs. In Malaysia, stateless children in Selangor and Sabah are frequently denied access to basic education. Stateless people, like some Lisu and Lahu hill tribes living in Mae Ai or the Akka people in Mae Sae, in Thailand are unable to access basic healthcare. When Thaksin was prime minister of Thailand he introduced a health care plan with a nominal fee of Thai Baht 30 (less than 1 U.S. \$) at that time, but the stateless hill tribes could not avail themselves of that health care system as they had no documents to prove their citizenship.

In some EU states, the Roma people scattered in different European countries or “erased citizens” of Slovenia who suffered for a long time, have been systematically denied access to both health care and education

on a par with other citizens of the countries where they reside. The largest number of stateless people in Europe are Roma and in a number of European countries they have no right to nationality. Many Roma lack personal identity documents which hinder their access to basic human rights, such as education and health services, which increases their susceptibility to continued statelessness. They live entirely outside of any form of basic social protection or inclusion. In recent years, political developments in several countries and regions in Europe have made Roma people more vulnerable. The break-up of former Czechoslovakia and former Yugoslavia caused enormous difficulties for persons who were regarded by the new successor states as belonging somewhere else - even if they had resided in their current location for many years. The Czech Republic used a citizenship law which made tens of thousands of Roma stateless. In Slovenia several thousand persons, among them many Roma, became victims of a decision to erase non-Slovene residents from the Register of Permanent Residents. Croatia and "the former Yugoslav Republic of Macedonia" also adopted restrictive laws which made access to nationality very difficult. The Kosovo conflict led to a large displacement of Roma people primarily to Serbia, Bosnia and Herzegovina, Montenegro and "the former Yugoslav Republic of Macedonia" but also to other countries outside this sub region.

When Thomas Hammerbag was human rights commissioner of the European Union he made observations in one of his last reports on the human rights of stateless people in Europe. He noted that, "it is not acceptable that European citizens are deprived of their right to a nationality - a basic human right. It is necessary to address this problem with much more energy than has been done so far." He also reported that the stateless Roma people often do not have the means to speak out themselves and many Roma do not know how to approach ombudsmen and other national human rights institutions.

The other most vulnerable group of stateless people is the Rohingya ethnic people in Myanmar/Burma and in Bangladesh. Many of them, who live in Myanmar's Rakhine state, are branded or regarded as *foreign or alien*. Within Myanmar, they are known as *Bengali* rather than Rohingya. A series of major clashes between Rakhine Buddhists and Rohingya people in Myanmar left a score of deaths last year. There are

135 registered ethnic groups in Myanmar but Rohingyas are not included in the official list. The Myanmar elite used to recognize them as a part of the nation but there were several attempts during the military dictatorial regime in the 1970s to delete them from the notion of state building and make them out to be strangers. Some 200,000 Rohingya people have taken refuge in Bangladesh since then. The clashes last year displaced at least 70,000 people who are currently living in 50 camps scattered near Sittwe, Kyauktaw and Maungdaw townships in Rakhine State.

Brad K. Blitz and Maureen Lynch, who made a comparative study on statelessness and the benefits of citizenship, observe that one of the central concerns for the prevention and reduction of statelessness is the degree to which race and ethnicity are prioritized over civic criteria, or vice-versa, in the design of exclusive nationality and citizenship laws. They point out that in practice, nationality policies built on the principle of blood origin (*jus sanguinis*) rather than birth on the territory (*jus soli*) have made the incorporation of minorities, especially children of migrants, particularly difficult. In several parts of the world from Cote d'Ivoire to the Dominican Republic to the former Soviet Union to Germany and Italy, the principle of membership on the basis of blood origin has locked many minority groups out of the right to citizenship in their habitual state of residence.

### **Right to citizenship and nationality: universal human rights**

The right to citizenship and nationality are basic human rights and they are universal. Several international legal instruments offer a means of protecting the rights of stateless people, but many states failed to ratify and comply with the provisions. While statelessness is perpetuated due to various reasons, in several contexts it is partly as a result of lack of national legal provisions and administrative practices concerning the acquisition, change or loss of nationality which do not respect and ensure the right to a nationality. In several countries nationality laws deny women the right to pass on nationality to their children. Lack of safeguards against statelessness at birth and administrative decisions on nationality and citizenship, including punitive withdrawal of nationality, are often cited as the most important factors rendering persons stateless. In several countries in the Gulf and Middle East such as Syria, Jordan, Kuwait, Oman, Bahrain and Lebanon, citizenship laws do not permit

women to pass their citizenship to their husbands or their children. Take for example, a country like Lebanon which had a history of progressive policies related to the equal rights of women, such as a woman's right to vote in 1953, laws related to permission for women to travel freely which was introduced in 1974, equal rights to retirement and social security benefits in 1984 as well as equal rights to conduct business freely in 1994. Despite all this, it is not possible for a Lebanese woman to pass on her citizenship, which is a gross violation of a fundamental right that in many ways thwarts almost any progress the country has made related to the "equality" of women.

There are eleven countries including Lebanon in the Middle East and in the North African region that do not yet grant equality to women with regard to the right to pass on their nationality to their children. (Qatar, Kuwait, Lebanon, Syria, Mauritania, Jordan, Libya, Saudi Arabia, UAE, Bahrain, Oman). In Asia, four countries maintain laws that do not provide mothers equal rights as they do to fathers to confer their nationality on their children. Only fathers can confer their respective nationalities on children in countries such as Brunei, and Iran. In Malaysia, children born in the country to either Malaysian mothers or Malaysian fathers acquire Malaysian nationality. But children born to Malaysian mothers outside of Malaysia may only acquire Malaysian citizenship if the father is also Malaysian. Nepal's nationality law also has discriminatory provisions related to children born of Nepali mothers and fathers of foreign citizenship. Although African countries have generally witnessed numerous reforms to nationality laws in recent years which have granted equality to women and men with regard to conferral of nationality on their children, several countries maintain legislative provisions that do not yet do so. For example, the laws of Somalia and Swaziland do not allow mothers to confer their citizenship on their children. There are other African states with constitutional guarantee of equality that have not yet reformed nationality laws to introduce gender equality; they are Burundi, Liberia, Sudan and Togo. In the Caribbean region, two states do not allow women to confer nationality on their children on the same terms as fathers - the Bahamas, and Barbados.

The question of nationality falls, in principle, within the domestic jurisdiction of each State. However, the applicability of a State's internal decisions can be limited by the similar actions of other States and by

international law. This aspect was clarified by the Permanent Court of International Justice, in its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923. The Permanent Court of International Justice stated that “The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations.” In effect, the Permanent Court said that while nationality issues were, in principle, within domestic jurisdiction, States must, nonetheless, honour their obligations to other States as governed by the rules of international law.

This approach was reiterated seven years later in the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. Indeed, many States commented on the Permanent Court’s 1923 Advisory Opinion and most States interpreted the Advisory Opinion as a limitation on the applicability of a State’s nationality-related decisions outside that State, especially when those decisions conflict with nationality-related decisions made by other States: “It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.”

How a State exercises its right to determine its citizens should conform to the relevant provisions in international law. Throughout the 20th century, those provisions gradually developed to favour human rights over claims of State sovereignty. The Universal Declaration of Human Rights, the 1997 European Convention on Nationality and the Inter-American Court of Human Rights all affirmed the nationality rights.

### **Rights of stateless people: international human rights instruments**

The existence of stateless people poses serious questions and challenges to the central tenets of international law and human rights principles which we have been seriously discussing over the past 65 years.

The Universal Declaration of Human Rights (UDHR), Article 15, implicitly acknowledges the principle of the right to nationality of an individual. This is categorically affirmed when the UDHR states that “*no*

*one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*” International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill the mandates of protecting human rights. The obligation to respect means that States must refrain from interfering with or curtailing the right to enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

Originally, norms to prevent statelessness were to be included in a Protocol to the 1951 Convention relating to the Status of Refugees but eagerness to deal with the large number of post-war refugees at the time led to adoption of the Convention without inclusion of the Protocol. Action on statelessness was thus delayed until the Convention relating to the Status of Stateless Persons was adopted in 1954. The Convention on the Reduction of Statelessness was adopted in 1961. The 1954 Convention affirmed that the fundamental rights of stateless persons must be protected. At the same time, the 1961 Convention created a framework for avoiding future statelessness, placing an obligation on states to eliminate and prevent statelessness in nationality laws and practices. The main goal of the 1961 Convention is to help avoid statelessness. It is the only international instrument which outlines specific ways to identify a person’s nationality where statelessness would result otherwise. Unlike the Refugee Convention, however, the two Conventions on Statelessness have not been widely ratified.

In addition to the 1954 and 1961 Conventions, a number of other international instruments touch on the right to a nationality: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Nationality of Married Women, and the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws.



The UN Convention on the Rights of the Child (CRC), Article 7(1) states that “national governments must register children immediately after birth, and children enjoy the right from birth to acquire a nationality.” It requires that governments protect that same right as children mature and that a government must place its international obligation to protect the child’s right to nationality ahead of other national considerations. The CRC also states that a national government has a duty to grant a child born in its territory citizenship if the child is not recognized as a citizen by any other country.

The International Covenant on Economic, Social, and Cultural Rights protects the rights of everyone, regardless of citizenship, and regional instruments, such as the 1997 European Convention on Nationality, also contribute significantly to protecting the rights of stateless persons. The document underlines the need of every person to have a nationality, and seeks to clarify the rights and responsibilities of states in ensuring individual access to a nationality.

When human rights are violated, the doors to creating more and more statelessness are opened in this world and this is what we are witnessing today.

## Stateless Women: See Me, Hear Me

- Rev. Aundreia Alexander

### Introduction

In the opening chapter of her book *Women and Children Last*, Ruth Sidel, a sociology professor and activist for women and children in poverty, recounts the epic story of the maiden voyage and shocking demise of the Titanic. The Titanic, a historically renowned British ocean liner, was built and billed as unsinkable only to succumb to an iceberg four days into its journey. The ship sank to the bottom of the sea drowning the majority of passengers on board. In reference to the well-known ship protocol of the day, that in a time of disaster, women and children would be saved first, Sidel writes: “Women and children were, indeed, the first to be saved...All this is well known; less well known is the fact that the percentage of women and children saved in first and second class was far higher than the percentage saved in third class, known as ‘steerage’.”<sup>1</sup> She further points out that, in fact, the majority of women and children in steerage did not survive and that the ship’s framework and structure created the predictable disparate impact of the protocol:

*Access to the lifeboats was from the first- and second-class decks; the barriers to keep those in third class from going onto other decks were not removed during the disaster, and many could not find their way or, if they did could not get through. Moreover, little effort was made to save the people in steerage; indeed, some were forcibly kept down below by seamen standing guard.*<sup>2</sup>

Sidel uses the Titanic disaster as an example for the systemic disenfranchisement of women, children and minority cultures. The steerage class consisted of hundreds of poor ethnic minority emigrants from throughout Europe seeking a new life in North America. The ship’s structure was inherently discriminatory symbolizing the systemic

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<sup>1</sup> Ruth Sidel, *Women and Children Last: The Plight of Poor Women in Affluent America* (New York, New York; USA: Penguin Books 1992), xvi.

<sup>2</sup> Ibid.

division in hierarchical structures of a patriarchal society. At the top of the structure are ethnic majority/superior wealthy men who, under the guise of chivalry are the maker of the laws and arbiters of human worth. Placing women and children behind themselves they then further bifurcate and rank all women, children and other men into class and value between socio-economic status and ethnicity. The systems that lead to statelessness are similarly filled with “locked gates, segregated docks, and policies that assure that women and children will be first—not the first to be saved but the first to fall into the abyss.”<sup>3</sup>

The liberation and overall well-being of any oppressed group is more holistic when the oppressed contribute to their own liberation. A comprehensive and holistic approach to an ecumenical strategy for advocacy on rights for stateless women, and advocacy for the integration of those women into society, must fully incorporate the presence and voice of these women. They may be last in society’s hierarchy of who is who and perceived to be invisible but they are in fact ever present and should be heard.

Although the directed focus of this presentation is on women it will also address some of the most harmful ways that statelessness impacts children. Women and their children, especially in marginalized circumstances are often inextricably connected.

## **An overview of women and statelessness**

### ***Causes of statelessness***

Wherever there is an injustice or a disparity impacting a people group, women and children are invariably disproportionately affected. They are the marginalized of the marginalized. Circumstances leading to statelessness are no different.

The international legal status of “stateless person” refers to someone “who is not considered a national by any State (Nation) under the operation of its law.”<sup>4</sup> Statelessness is a perpetual state of limbo, where an individual does not have a legal bond of protection from a

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<sup>3</sup> Sidel, *Women and Children Last*, xvii.

<sup>4</sup> UNHCR 1954 Convention relating to the Status of Stateless Persons, Article I.

government entity. It is as if they do not exist because there are not any documents to validate his or her life. They are legally invisible.

The very definition of statelessness makes it extremely difficult to fully access the demographic specificity of stateless persons. The UNHCR has estimated that there may be as many as 12 million stateless persons around the world.<sup>5</sup>

Factors leading to statelessness fall into one of three primary causes that may also overlap:<sup>6</sup>

1. State succession;
2. Discrimination and arbitrary denial or deprivation of nationality; and
3. Technical causes.

State succession can cause statelessness when a State ceases to exist and individuals for various reasons fail to get citizenship. State succession usually causes statelessness in a non-discriminatory manner. Some technical causes often have a disparate impact on women and children. And other nationality laws distinctly discriminate against women. Like the Titanic scenario these factors include policies and procedures that function as “locked gates, and segregated decks” that keep women and children last.

For instance, in some countries a mother cannot confer her nationality status on to her child. State policies often deny citizenship to children born out of wedlock. Or a woman may lose her citizenship upon divorce. A child’s citizenship status may fall between the cracks due to onerous birth registration requirements. The 2012 report on the *State of the World’s Refugees* noted that a preliminary analysis by UNHCR found that more than 40 countries still discriminate in some manner against women not affording them equality with men in respect to nationality and identity.

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<sup>5</sup> *The State of the World’s Refugees: In Search of Solidarity* (UNHCR 2012), 17.

<sup>6</sup> *Citizens of Nowhere: Solutions for the Stateless in the U.S.: A Report from the UNHCR and Open Society Justice Initiative*, 13.

Fortunately laws that discriminate against women in respect to conferring nationality on to their children have been greatly reduced since the adoption in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>7</sup> For a list of the 26 countries where gender equality in respect to nationality have not yet been attained see the *UNHCR Background Note on Gender Equality, Nationality Laws and Statelessness* report issued in March, 2012.<sup>8</sup>

### ***Impact of statelessness on women and children***

A person without a country is a person who is certain to suffer from a perpetual violation of basic human rights and dignity. The overall wellbeing of a stateless person is impacted by the state of being invisible. They are not afforded the basic rights of being a citizen. Their children may not be allowed to attend school or have access to life saving healthcare, including vaccines. They are limited, or barred, from viable employment. They are not allowed to vote or own property. They cannot travel freely because they do not have proper identifying documents. Travel restrictions may result in permanent or extended separation from family. Access to basic necessities of life and sustenance-food, clothing, and shelter are limited.

Stateless women and children have a higher likelihood of being victims of violence and being sexually exploited including human trafficking, domestic violence, and unreported rape. Because they lack legal citizenship reporting crimes could lead to more victimization so they are often without protection of the law. The following overview is a common profile for stateless ethnic Uzbek women, married to Kyrgyz citizens. The recounted scenario reveals the complex circumstances that many stateless women find themselves facing:

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<sup>7</sup> *Background notes on Gender Equality, National Laws and Statelessness* (UNHCR March 2012), 1. Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) guarantees women's equality (1) with respect to acquisition, change, or retention of their nationality and (2) their ability to confer nationality on their children. The International Covenant on Civil and Political Rights and other treaties also address the issue.

<sup>8</sup> I will defer more detailed discussion of these factors and legal nuances to other presenters at this consultation who are addressing *Statelessness and National Laws and Statelessness in International Law*.

*[The women] usually carry expired Uzbek passports and lack the resources to travel to the Uzbek Embassy in Bishkek to request an extension of their validity. Absence of stable sources of income also prevents them from legalizing their stay in the Kyrgyz Republic. Lacking valid passports and fearing problems with border guards, they cannot legally cross the border any longer to visit relatives in Uzbekistan. If they manage to find day-labour, they often do not receive their salaries, as these are paid to their parents-in-law instead. Financially, they thus fully depend on their in-laws. They cannot receive social benefits for their children, and without valid documents, they are even denied access to medical services during delivery. In case of divorce, they are not entitled to any alimony or property and would have no place to live as they no longer possess the travel documents allowing them to return to Uzbekistan.<sup>9</sup>*

In some cases a stateless person might find themselves being bounced around from country to country due to successive deportations, no country will allow them to stay. They may also be relegated to extended stays in detention centres for not having legal status in a given country. The barrage of problems that come with being stateless often results in deep depression, anxiety and even Post Traumatic Stress Disorder (PTSD).

## **Recommended strategies**

### ***Toward an ecumenical advocacy on the rights of stateless people***

The UNHCR has adopted the following position on tackling the issue of statelessness:

*Protecting, assisting and helping to provide solutions for refugees, stressing the rights of stateless people and reducing statelessness are our core mandate...<sup>10</sup>*

The action undergirding the mandate is a focused four-dimensional approach: *Identification, prevention, reduction and protection.*<sup>11</sup> Accomplishing all four areas is a comprehensive response to ultimately end the

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<sup>9</sup> *Self-Study Module on Statelessness* (UNHCR 2012), 34.

<sup>10</sup> *Ibid.*, 12.

<sup>11</sup> *Ibid.*, 12-13.

phenomenon of statelessness. The UNHCR 1954 *Convention relating to the Status of Stateless Persons* and the 1961 *Convention on the Reduction of Statelessness* have laid a foundation for international laws that address the action areas calling for the identification of stateless persons and for the reduction and prevention of statelessness.<sup>12</sup> There is a growing willingness and commitment by States to take action to remove blatant gender bias in international law.<sup>13</sup> More States are also taking action to ensure that children are more easily registered for citizenship at birth. Both are some of the factors resulting in a reduction and prevention of statelessness.

Getting to the core of identification and protection requires a more collaborative effort with other partners including faith communities like the World Council of Churches and its over 349 churches and denominations located in over 110 countries and representing a membership of over 560 million people. The WCC and its member churches, with a history of serving the disenfranchised, is uniquely equipped and predisposed to partner with the UNHCR, persons affected by statelessness, civil societies, NGOs and other faith communities to implement a comprehensive and holistic strategy to end statelessness. The ultimate goal is to see all former stateless persons fully integrated into citizenship and enjoying economic and social inclusion.

### ***Biblical and theological framework***

The WCC has a membership of churches and people of faith who share common moral and theological principles that are the framework that compel us all to love and care for the stranger among us. These principles include:

- Believing that all people, regardless of national origin, are made in the *image of God* and deserve to be treated with dignity and respect (Genesis 1:26-27, 9:6)

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<sup>12</sup> Ibid., 40.

<sup>13</sup> UNHCR *Background Note on Gender Equality, Nationality Laws and Statelessness* (March 2012).

- Believing there is an undeniable biblical responsibility to love and show compassion for the stranger among us (Deuteronomy 10:18-19, Leviticus 19:33-34, Matthew 25:31-46)
- Believing that the sojourners are our neighbours, and we are to love our neighbours as ourselves and show mercy to neighbours in need (Leviticus 19:18, Mark 12:31, Luke 10:25-37)

### ***Ethical framework - visible stateless advocates***

It is not unusual for advocates of the disenfranchised to advocate “on behalf of” and “for” the one marginalized. We talk of “speaking for” and “giving voice to the voiceless”. The power of advocacy and the depth of its impact are greater when the compassionate advocate works in collaboration with the one who is being harmed. If advocacy efforts rely on a profile based solely on a portrait of hopelessness cloaked in victimization, brokenness and dependency, we fail to acknowledge the reflection of a loving and life-changing God in the being of the one who - though marginalized - is in fact a valued human being with dreams, hopes, plans, etc. Additionally when disenfranchised persons are defined by their circumstances the stigma attaches and becomes a stereotype that may persist even when the circumstances have changed.

Stories that reflect resilience and overcoming obstacles will give courage to others who are waiting for laws and circumstances to get better for them. People are more empowered when they can contribute to their own liberation.

In chapter 5 of the Gospel of Mark, when the woman suffering from twelve years of hemorrhaging touched the hem of Jesus’ garment she was physically healed. But then Jesus acknowledged her and he listened to her tell her “whole story”, twelve years of suffering. It was only after she took personal responsibility for her healing *and* told her story that she was not only healed but had peace.

#### ➤ Recommendations

- Whenever possible include stateless persons at every level of conversation regarding policy and advocacy for policy changes



- Report stories of resilience and empowered voices in telling the story about statelessness
- If not already done, create an anthology of stories and circumstances of stateless people as a vehicle for them to tell their stories and also as a resource for advocacy and education

### ***Faith in action***

The report of the 2011 WCC-CCIA consultation on the *Human Rights of Stateless People* in Dhaka, Bangladesh made the observation that the local churches were either not adequately equipped to engage in legislative advocacy, not sufficiently knowledgeable about the issue of statelessness, and/or would risk political backlash for getting politically active. The call to action for the church must be layered and comprehensive. WCC should continue to work closely with the UNHCR and other international and regional bodies to further implement policies that will reduce and prevent statelessness. Additionally the WCC should implement a strategy of *in the meanwhile and an also approach*.

Systemic transformation on a global issue as significant as statelessness takes a long time to resolve. In the meanwhile people are suffering through the diminished state of not only being without a country but they are also without basic necessities of life and in need of social services, support and sanctuary.

The Christian Church has a long history of walking alongside the sojourner, particularly refugees and immigrants, providing a space for freedom of religious expression and mutuality of respect. As part of a comprehensive approach to improving the livelihood of stateless persons, the WCC can facilitate resources for member churches and local congregations to engage in holistic ministries of hospitality to stateless persons within their region. By serving as a welcoming community for stateless persons the church and the neighbour (stateless persons) are enriched. The faith community should serve as a liberating presence and sanctuary for the stateless, thus providing a space for one to find her own voice for self-advocacy and contribute to her own healing.

In furtherance of the UNHCR's mandate to identify and protect stateless persons the following recommendations will facilitate a comprehensive strategy for the WCC to equip churches in serving stateless people in their country/region.

➤ Recommendations

- Encourage congregations to serve as a space for social and spiritual community for stateless persons
- Education and awareness – statelessness is not as well understood in some regions as refugee, selected migration, or asylum. In those regions where there is known to be a critical mass of stateless person there should be a focused education and awareness campaign for congregations and civil society
- Create a WCC website specifically focused on ministries to stateless persons including:
  - Bible studies
  - Advocacy ideas from various regions
  - A place to share resources
  - Link to member church organizations' policy/resolution/positions on statelessness and related issues
- Partner with the Women's divisions of the member churches for WCC to disseminate information related to women and children
- Encourage congregations, where possible, to provide assistance to stateless persons and cultivate partnerships with civil society and NGOs.

***Comprehensive public policy***

The all-encompassing impact of statelessness will not be resolved merely because citizenship is achieved. It will be beneficial to the state and the individual if the state invests in a comprehensive approach to assimilating former stateless individuals into full citizenship. The comprehensive package of resources should include the following recommended components.

➤ **Recommendations**

- Mental health resources to address depression, anxiety, PTSD, etc.
- Education for adults and children
- Access to training that will lead to viable employment
- Health care
- Micro business loans for individuals who meet predetermined criteria
- Full integration into society including fair access to all social and economic benefits and responsibilities

**Conclusion**

As noted in the opening, the Titanic with its locked gates and divided decks was structurally intended to segregate genders, ethnicities, and classes. It was built to serve the pleasure of the elite. It was built to last. It was thought to be indestructible. But it was in fact summarily defeated. The injustice of statelessness and its even more disparate impact upon women and children of ethnic and religious persecuted groups looms large and seems to be unsinkable. Collaborative efforts of nations, faiths, civil societies and the women and children affected are a force to contend with and can sink the ship of injustice.

## **Statelessness and Discrimination**

*- Sarnata Reynolds*

Every person has the right to a nationality. And while States have the sovereign right to determine the procedures and conditions for the acquisition and termination of citizenship, it is also the state's duty to protect the right to nationality and put in place norms that support recognition of all those who would otherwise be stateless. Attention to stateless populations is increasing, but they remain, essentially, international orphans.

The primary responsibility for ending statelessness rests on governments. However, when states violate their obligations and people need protection, the task of helping the world's stateless people falls to the office of the UN High Commissioner for Refugees. The UNHCR was given a mandate over stateless persons when the 1961 Convention on the Reduction of Statelessness came into force.

Every person has the right to a nationality. Yet statelessness continues to be a fundamental cause of discrimination, exploitation, and forced displacement in all regions of the world. Statelessness is a highly complex legal and often political issue with a disproportionate impact on women, children, and ethnically mixed families. It has serious humanitarian implications for those it affects, including no legal protection or the right to participate in political processes, poor employment prospects and poverty, little opportunity to own property, travel restrictions, social exclusion, sexual and physical violence, and inadequate access to healthcare and education.

Statelessness is both a cause and consequence of discrimination, exploitation, and forced displacement in all regions of the world. It can occur as a result of one or more complex factors including political change, targeted discrimination, often due to race or ethnicity, differences in the laws between countries, the transfer of territory, difficult or discriminatory laws relating to marriage and birth registration, and the expulsion of people from a territory.

These isolated and overlapping causes create many opportunities to battle statelessness globally. While the statelessness conventions may not provide a right of action, or a formal method to report violations of rights, like all others, stateless people are entitled to human rights protection through the UDHR and other customary international human rights laws and standards. These rights follow the stateless wherever they go and must be respected and protected by governments, employers, recruitment agents and the communities in which they live and work.

The violation of the right to nationality is directly or indirectly related to the violation of other rights such as education, political participation, property ownership, and freedom of movement.

**All people have the right to:**

- Life (all conventions)
- Nationality
- Freedom from torture, and other cruel, inhuman or degrading treatment or punishment (ICCPR and CAT)
- Freedom from slavery and servitude (ICCPR)
- Freedom from imprisonment for inability to fulfill a contractual obligation (ICCPR)
- Freedom from discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR)
- Recognition as a person before the law (ICCPR)
- Freedom of thought, conscience and religion (ICCPR)
- Best attainable standard of physical and mental health (ICESCR, ICERD, CEDAW, CRC)
- Education (ICESCR, CRC, ICERD)
- Adequate housing (ICESCR, CEDAW, CRC, ICERD)
- Adequate food and water (ICESCR, CRC, CEDAW)
- Work and rights at work (ICESCR, ICERD, CEDAW)

WCC members can identify any of these rights as an entry point into the violations faced by stateless persons, or they can employ them in combination.

## **Discrimination**

Discrimination in law or practice drives and deepens poverty, and the refusal to acknowledge these underlying problems leads governments and society to be willfully blind to the abuse, exploitation, and conditions of slavery many stateless people experience. In many cases, children are born into a stigmatized, discriminatory and xenophobic environment, sometimes stirred up by the authorities and almost always reflected in the administration of justice. Many face hostility in the communities in which they live and may be seen as an easy and populist target for politicians and police forces when dealing with crime. Such a climate leaves people seen as “foreign” vulnerable to discriminatory attacks by members of the public and to discriminatory abuses of their rights within the criminal and immigration systems.

In some cases, media personalities bolster inaccurate and incendiary remarks, calling for new laws to punish an entire ethnic group for conditions they most likely did not create. Historically and geographically, the rhetoric justifying exclusion does not change significantly. It includes the stealing of jobs, an invasion of “illegal immigrants”, the onslaught of disease, increasing crime, and an endless list of other social ills.

Discrimination in any context is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights just because of their colour, race, ethnicity, descent or national origin (or lack thereof). It is an assault on a fundamental principle underlying the Universal Declaration of Human Rights (UDHR) – that human rights are everyone’s birthright and apply to all without distinction.

For years, members of the WCC have worked for the protection of human rights around the world. Pushing for the right of stateless people will not be a different exercise. While the source of human rights violations may originate from a different place, for the most part,

promoting respect for the rights of stateless people is an identical exercise. I challenge all of you to make the protection of stateless persons a straightforward endeavour rather than a complicated undertaking!

That is the rhetoric, now here is the reality.

### **Conditions resulting from statelessness/discrimination**

The stateless are at particular risk of exploitation by employers, traffickers and smugglers. Their lack of legal status means that they are often unable or unwilling to assert their labour or other human rights. Children are extremely vulnerable to exploitation; human rights abuses against stateless children are often well hidden from the public eye, which allows horrific violations to go unchecked and unpunished. Women and girls are particularly at risk of sexual exploitation by employers or state officials, or if they fall into the hands of traffickers.

In countries around the world, the lack of citizenship and ID cards leads to unemployment, underemployment, and lower salaries. Lower levels of income lead to socio-economic problems including hunger and substandard accommodation. Unable to work or move freely, the ability for millions of people to acquire academic degrees and support their families is narrowed. Perhaps the situation of stateless children around the world best demonstrate the consequences of statelessness, whether putting their bodies on the line in Kuwait, drowning in the Bay of Bengal, or taking up work as Roma children in Italy.

### **Recognition versus naturalization**

Because nationality often serves as the only source of protection for certain rights, including the state's right to grant diplomatic protection and representation on the international level, the stateless are vulnerable to violations of their human rights both inside their country of birth and outside it. Indeed, in the United States a stateless person in immigration detention often remains unidentified as stateless until it is clear that no nation will provide travel documents. Ideally, nations hosting populations of stateless people would *extend citizenship* to them, but because discrimination is often the underlying issue preventing a person or population from being recognized as nationals, the struggle to achieve

recognition may be most effective when coupled with an international effort. While international pressure is often key to addressing the abuse of human rights violations, it is particularly important for the stateless because they do not have access to any political process and may suffer severe consequences for speaking out, without any legal protection whatsoever.

This was (and continues to be) the case in Kuwait where hundreds, if not thousands, of stateless Bidoon have been demonstrating for *recognition* of their citizenship. Their demonstrations were peaceful, but they were met with tear gas, beatings and arrests. Over a year dozens of individuals were put in jail – sometimes with criminal charges and sometimes without. Many were charged with violating the law by simply demonstrating, because as non-Kuwaiti nationals they did not hold this right. Some of the cases made their way through the courts, and charges have been dismissed in a number of cases. Others remain in limbo, and one individual is currently on a hunger strike – it is not his first. Kuwait's stateless activists are prolific tweeters and the use of Twitter has kept their mistreatment in the public realm. There is no question that the involvement of the UNHCR in Geneva, international NGOs and local NGOs is also playing an important support role for the people. This population could benefit greatly from the collective action of the World Council of Churches, as the faith-based community in many countries has important relationships with governments that should be taking stronger and more public positions in support of a remedy for Kuwait's stateless.

Where possible, *naturalization*, the process by which non-nationals receive citizenship, is another key to reducing the problem of statelessness. It enables people to secure employment, utilize public services including access to education and health services, participate in the political process, move about freely, avoid labour exploitation, and have access to the judicial system. The complicated dynamic here is ensuring that naturalization is a remedy desired by a stateless community. For example, in Myanmar there are some Rohingya people who do not want the government to develop a process of naturalization for them, because they do not identify as anything other than a citizen of Myanmar. Undergoing a naturalization process would undermine their claim to inherent citizenship, and they would rather fight for that



recognition than secure nationality through an application process. In other situations populations are similarly split.

Regardless of the avenue taken, stateless communities may not have meaningful access to their human rights even when they acquire citizenship because their experience is the result of deep-rooted discrimination that remains. With the acquisition of citizenship, however, they do legally exist and are much more likely to come to the attention of - or be counted and assisted by - UN agencies and humanitarian organizations.

That pressure must be sustained.

## **How people become stateless and how states justify it**

### ***Theoretical nationality***

Stateless persons may be registered as foreigners, non-national residents, or be categorized as nationals of another state even in instances where the other *state does not consider them as nationals* and will not protect them. During this consultation we will learn how common this stance is, and how rarely this assertion, in particular, is challenged. Myanmar rationalizes its refusal to extend citizenship to the Rohingya people by arguing they are all actually undocumented migrants from Bangladesh. The Dominican Republic takes this position when it justifies the denationalization of Dominicans of Haitian descent by arguing no harm is done because they are Haitian citizens anyway. The Kuwaiti government justifies its exclusion of Bidoon by arguing the vast majority are foreign nationals who ripped up their passports in order to benefit from Kuwait's wealth and social services. And most recently, Sudan did the same thing when it denationalized all "Southerners" *en masse*, arguing they had acquired South Sudanese citizenship automatically. Theoretically this may be accurate, but there is no such assurance in reality.

At times, people may be registered as stateless, but this information may not be available due to political sensitivities. Some stateless people may not register at all fearing that state authorities will use registration records to identify and persecute them. A stateless person may also be a

refugee if forced to leave the country of habitual residence because of a well-founded fear of persecution.

### ***Statelessness and national security***

States frequently justify discriminatory migrant and nationality policies with national security, economic, and public health concerns. Since the September 11 attacks, measures to enhance security that have focused on controlling people's movements have been introduced in a number of countries. Some of these measures have disproportionately affected migrants and other non-nationals. In some countries migrants, in particular irregular and stateless migrants have been labeled as security threats or as suspected or potential terrorists.

Problems also arise when children of migrant workers are born in foreign territories. Authorities in the host country may refuse to register the birth, and the home country may have a policy of granting citizenship based only on domestic birth, in which case the children of migrant workers will be denied citizenship a second time. Indeed, the failure to recognize the human rights of migrants over years, decades, and even centuries represents a significant cause of statelessness in various parts of the world. Migrants, and in particular irregular migrants, are often unable or too afraid to register the births of their children in their country of destination, and these children can therefore be made stateless. Immigration laws in some countries deny citizenship rights to children born of non-national parents even if the consequence is that the child is stateless. Traffickers render many trafficked people, particularly women and children, effectively stateless through the confiscation of their identity documents.

Statelessness may also arise when children are abandoned for political or economic reasons. A domestic example would be the refusal to extend citizenship at birth to nonmarital children born outside the US to an US citizen father and a foreign mother. Although not required of US citizen mothers who give birth overseas, citizenship of a nonmarital child born to an US citizen father must be established through proof of paternity, such as a blood or DNA test. If the father is deceased or his whereabouts unknown, this may be impossible and the child may be rendered stateless. A few years ago this very situation was challenged all

the way to the Supreme Court, which decided that it was not an equal protection violation to require that a father submit to a paternity test even though a mother would not have the same requirement. The frequent coupling of US soldiers and Korean mothers served as the backdrop for this case, and although not raised, it was the prospect of “war babies” entering the US that formed the basis of concerns. Basically, in order to avoid “opening the floodgates” to nonmarital children born to military personnel overseas, the Supreme Court provided constitutional permission for men to father and abandon children – and this was justified as a measure to avoid statelessness.

Gender-based discrimination in the area of citizenship is a form of bias faced by women everywhere. Yet, governments, international bodies, and the general public alike know and do very little about the plight of people who lose or are denied citizenship, especially women and girls and elderly stateless persons.

All of these conditions, alone or when taken together, have created a massive number of stateless people. Each of them offers a point of entry into identifying and tackling statelessness.

## **Conclusion**

No region of the world has been left untouched by the statelessness issue, but statelessness is not an unsolvable problem. It is certainly true, however, that durable solutions must be implemented by states. They must work harder to avert and resolve such situations. All governments can sign and implement the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness. In most cases, it is not difficult to determine which country an individual has a genuine effective link with for purposes of nationality decisions. Rather, difficulties in preventing or reducing statelessness often occur as a result of legislative, judicial, administrative, and political decisions that fail to recognize basic principles of international law with respect to nationality.

The global community must work together to end statelessness. I hope leaders of the WCC community, as well as their congregants, will take what you have learned to raise awareness of this often purposely hidden

problem, and to advocate for changes in the *status quo*. Many venues exist to advocate for the rights of stateless people and pursue remedies for statelessness, including the UN, national governments, regional bodies, non-governmental organizations, and the general public. Ultimately the prevention and reduction of statelessness contributes not only to the promotion of human rights, an improved quality of life for affected individuals, and increased overall human security, but it also aids in the reduction of forced displacement and refugee flows.

## **Statelessness and International Law: An Overview**

- Mark Manly

*Presentation given by Mark Manly (Head of UNHCR's Statelessness Unit) at the international consultation organized by the Commission of the Churches on International Affairs of the World Council of Churches on Towards an Ecumenical Advocacy on the Rights of Stateless People, Washington, DC, 26 February to 1 March 2013.*

In his photo essay *The World's Stateless*, Greg Constantine tells the story of Sacha, a stateless ethnic Korean man and former USSR citizen who moved from Uzbekistan to Ukraine in 1993. His predicament shows the extent to which the lives of stateless people are put on "hold" until their nationality status can be resolved. Like hundreds of thousands of other people scattered across the independent States which emerged upon the demise of the Soviet Union, he had been stateless and undocumented. Though he had lived with a Ukrainian woman for a decade, they had not been able to register their union as he did not have the required documents to do so.

This example illustrates the kinds of negative impacts statelessness has on the lives of individuals. Statelessness touches on questions of universal meaning and importance: international justice, human dignity and inclusion. It is therefore an issue all of us can relate to. While there are ways in which all of us can all play a role in addressing statelessness, it remains an issue of international and domestic law.

My presentation provides an overview of international law as it relates to statelessness.

I will first explain how the right to a nationality is enshrined in international law. I will focus on the 1961 Convention on the Reduction of Statelessness and the role it plays in establishing a legal framework for the prevention and reduction of statelessness. While this Convention gives content to the right to a nationality by setting out rules that are to

be implemented through nationality laws to prevent and reduce statelessness, I will also outline the administrative steps required at the national level to ensure every person possesses a nationality. As regards people who have already become stateless, I will explain how their rights are protected by the 1954 Convention relating to the Status of Stateless Persons and by international human rights law. There is a set of international legal standards for the protection of stateless persons and for the prevention and reduction of statelessness but this framework needs to be reinforced, including through additional accessions to the two UN Statelessness Conventions. On a positive note, the issue of statelessness has gained tremendous momentum, particularly during and since 2011, the anniversary of the 1961 Convention, and we have seen real progress through increased accessions to the statelessness conventions and their implementation by States. Finally, while addressing statelessness is primarily the responsibility of States, the United Nations High Commissioner for Refugees (UNHCR) is entrusted by the General Assembly of the United Nations with a mandate to identify and protect stateless persons and to prevent and reduce statelessness worldwide.

## **1. The right to a nationality in international law**

Although the right to a nationality is enshrined in international law, it is often stated that the State, as part of its sovereign power, has the prerogative to set rules for the acquisition, change and loss of nationality. According to Article 1 of the 1930 Hague Convention,

*[i]t is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.*

The limits to State discretion in the area of nationality rules have become increasingly clear in recent decades. In Resolution 61/137 as well as in subsequent resolutions, the United Nations General Assembly “[e]mphasizes that prevention and reduction of statelessness are primarily the responsibility of States, in appropriate cooperation with the international community.”

Let me now turn to a fundamental issue: When speaking of stateless persons, who are we referring to? Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any State under the operation of its law.” In essence, this defines a stateless person according to the viewpoint of the State. In assessing whether a person is stateless, one needs to look at nationality laws as they appear in the books as well as how these laws are implemented in practice. More precisely, in order to determine whether a person is stateless, the following questions need to be answered: Has the person acquired nationality by birth in the territory, by descent from a national, by naturalization or upon marriage? If not, does the person possess another nationality? Has the person renounced, lost or been deprived of his nationality? If so, does the person possess another nationality?

While a lack of documentation does not in itself render people stateless, the possession of nationality is linked to birth registration and the possession of identity documentation. The key question to be answered is whether someone is denied documentation *because* he or she is not considered a national.

As statelessness impacts negatively on the enjoyment of human rights, the issue is of concern to the international community. In principle, only a limited range of internationally recognized human rights are contingent on possession of a nationality: The unrestricted right to enter and reside in a country, the unrestricted right to work and political rights. The right of the State to exercise diplomatic protection only extends to its nationals.<sup>1</sup> In practice, however, statelessness is an obstacle to the enjoyment of a wide range of civil, economic, social and cultural rights, including recognition as a person before the law, the right to work and the right to education. The international community is also concerned because statelessness can lead to forced displacement. The cases of the Rohingya from Myanmar, Bhutanese refugees in Nepal and Black Mauritians illustrate how stateless persons may become refugees if they cross an international border.

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<sup>1</sup> Though also note the progressive development of the law in this regard in the International Law Commission’s Draft Articles on Diplomatic Protection: [http://untreaty.un.org/ilc/texts/9\\_8.htm](http://untreaty.un.org/ilc/texts/9_8.htm).

International law takes account of the link between statelessness and the impairment of human rights and several human rights instruments limit State sovereignty with regard to nationality matters. Article 15 of the 1948 Universal Declaration of Human Rights states that everyone has the right to a nationality and not to be arbitrarily deprived of nationality. Article 15 does not, however, clarify which State is to grant nationality: for example if a child is born in a State which only permits acquisition of its nationality by descent from one of its nationals, but the child is born to nationals of another State who face restrictions on conferring their nationality on their children born outside their State, there may be a conflict of laws which renders the child stateless. As regards deprivation of nationality, not only do due process guarantees apply, but individuals are protected against deprivation on discriminatory grounds such as race, gender and disability, and where they would be left stateless.

The right of every child to acquire a nationality is set out in Article 24(3) of the International Covenant on Civil and Political Rights and in Article 7 of the 1989 Convention on the Rights of the Child. Due to near universal ratification, these treaty obligations are important tools to prevent statelessness. Their scope and content are gradually becoming clearer. For example, in its General Comment 17, the United Nations Human Rights Committee clarifies that discrimination against children born out of wedlock as well as discrimination based on the nationality status of a child's parents are inadmissible:

*States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.*

The right to a nationality is also enshrined in regional treaties. The African Charter on the Rights and Welfare of the Child, the American Convention on Human Rights and the European Convention on Nationality all set out the right to a nationality. Crucially, they also contain the clear obligation for a State to grant nationality to children born in its territory who do not acquire any other nationality. For example, Article 6(4) of the African Charter on the Rights and Welfare



of the Child states that “a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws.”

Non-discrimination provisions in human rights instruments also limit State sovereignty with regard to the acquisition and deprivation of nationality. The International Covenant on Civil and Political Rights prohibits discrimination on gender and other grounds, the 1965 Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination regarding nationality on the grounds of race and ethnicity and the 1979 Convention on the Elimination of All Forms of Discrimination against Women prohibits discrimination against women regarding the acquisition, change and retention of nationality as well as the conferral of nationality on children.

## **2. Giving meaning to the right to a nationality by preventing and reducing statelessness – The 1961 *Convention on the Reduction of Statelessness***

The 1961 Convention on the Reduction of Statelessness gives meaning to the right to a nationality by establishing common international rules to prevent statelessness, thereby reducing it over time.<sup>2</sup> The 1961 Convention requires States to grant nationality to children who would otherwise be stateless and who are either born on the territory or born to a national abroad. Nationality is also to be granted to foundlings. The Convention provides rules that protect against statelessness in situations in which a person may lose or be deprived of his or her nationality. For example, voluntary renunciation of one’s nationality is forbidden unless the person concerned possesses or acquires another nationality and nationality may not be lost if this leads to statelessness (though the Convention allows for a limited set of exceptions to this rule). The Convention also prohibits deprivation of nationality on racial, ethnic, religious and political grounds. By giving effect to the right to a nationality, the 1961 Convention helps ensure the enjoyment of the full range of human rights. The common minimum standards it sets out

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<sup>2</sup> Although not discussed in detail here, the standards which apply in the specific context of State succession are the International Law Commission’s Articles on Nationality of Natural Persons in relation to the Succession of States.

provide legal certainty for individuals and other States, thereby limiting conflicts between nationality laws of different States. Also, the 1961 Convention constitutes a low-cost means of addressing the problem of statelessness and of ensuring social inclusion and development.

### **3. Steps required at the national level to ensure every person possesses a nationality**

In order to prevent people from becoming stateless, gaps in nationality laws need to be addressed. The following questions help identify provisions that can lead to statelessness at birth: Do all children born in the territory acquire that State's nationality if they do not acquire any other? Do all children born to a national abroad acquire that parent's nationality if they do not acquire any other? Are foundlings – that is young children found in the territory – considered nationals? As regards statelessness occurring later in life, the following questions serve to identify gaps in nationality laws: Can people voluntarily renounce their nationality without acquiring another? Can people lose or be deprived of their nationality even if they have not acquired another nationality?

However, preventing statelessness is not only about addressing gaps in nationality laws, but also about adequate administrative practice. More precisely, procedures need to be in place to implement the safeguards provided for in a given nationality law. Furthermore, administrative procedures need to be based on adequate rules of proof for confirmation of nationality and issuance of documents. Otherwise people who satisfy the criteria for nationality set out in legislation may be unable to acquire proof of that nationality.

A lack of birth registration can also lead to statelessness if it means that persons cannot establish their link to a State, either through proof of where they were born or who their parents are. Facilitated access to birth registration helps prevent statelessness. Birth registration needs to be geographically accessible as well as free of charge and documentation requirements need to be reasonable. Countries with unregistered populations should facilitate late registration. Let me be clear though: lack of birth registration generally is not sufficient to make someone stateless; there must be other factors (e.g. where the passage of time or

migration makes it impossible subsequently for an individual to establish their identity, including their nationality).

#### **4. What needs to be done when people have already become stateless – Protection of the rights of stateless people and the 1954 *Convention relating to the Status of Stateless Persons***

Despite the fact that the right to a nationality is enshrined in international law, people will continue to become stateless. While most rights set out in international human rights instruments are to be enjoyed by everyone, there are some rights which are enjoyed only by citizens. Perhaps more importantly, without a nationality, stateless people are often denied enjoyment of a broad range of rights in practice. The 1954 Convention relating to the Status of Stateless Persons is the only treaty that establishes an internationally recognized status for stateless persons.

Complemented by human rights law, the 1954 Convention principally applies to non-refugee stateless persons. If a stateless person would face persecution in the event of his or her return to a country of former habitual residence on grounds such as race, religion or political opinion, that person is a refugee and is thus to be protected under the 1951 Refugee Convention.<sup>3</sup> Nonetheless, both the Refugee and the 1954 Statelessness Conventions provide similar rights, namely as regards education, employment, social security, access to courts as well as identity and travel documents.

By establishing an internationally recognized status for stateless persons, the 1954 Convention provides legal certainty for stateless individuals and enables them to enjoy their human rights. Furthermore, the 1954 Convention provides that States are to facilitate the naturalization of stateless persons as acquisition of nationality is the only durable solution for such individuals.

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<sup>3</sup> The relevant part of the definition reads: “the term ‘refugee’ shall apply to any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

## 5. Reinforcing the international legal framework

Despite the existence of two Statelessness Conventions and complementary provisions in human rights treaties, the international legal framework needs to be reinforced. There are simply too few States Parties to the Conventions and too many gaps in the implementation of existing standards. In Article 4 of its Resolution 61/137 and in subsequent resolutions, the United Nations General Assembly addresses the problem of low numbers of States parties to the Statelessness Conventions:

*Notes that sixty-two States are now parties to the 1954 Convention relating to the Status of Stateless Persons and that thirty-three States are parties to the 1961 Convention on the Reduction of Statelessness, encourages States that have not done so to give consideration to acceding to these instruments[.]*

The UNHCR Executive Committee has also encouraged States to give consideration to acceding to the Statelessness Conventions. Moreover, a series of Human Rights Council Resolutions call for States to consider accession and individual States have also been called upon to do so in the course of their Universal Periodic Review.

Aware of the need to reinforce the international legal framework, UNHCR and civil society organizations in dozens of countries used the 50th anniversary of the 1961 Convention to promote: accession to the Statelessness Conventions, reform of nationality laws to prevent and reduce statelessness, improved birth registration and identity documentation procedures to prevent and reduce statelessness as well as the resolution of protracted situations and the creation of determination procedures under the 1954 Convention. As a result of these efforts, 61 States made pledges at the Ministerial Intergovernmental Event on Refugees and Stateless Persons in Geneva in December 2011. In total, over 100 statelessness-pledges were made by States and regional organizations to address the issues outlined above. As a consequence, the period spanning 2011 and 2012 was marked by the acceleration of accessions to both Statelessness Conventions. Statelessness has moved higher on the international agenda and we are now witnessing a sea change as the result of wider acceptance of the international legal statelessness regime. One indication of this is the number of recent

accessions to the two statelessness conventions: There have been a total of 24 accessions in the past two years alone, bringing the total number of States party to the 1954 Convention to 76, with 50 now party to the 1961 Convention.

## **6. UNHCR's statelessness mandate**

UNHCR's mandate to promote accession to the Statelessness Conventions and to provide technical advice was entrusted to the agency by United Nations General Assembly Resolution 50/152 of 1995:

*[the United Nations General Assembly] Requests the Office of the High Commissioner, in view of the limited number of States party to these instruments, actively to promote accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of statelessness, as well as to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States [.]*

Today, UNHCR has a global statelessness mandate which encompasses four pillars, namely the identification of stateless persons, the prevention and reduction of statelessness as well as the protection of stateless persons. In Resolution 61/137 of 2006 and in subsequent resolutions, the General Assembly:

*notes the work of the High Commissioner in regard to identifying stateless persons, preventing and reducing statelessness, and protecting stateless persons, and urges the Office of the High Commissioner to continue to work in this area in accordance with relevant General Assembly resolutions and Executive Committee conclusions[.]*

In 2006, UNHCR's governing body made up of States, the Executive Committee, adopted a conclusion on "the identification, prevention and reduction of statelessness and the protection of stateless persons" which provided guidance on how these four areas of the mandate are to be implemented. While entrusting UNHCR with a global mandate, the General Assembly also "[e]mphasizes that prevention and reduction of statelessness are primarily the responsibility of *States*, in appropriate cooperation with the international community" (emphasis added).

In conclusion, while international law regulates issues of statelessness, there are gaps in the existing standards and many problems of implementation. The WCC and its members can play an important role in addressing these deficiencies. Only with a broad-based coalition can we achieve the many changes needed to resolve the plight of the world's stateless people.

## **The Humanitarian Implications of Statelessness**

*- Maureen Lynch*

There was a time when the vast majority of the information we had about the everyday lives of stateless people was from conversations and narratives. Then, thanks to generous funding from the US Department of Population Refugees and Migration, in late 2010 and the first half of 2011 Dr Brad Blitz at the International Observatory on Stateless (IOS) led a four-country project which included both surveys designed to collect quantifiable data at the household level as well as in-depth interviews with a much smaller number of people.

We learned that it IS possible to quantify some of the harms resulting from the denial and deprivation of citizenship.

What we used to know is that stateless people generally cannot access jobs in the formal sector. For example, Alex in Estonia makes his living by scavenging for bricks and other building materials and then melts them down in order to collect and sell the metal within.

What we learned is that statelessness has a negative impact on ability to generate income. That is, averaged across the four countries in the study, the monthly income of stateless households is 33 percent less than that of citizens. In Bangladesh, for example, where the discrepancy is greatest, the income of stateless/formerly stateless households is about 74 percent lower.

What we used to know is that stateless/formerly stateless people often live in poor and overcrowded conditions, and that they rarely own property.

What we learned is that statelessness has a negative impact on natural assets. Using the Bangladesh example again, it is pretty clear that the formerly stateless population has markedly less access to private land. Data also indicated statelessness reduces ownership of a house by almost 60 percent.

What we used to know is that stateless/formerly stateless women must contend with a heap of challenges – especially those in mixed marriages or in countries with inequitable nationality laws. This lady whom I will call Mary was more concerned that she had not been able to register her new baby than about her own situation, though she was not well at the time.

What we learned is that statelessness has a negative impact on health expectancy. The health index for stateless/formerly stateless women in Bangladesh is not only markedly lower than their citizen counterparts but also lower than stateless/formerly stateless men.

We already knew that in many contexts stateless communities have poor sanitation. We learned that is in fact the case.

Concerning education, it is frequently reported that stateless children cannot attend school, though certainly some of them can.

The research revealed that statelessness has a negative impact on educational attainment. For example, In Slovenia it was 3 years lower educational attainment. In Bangladesh the difference is much more severe, grade 3 as opposed to grade 9. There was also clear indication that the educational attainment and citizenship status of parents have a significant positive impact on children's education.

The one area where very little or no difference appears is concerning religion. However, we continue to hear of antidotal evidence that some individuals have been denied travel to undertake Haj, the Muslim's pilgrimage.

Despite everything we learned, there are still so many knowledge gaps: like, among stateless communities, how is the situation of those without even any evidence of their existence, like how does the situation of the Maktoumeen in Syria differ from that of the Adjanib. Or in the case of Kuwait, how does the situation of Bidoon who purchased fraudulent foreign passports and were not able to leave the country or were returned differ from other Bidoon.

We know little about the discrete needs and concerns of stateless youth, seniors, and the hundreds of thousands of children.



What are the health risks assumed when stateless demonstrate in the streets and are doused with tear gas or other chemicals?

Do disability organizations keep data specific to this population? Or, as in the case of Kamal, do impairments become permanent problems?

Who is tracking the number and condition of stateless persons in detention? Certainly the equal rights trust report of 2010 shed some light, but who is looking out for their rights?

And what about the mental/emotional cost of statelessness? Who is studying? Who is helping? More than one community has highlighted the number of suicides taking place among their young people. Or, as in the case of this man, suggesting that his child would be better off without him because her mother is a citizen but she is stateless because of her father's status.

There are so many ways to help, to try to improve the situation. This list is just a group of suggestions.

- Help increase the income earning power of stateless and formerly groups, through affirmative action schemes including job creation programmes;
- Work with donor governments, UN agencies and the WHO to improve the quality and delivery of healthcare to stateless and formerly stateless groups;
- Design and implement programmes to educate government officials about purpose of the National Identity Cards (NIC) so all authorities, especially police and passport officers, can support new citizens;
- Work with partners, including governments, the World Bank, European Union, other multilaterals, UN agencies, and UNICEF to identify ways of improving the delivery and quality of education for stateless populations;
- Work to ensure equal access to education at all levels for girls and boys;

- Promote equal access to education and support adult education programmes for stateless and formerly stateless persons, including language courses;
- Develop opportunities for savings and investment for stateless groups;
- Work with law enforcement bodies to allow greater freedom of movement
- Work with national officials to prevent onerous and discriminatory requests regarding documentation.
- Provide greater access and information regarding citizen's rights;
- Identify mechanisms to increase civic and political participation;
- Support anti-discrimination information campaigns;
- Undertake or sponsor further studies with a focus on the specific issues related to stateless children, adolescents, and seniors.

And finally, always remember to let the voice of the stateless speak for themselves. Bring them to the table. Help develop their capacity to undertake advocacy on their own behalf.

## **Remarks on Government Responses to Statelessness**

- *Nicole Shepardson*

Thank you for including me in this important discussion. I work in the State Department's Bureau of Population, Refugees, and Migration (also known as PRM or BPRM). For those who may be unfamiliar with this office, it is the humanitarian arm of the State Department. We promote protection and provide humanitarian assistance to persecuted and uprooted people around the world – refugees, asylum seekers, internally displaced persons, returnees, stateless persons, conflict victims, and vulnerable migrants. Our programmes exceed \$1.8 billion annually, and provide humanitarian assistance to vulnerable populations overseas – such as health care, emergency shelter, water and sanitation, assistance for survivors of gender-based violence, etc. – as well as resettle refugees in the United States. In addition to administering these programmes, a large part of PRM's work involves humanitarian diplomacy. By this I mean advocating, negotiating and working with other governments and humanitarian actors to protect these vulnerable populations of concern and to find solutions to their plight.

I am pleased that you have asked me to speak on the topic of *Government Responses to Statelessness* because governments are so central to preventing and reducing statelessness. Governments are responsible for preventing statelessness by eliminating discrimination in nationality laws and ensuring universal birth registration, for example. And it is governments who take action to reduce statelessness by granting citizenship to stateless persons.

For the U.S. Government, statelessness is an important issue in our foreign policy. We are committed to addressing the global problem of statelessness as part of our overarching commitment to champion human rights and dignity. Because the problem of statelessness is rooted in the relationship between a government and an individual, the consequences of statelessness can have a dire impact on almost every aspect of a person's life.

The personal implications of being stateless can be tragic. Imagine having no government to provide you basic protection or essential services. In fact, far from relying on government to protect you, you only hope that government will overlook you, leave you alone, not molest you. You are a citizen of nowhere and your residence is in the seams and shadows of illegality. You have no right to vote. You may not be able to register your marriage or the birth of your child. You probably have no identity documents, so you cannot work or travel freely and you may not even be able to open a bank account, rent an apartment, call the police or go to the hospital in an emergency. And because, without documentation, you do not officially exist, you are highly vulnerable to exploitation and abuse, including being trafficked for labour or sex. Women and girls can be especially vulnerable to these risks. Finally, when you die, your death may not be documented in any official way and you may not be able to bequeath to your loved ones any property you may have been lucky enough to acquire. No matter your gifts, your hopes, your personal achievements, you are not accepted as “belonging” in your country, even if it is the only place you ever lived.

For most of us, our citizenship is secure and we tend to take it for granted. Statelessness seems like an abstract concept. And so without government recognition, millions of stateless people around the world remain “hidden.” The abuses and injustices they suffer are largely unnoticed, unreported.

For this reason, the United States’ *first broad foreign policy objective* regarding statelessness is to create awareness about stateless people and the challenges they encounter. We are working to raise awareness within the Administration, the Congress and the public.

In 2007, the Administration included a statelessness section in each of our individual country reports on human rights practices, and this has proven to be an important tool to document a hidden problem and create awareness within and outside of government.

Since then, senior Department officials have made numerous speeches, published articles, and undertaken other efforts to raise awareness about statelessness. Former Secretary of State Hillary Clinton capped these efforts by speaking about her concern about statelessness at the UN

High Commissioner for Refugees' ministerial event in Geneva in December 2011. I encourage you to check out PRM's webpage on [www.state.gov](http://www.state.gov) to read her remarks and explore other resources on our statelessness page.

Also in our efforts to create awareness and increase knowledge of statelessness issues, my bureau has supported three research projects. The first, carried out by Kingston University, examined the costs of statelessness. This study used quantitative and qualitative methods to compare the livelihoods of stateless persons with those of citizens in four countries (Bangladesh, Kenya, Slovenia and Sri Lanka). Among its most striking findings, the study proved that statelessness reduces household income by a third. It also found that the average education of stateless households is lower than that of citizens by at least one year and in some cases as many as six years.

Two other research projects are currently underway and focus on the impacts of statelessness on women and children. One is examining the impacts of discriminatory nationality legislation on stateless women and children in North Africa and the Near East, with a focus on protection and access to basic services. The other is investigating the relationship between statelessness and vulnerability to trafficking in persons in Thailand. Because these research projects are still underway, we do not yet have findings or recommendations to report, but will share them publicly when they become available.

Our *second major foreign policy objective* regarding statelessness is to encourage strong action on these critical issues by the Office of the United Nations High Commissioner for Refugees – in particular, we support UNHCR's mandate to prevent and reduce statelessness, and to protect stateless persons. The United States is by far the largest single donor to UNHCR, providing over \$770 million to UNHCR in FY 2012. These contributions to UNHCR's core budget include support for its efforts to address statelessness.

*Third*, the Administration seeks to use diplomacy to mobilize other governments to prevent and resolve situations of statelessness. U.S. diplomats engage directly with governments to advocate for the prevention and reduction of statelessness. The vehicles we use are many

and varied – bilateral human rights dialogues; field missions and monitoring; multilateral diplomacy in forums like the UN Human Rights Council; and efforts in regional bodies.

For example, following the outbreak of communal violence that particularly affected the Rohingya community last June in Burma's Rakhine State, four of the Department's Deputy Assistant Secretaries (two from regional bureaus for East Asia and South and Central Asia, one from the Bureau of Democracy, Human Rights and Labour, and one from PRM) traveled there and to Cox's Bazar district in southeastern Bangladesh in September. In both Burma and Bangladesh they discussed with government officials and key stakeholders what more the international community can do to improve the security, stability and humanitarian situation over the long-term. As you know, the Rohingya were rendered stateless by Burma's 1982 citizenship law. The State Department continues to engage at the highest levels in Burma and with affected governments throughout the region to address the plight of the Rohingya.

Additionally, in 2008, I joined PRM's Southeast Asia Program Officer on a trip to Vietnam and met with the Ministry of Justice to discuss naturalization issues for Cambodian refugees who fled the Khmer Rouge regime, as well as statelessness arising from Vietnam's nationality law in cases of divorce between Vietnamese women and foreign nationals. Since then, the Government of Vietnam has made significant progress in addressing the situation of stateless populations. Among the 2,357 stateless Cambodians, 1,367 persons have been naturalized and the remaining 990 individuals are in the process of naturalization. At the same time, the Vietnamese government is facilitating the naturalization of another 7,200 stateless refugees from Cambodia currently living in Ho Chi Minh City. Of this group over 1,000 persons have applied for Vietnamese citizenship. The same simplified procedure will also be applied in the naturalization process of any other stateless groups in the country. An estimated 3,000 Vietnamese women have benefited, after returning to their villages without knowing that they had become stateless as a result of their divorce.

Similarly, PRM's Principal Deputy Assistant Secretary David Robinson returned earlier this month from a mission to the Dominican Republic

and Haiti, where he sought to demonstrate the U.S. government's commitment to support efforts that improve access to civil documentation for persons of Haitian descent who are at risk of statelessness throughout the Caribbean. The State Department also has worked through the Organization of American States as a regional forum, by sponsoring resolutions on statelessness and the right to identity.

The Dominican Republic is a good example of a situation where actions by the U.S. Government and efforts by the church have complemented each other. While PRM and the U.S. Embassy have engaged in robust diplomacy, church leaders and the Jesuit Refugee Service have played a critical role in defusing conflicts and xenophobic violence in border communities, in facilitating access to documentation, and in assisting Haitian migrants and persons at risk of statelessness who have suffered attacks and human rights abuses.

Finally, I want to highlight the Women's Nationality Initiative as a key aspect of the U.S. Government's response to statelessness. Consistent with her efforts to promote gender equality and women's rights as human rights, Secretary Clinton launched this initiative in late 2011 to combat discrimination against women in nationality laws that often results in statelessness. This initiative continues under our new Secretary Kerry, and has two main objectives:

To increase global awareness of the importance of equal nationality rights for women, and the consequences of discrimination against women in nationality laws and statelessness.

To persuade governments to amend nationality laws that discriminate against women, ensure universal birth registration, and establish procedures to facilitate the acquisition of citizenship for stateless persons.

Our efforts to implement the Women's Nationality Initiative thus far are focused in three countries: Benin, Nepal and Qatar. In Nepal, for example, the U.S. Embassy has formed a working group with UNHCR's country office and local NGOs to coordinate advocacy to address discrimination against women in Nepal's nationality law. Embassy staff

have conducted extensive field missions to meet with stateless persons in several districts in Nepal. Our Ambassador and other senior Department officials continue to raise this issue with Nepali government officials and members of parliament to persuade them to revise nationality provisions as part of the drafting of the country's new constitution.

Also as part of the Women's Nationality Initiative, the United States spearheaded last year's UN Human Rights Council resolution on the right to a nationality with a focus on women and children. This resolution was the first in the 66 year history of UN human rights bodies to shine a spotlight on the right to a nationality proclaimed in the Universal Declaration of Human Rights. The resolution drew governments' attention to the problem in nearly 30 countries where nationality laws discriminate against women, barring or limiting their ability to acquire and retain nationality and, importantly, confer it to their children. Ultimately, it garnered the co-sponsorship of 49 governments and passed by consensus and without controversy. It is an example of highly successful multilateral diplomacy.

In all of these efforts, I believe there are opportunities for greater partnerships with faith-based organizations like yourselves to address the global problem of statelessness. Churches can help create awareness and educate their parishioners about the causes of statelessness and the challenges that stateless persons encounter. Churches also can play an important role in fostering the sense of "belonging" that stateless persons lack in their communities and in advocating solutions with their governments. I hope that my presentation has given you a good sense of how the U.S. government is seeking to address statelessness around the world, and perhaps sparked some ideas for future actions.



## **Statelessness and Nationality Law –**

- Sebastian Köhn

Statelessness is the antithesis of nationality, and it is impossible to understand how people become stateless unless we understand how they become citizens.<sup>1</sup> Citizenship denotes the link between an individual and the state, while statelessness is the absence of any such link with any state.

The Westphalia Peace Conference – which ended the Thirty Year War – marked the birth of the current state centric international system of sovereign political entities. This was also in many ways the beginning of citizenship as we know it today. For a long time, decisions about citizenship were at the sole discretion of the sovereign, but the 20th Century saw a significant shift in this regard. Article 1 of the Convention on Certain Questions relating to the Conflict of Nationality Laws in 1930 spelled out the currently dominant norm:

*It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.*

Indeed, to this day decisions regarding acquisition and loss of nationality rest primarily with the state. This presentation will look at the ways in which nationality is acquired and lost, and how statelessness can be created or avoided. I will also consider some of the primary international legal norms that govern nationality, and the restrictions those impose – at least in theory – on states.

### **Acquisition of nationality**

Acquisition of nationality represents one or more elements of the link between the individual and the state. These are typically either links to

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<sup>1</sup> Citizenship and nationality are synonymous in international law, although they may mean different things in domestic law.

the territory or links to an individual who is already a citizen. In other words, nationality is most commonly acquired either on the basis of the place of birth or on the basis of descent. In legal terms, *jus soli* is the term used for territorially determined citizenship, and *jus sanguinis* is the term for citizenship by descent (typically one of the parents).

Citizenship from birth can be granted either automatically or non-automatically. Automatic acquisition of nationality means that the person is a national from the time of birth, regardless of whether she has been registered or not, regardless of whether she holds proof of that nationality. Automatic acquisition is always non-discretionary.

Non-automatic acquisition of nationality by birth requires some form of registration. This is typically non-discretionary. For example, a child born abroad sometimes only acquires nationality after she has been registered, but provided registration takes place the actual granting of nationality is not at the discretion of the state.

In some cases – not least situations of migration or state succession – conflicts of laws may lead to statelessness unless there is a “safety net” in the law. For example, if country A grants citizenship on the basis of *jus soli* only and two of its nationals give birth to a child in country B where citizenship is based entirely on *jus sanguinis*, the child would be stateless.

Another common gap in nationality law is the restriction against conferral of nationality from the mother to the child. This form of sex based discrimination is prevalent in the laws of more than 30 countries and may lead to statelessness where the father is unknown, an alien, or stateless himself.

In order to address gaps like these, a number of norms have been developed through international treaties that guarantee that every child has a right to acquire a nationality. The Convention on the Reduction of Statelessness and the African Charter on the Rights and Welfare of the Child, for example, stipulate that children must be granted nationality of the country where they are born if they would otherwise be stateless. This is also, I would argue, the applicable standard under the Convention on the Rights of the Child. Furthermore, the Convention on

the Elimination of all Forms of Discrimination against Women prohibits, along with many other international treaties, sex-based discrimination.

In some cases acquisition of nationality is restricted to people of certain ethnic origins or religious affiliation. In Liberia, for example, citizens must be of “negro African descent” and in many Arab countries citizenship is only available for Muslims. Other states, such as Israel, give preferential treatment on the same grounds.

Citizenship can also be acquired through naturalization. This happens after birth, although generally speaking the categories for affiliation with the state are the same: the individual must usually show either a connection to the territory (e.g. long-term residency) or to a citizen (e.g. marriage). Discrimination is, generally speaking, more prevalent in naturalization rules than in rules for acquisition of nationality from birth. For example, many countries prohibit mentally disabled people from naturalizing altogether.

### **Loss of nationality**

Criteria for loss of nationality are typically prescribed by law. In some cases loss happens automatically, by operation of law. This includes situations where a national resides outside her country of nationality for a certain period of time, or where a person has dual nationality and is required to give up one of his citizenships by a certain age.

Nationality can also be lost through a non-automatic decision by the state with respect to an individual or a group of individuals. This is usually referred to as deprivation or revocation of nationality. Conditions for revocation of nationality are also usually set out in the law but in many cases these are broad, with much discretion resting with the state. “Disloyalty to the state,” change of religion, or “crime against the state” are only a few examples.

International law clearly prohibits arbitrary deprivation of nationality. However, precisely what makes deprivation of nationality arbitrary is a matter of debate. On the procedural side, I would argue that a decision to deprive an individual of nationality must respect due process of law and provide for a fair hearing and right to appeal. Ideally, such decisions

should be judicial and not administrative. Moreover, the notion of arbitrariness also includes necessity, proportionality and reasonableness. In other words, it must be interpreted more broadly than just “against the law” – indeed, as the Human Rights Committee has pointed out, even interference provided for by law should be in accordance with international standards.

In addition to procedural arbitrariness, substantive arbitrariness includes deprivation of nationality on discriminatory grounds. Racial or ethnic discrimination are universally prohibited under customary international law, and other forms of discrimination are prohibited through treaty law. Moreover, deprivation of nationality that results in statelessness is arguably also prohibited under customary international law, or at a minimum forbidden under the Convention on the Reduction of Statelessness.

# ***Regional Perspectives***



## **Refugees from Rakhine State of Myanmar and Urdu-Speaking Bihari Population in Bangladesh**

*- Joyanta Adhikari*

### **Introduction**

Although Bangladesh has made impressive achievements in a number of socio-economic fields during the last 40 years, it has yet to grapple with two long-drawn refugee problems afflicting its fledgling economy, politics and society. One of the refugee problems is with the Rohingya population coming from neighbouring Myanmar out of repeated ethnic conflicts between the minority Muslim Rohingyas and the majority Buddhists. The other problem is with the Muslim Bihari population coming from Behar, an Indian State, during the partition of India in 1947 and in the wake of 1965 Indo-Pakistan War.

Bangladesh does not have a national legislation to deal with asylum seekers and refugees; however, the State has registered and granted “refugee status” once to those 258,800 Rohingyas through an “executive order” in 1991. UNHCR was invited and it signed a Memorandum of Understanding (MoU) with the Government and was mandated to look after the protection issues. Bangladesh is also not a party to the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) or its 1967 Protocol. Despite that, the state has been providing refuge to the Rohingyas along with tolerating their illegal presence.

The Rohingya refugees are localized in the south-western part of Bangladesh bordering Myanmar separated by the Naf River from Bangladesh. The Bihari refugees however are scattered all over Bangladesh in different cities and towns. These refugee problems are not only affecting the Bangladesh society at large but also engendering security problems with far-reaching effect on peace and security at the national, regional and even global levels, which the international community can no longer ignore.

## ***Violence in Rakhine state***

The Rakhine State violence consists of a series of ongoing conflicts between Rohingya Muslims and ethnic Rakhine in northern Rakhine state, Myanmar. The violence came after weeks of sectarian disputes and has been condemned by most people on both sides of the conflict. The immediate cause of the conflict is reported to have been the killing of 10 Rohingya Muslims by Buddhist Rakhine after the alleged rape and murder of a Buddhist Rakhine woman. The eruption of this violence in Rakhine State in June and October 2012 led to the displacement of over 100,000 people, mostly within Myanmar. Several thousand Rohingyas also attempted to seek safety in Bangladesh. Most recently an estimated number of 13,000 people have made the dangerous journey into the Bay of Bengal on smugglers' boats to get refuge in Bangladesh. Many of them are men but there are believed to be an increasing number of women and children which is an indicator of growing desperation and lack of prospects. Despite repeated advocacy by UNHCR and the international community, Bangladesh kept its border closed on both occasions, citing concerns related to national security and the burden posed by a possible major influx.

### **1: Rohingya population**

#### ***Rohingya refugees in camps<sup>1</sup>***

Currently some 30,000 Rohingya refugees are residing in two camps administered by the government, namely Nayapara and Kutupalong of over 18,000 and 12,000 inmates respectively in the Cox's Bazaar district of Bangladesh. The government has only registered around 25,000 Rohingyas and has decided not to do further. Refugees not registered by the government do not have access to food rations. Refugees in the camps are provided with food rations by the World Food Programme (WFP), except those who are not registered by the government. UNHCR is providing all camp residents shelter, NFIs, water/sanitation services, as well as vocational training and supplementary feeding to malnourished refugees. Primary health care in the camps is provided by the relevant government ministry with the provision of referral services

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<sup>1</sup> UNHCR Representation in Bangladesh, *Refugee from Rakhine State of Myanmar: Briefing Notes* (UNHCR 2012).



to higher health care providers. UNICEF phased out its support of refugee education in 21 primary schools in the camps at the end of 2011. However, UNHCR made an arrangement under which Save the Children International has taken over the technical oversight of the refugee education programme since January 2012.

### ***Undocumented Rohingyas<sup>2</sup>***

UNHCR has not been permitted to register newly arriving Rohingyas since mid-1982. As estimated by the government, 200,000 - 500,000 undocumented Rohingyas are currently residing in various villages and towns outside of the refugee camps, while UNHCR estimates around 200,000 living in three districts, namely Cox's Bazar, Bandarban and Chittagong. The undocumented Rohingyas remain of concern to UNHCR because the agency is not allowed to actively work with the community. Two studies on the plight of the undocumented Rohingyas supported by UNHCR indicate that the registration/documentation of this community is urgently needed. The undocumented Rohingyas in significant numbers are residing in two locations - Leda Site and Kutupalong Makeshift Site.

### ***Government of Bangladesh policies***

Initially, the Bangladesh government has been very positive toward the Rohingya issue and took a pro-active role to deal with it. It set up two camps for the Rohingya refugees and registered 25,000 refugees to handle it formally. The government along with her development partners and voluntary organizations undertook a number of humanitarian and development programmes for the registered refugees residing in the camps. But the influx of the refugees from Myanmar at different points in time that started from 1978 put an increasing financial burden on the government that led it to reconsider its liberal policy. The government suspended further registration of the refugees and tended to minimize its involvement in managing the Rohingya issue apprehending that it may serve as a "pull factor" for the Rohingyas in Myanmar to further bring them in Bangladesh which would further worsen its financial burden. It even went further to warn its development partners not to register the undocumented Rohingyas residing outside the camps.

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<sup>2</sup> Ibid.

The UNHCR initiated a two-year development programme of USD 33 million for the undocumented Rohingya refugees but it suffered a rebuff.<sup>3</sup>

For Rohingya refugees from Myanmar, neither repatriation nor local integration was a solution available to them over the past decade, leaving resettlement in other countries the only option for those who were vulnerable and in need of international protection. From late 2006 until November 2010, the Bangladeshi authorities suspended resettlement pending the formulation of a refugee policy. There has not been any change in the government's operation policy despite the repeated requests by UNHCR since then.

The Bangladesh government further kept its border closed on occasions (in 1991 and 2012), citing concerns related to national security and the burden posed by a possible major influx. The Foreign Minister for the Bangladesh government stated in the parliament that the Bangladesh government is concerned about the alleged involvement of the Rohingya refugees in waging armed struggle against the Myanmar government using the land of Bangladesh as a launching ground. The minister said that her country was not willing to give shelter to refugees any more, despite international calls to open its border. "We are already burdened with thousands of Rohingya refugees staying in Bangladesh and we do not want any more."<sup>4</sup> This is why the Bangladesh government has taken stern measures to push back any further attempt by the Rohingyas coming from across the Myanmar border. This has aggravated the plight, insecurity and uncertainty facing Rohingyas.

More recently, the Bangladesh government has ordered three international charities to stop providing aid to Rohingya refugees who cross the border to flee persecution and violence in Myanmar. The charities are France's Doctors without Borders/*Médecins Sans Frontières* (MSF), Action Against Hunger (ACF) and Britain's Muslim Aid UK.

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<sup>3</sup> Haque, Mahbul. ud, *Undocumented Rohingya Refugees in Bangladesh: Government Justification of the Policies on their Basic Rights and Human security* (The Fourth International Conference on Human Rights & Human Development 1913:5).

<sup>4</sup> "Bangladesh turns back refugees amid sectarian violence in Myanmar." *CNN*, June 14, 2012. <http://edition.cnn.com/2012/06/13/world/bangladesh-myanmar-refugees/index.html?iref=allsearch>.

The charities have provided healthcare, training, emergency food and drinking water to the refugees living in Cox's Bazar since the early 1990s. The government official responsible in the area said that the charities, "were encouraging influxes of Rohingya refugees" from across the border in Myanmar's Rakhine state in the wake of the recent sectarian violence that left at least 80 people killed.<sup>5</sup>

### ***An issue should not be ignored – time to take action***

The issue of Rohingya refugees has been affecting Bangladeshi society for over three decades (from 1978 - 2012) and the prospect of a lasting solution to it is not yet in sight, although the Myanmar government agreed to repatriate only the registered refugees. An estimated 200,000 to 500,000 Rohingya refugees registered/unregistered are living in inhuman conditions in Bangladesh. Rohingyas still living in Myanmar, numbering 800,000, are in reality stateless and without identity papers. They cannot travel from one village to another without having special permission. The condition of the Rohingya education system and economy is disastrous.

Most Rohingyas are despondent and without a future; some are turning toward radical ideas. Many of them are trying to go to Middle Eastern countries with illegal passport from Bangladesh and eventually landing in jails. They are being used by radical and religious fundamentalist group creating law and order problems in Bangladesh. Many people believe that the recent violence in Rakhine State has direct links with demolition of the Buddhist villages and Temples in Ramu, Bangladesh. An estimated 624,000 Rohingyas are already living in Bangladesh, Pakistan, Thailand and Malaysia. "This complicated situation has given them the name 'Asia's new Palestinians'. There is no known church or individual believers among the Rohingyas. Strongly influenced by Islam, the Rohingyas seek spiritual help by wearing charms, following magical rituals and visiting the tombs of saints."<sup>6</sup>

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<sup>5</sup> "Bangladesh Bans Foreign Charities Helping Rohingya." *The Express Tribune*, August 2, 2012. <http://tribune.com.pk/story/416444/bangladesh-bans-foreign-charities-helping-rohingya/>

<sup>6</sup> "The Rohingya Muslim People of Myanmar (Burma)." *30-Days Prayer Network*, 2010. <http://www.30-days.net/muslims/muslims-in/asia-east/rohingya/>

## **2: Bihari population**

### ***A historical overview***

The Bihari refugee issue is a bit older compared to the Rohingya one. This issue has its roots embedded in the first large-scale refugee exodus that happened both ways following the division of India between the two countries in 1947 - India and Pakistan. Nearly one million Urdu-speaking people mostly coming from the Bihar state of India migrated into East Pakistan who were well-received by the incumbent Pakistan's political elites and central administration mostly wielded by non-Bengali Urdu-speaking people of West Pakistan who had the same linguistic and religious identities. Because of their close affinity with the ruling class, the Bihari refugees could easily manage to establish themselves both politically and economically, while the native Bengali population was being increasingly subjected to discrimination, disparity and denial of power. This resulted in progressive distancing of the Bihari and the native Bengali population. The escalating distance between these two groups of population culminated in the War of Liberation fought in 1971 when these two groups took on diametrically opposed roles. While the Bengali as a nation fought against the Pakistani military forces, Bihari refugees sided with the Pakistani forces by joining the para-military units of the Pakistani forces. The victory of native Bengalis in the war put the Bihari population in a precarious situation. They suffered not only an identity crisis in the newly independent Bangladesh; both their livelihoods and security also came under colossal threat in a politically and socially hostile environment. Immediately after independence, they were accorded equal rights under Bangladeshi Law but it was declared that they were not Bangladeshi but Pakistani. Under the tripartite agreement between India, Pakistan and Bangladesh in 1974, Pakistan agreed that all Biharis employed in Pakistan Government service before Bangladesh's independence could be repatriated which resulted in the resettlement of some 170,000 Bihari refugees in Pakistan. Despite that, over 300,000 Bihari refugees still remain stranded in Bangladesh, most of them are living in 116 camps in different parts of the country awaiting their eventual resettlement in Pakistan.

### ***Government of Bangladesh policies***

The Bangladesh government has made efforts to make arrangement of their resettlement in Pakistan by holding negotiations with the Pakistani authorities at diplomatic level. But these efforts could not bring any meaningful results. In view of their utter disadvantage, the government has very recently undertaken a, some 3.5 billion taka (around USD 43 million), housing project to remedy their settlement problem.

Considered their distress and critical condition from the humanitarian perspective, the government has already taken moves to integrate them politically by allowing them voting rights and issuing them the National Identity Card on a par with other Bangladeshis. Besides, the government is considering offering them nationality so that can be integrated well with the mainstream population in the future.

## **The Voices of Stateless People, the Rohingya Ethnic Minority of Burma**

*- Jonah*

I, Jonah, Rohingya by ethnicity, was born and brought up in a rural area, North Rakhine State, in the western part of Myanmar. I have a strong commitment for personal life as Rohingya ethnic minority of Myanmar.

The Rohingya are an ethnic, religious and linguistic minority in Burma/ Myanmar inhabiting mostly the three townships of North Rakhine bordering Bangladesh.

Their number in North Rakhine is estimated at about 725,000. Professing Islam and of South Asian descent, they are related to the Chittagonian Bengali across the border but are distinct from the majority population of Burma, who are of Southeast Asian origin and mostly Buddhist. They gradually faced exclusion in Burma, especially since the military takeover in 1962.

They were rendered stateless by the 1982 Burma Citizenship Law which mainly confers the right to a nationality on members of the 135 “national races” listed by the government, among which the Rohingya do not feature. Denial of citizenship is the key mechanism of exclusion, institutionalizing discrimination and arbitrary treatment against this group. Severe restrictions on their movement and marriages, arbitrary arrest, extortion, forced labour and confiscation of land are imposed on them. The combination of restrictions and abuses has also a dramatic impact on their economic survival.

To begin with my primary education (Grade K-4) (1970-1975), there was a problem which was the language barrier. All the teachers in primary school were Burmese speakers. They did not understand my native language, Rohingya. Due to the fact that almost all teachers were Rakhine-Buddhist, they did not take care of the students who were Rohingya, but a few teachers were kind and taught well.

Secondly, when I completed my primary education, I went to high school in Buthidaung Township (1975-1980). In my eighth grade, I was selected as an outstanding student at township level, but in my final stage I was not selected because I had no National Registration Card (NRC). Those outstanding students had a chance to visit nationwide, sponsored by the state government in summer vacation. If a student had got three times, he/she would have got scholarship for his/her study of higher education.

Thirdly, when I finished my high school, I was eligible to go to medical college, but I was not able to do so because of not holding an NRC card. Three NRCs is the criteria for a medical student. Three NRCs means father, mother and himself/herself must hold NRCs. However, I had finished my B.Sc. (honours) in Chemistry.

Finally, while I was studying for my Master's Degree in Chemistry, I was selected to sit an examination as a state scholar. Fortunately, I have got my NRC card now because my parents have NRCs already. Unfortunately, I was not selected to go on to further study even though I was eligible to undertake a Ph.D. I have not served in a government job because of discrimination of race, colour and religion.

All in all, when I joined the American centre, the US embassy, Rangoon, I was selected as a Humphrey Fellow (2012-2013), as a Fulbright exchange scholar, sponsored by the U.S. Department of State. Currently, I am studying in the field of *Educational Administration, Planning and Policy* at Vanderbilt University, Nashville, TN, USA.

## **The Haitian Diaspora**

*- Bernadette Passade Cisse*

*Stateless or Citizen Member of the Haitian Diaspora?*

*The Right Answer in the Caribbean and the U.S. is the Path out of Poverty for Haiti*

### **I. Introduction: why should the global community care?**

Haiti's people, including non-Haitian citizens of Haitian descent living outside Haiti, represent its greatest resource and since the 19th century they have migrated in search of the best opportunities for caring for their families. The majority of migrants of Haitian descent live in the Dominican Republic and the United States. A significant percentage of Haitians in the Caribbean have family ties with the U.S. and the U.S. is Haiti's largest trading partner. Given the involvement of the U.S. in the Caribbean and in Haiti's internal affairs since Haiti's establishment as an independent republic in 1804, a response to the needs of stateless people of Haitian descent in the Caribbean must include the United States. Given the contribution of migrants of Haitian descent, including the stateless, to Haiti through their remittances and host countries through their labour and taxes paid, a response to those vulnerable to being stateless would make an important contribution to reducing poverty and income inequality in Haiti—two of the root causes of political and economic instability in Haiti, which have forced people to flee to other countries.

### **II. Who are the undocumented/potentially stateless people of Haitian descent in the Caribbean?**

#### ***A. Overview of population***

The largest groups of migrants of Haitian descent can be found in the United States, the Dominican Republic, Canada and the Bahamas. The Migration Policy Institute's low estimate of the number of migrants of



Haitian descent in the United States is 535,000 while other estimates have put the number at 1.2 million. Low estimates of the number of migrants or potential stateless people of Haitian descent in the Dominican Republic put that population at 600,000, but Refugees International's high estimate is that there are 1.2 million undocumented individuals of Haitian descent who are at risk of statelessness in the Dominican Republic. As for the Bahamas, the BBC has estimated that there are 80,000 individuals of Haitian descent living there while a low estimate in 2008 from the Minority Rights Group International puts the number at 20,000 to 70,000. If Haiti's population is 9 million, and the high estimates of the Haitian diaspora puts the total population in the U.S., the Dominican Republic and the Bahamas at 2.48 million, without including those in other countries like Canada and France, I would venture a guess that every single Haitian citizen in Haiti, has a family member living overseas with either the nationality of another country, Haitian nationality or no nationality.

Haitian migrants and their descendants throughout the Western Hemisphere represent a range of socio-economic backgrounds, professions, education, family structure, reasons for leaving Haiti and legal status. Depending on the host country, and the applicability of any of the aforementioned factors, especially legal status, treatment and living conditions of people of Haitian descent vary widely.

Notwithstanding the varied experiences of migrants of Haitian descent in the Western Hemisphere, those individuals who can neither access Haitian nationality nor the host country's nationality are more vulnerable to deportation, detention (including indefinite detention with domestic criminals), physical and psychological insecurity, gender-based and sexual violence, human trafficking, inability to access justice through host country courts, no education, unsafe housing and poor health, including because of unsafe work conditions. Those individuals of Haitian descent in the Caribbean at risk of statelessness with no legal status in the host country are disproportionately represented in the tourism, agricultural and construction sectors and in domestic work. These individuals are part of the informal economy that supports the standard of living for nationals in the host country. For decades, host countries, while scapegoating migrants of Haitian descent when politically expedient, have allowed them entry because of their

reputation for hard work and doing the work that nationals of the host country do not want to do.

***B. Reasons that undocumented/stateless persons of Haitian descent are outside of Haiti and relationship to Haiti***

While Haiti is identified as the poorest country in the Western Hemisphere, it is located in a wealthy neighbourhood with countries seeking labour to grow and support their economies. According to credible historians, Haiti's poor economy is directly linked to its establishment of a free republic in 1804 by former African slaves in a region surrounded by colonies with slaves who were essential to the wealth of European powers and thus became a pariah nation with no trade relations and paying crushing reparations to France in order to be recognized. Haiti also has a history of political strife linked to its economic difficulties and foreign support, particularly the United States, of authoritarian leaders who, according to experts, repressed democracy and violated human rights, including for reasons enumerated in the 1951 Convention relating to the Status of Refugees. Thus, Haitians have left Haiti and formed families outside of Haiti for both political and economic reasons to go to host countries that need their labour. Both the political and economic reasons that have pushed Haitians out of Haiti relate to a history of a very weak state that individual citizens do not look to for help or to solve their basic needs. Thus a society of individuals who very much believe that they can only count on themselves and their families to address their needs, and not the government, have always resorted to migration for education, work and a better life. In turn, the Haitian government, which seems to have internalized a belief in its limitations, relies on migration and the remittances of migrants to address the needs of its citizens.

The Inter-American Development Bank (IADB) and the World Bank have studied the amount of remittances that individuals of Haitian descent have sent to Haiti over recent years. For example, the IADB conservatively estimated that remittances to Haiti in 2006 amounted to \$2 billion dollars, which represented at least six times the amount of U.S. foreign assistance provided in that year. It has been widely reported that remittances constitute 25-30 percent of Haiti's budget.

Until 2012, Haiti did not recognize dual nationality, which increased the likelihood of the members of its diaspora being stateless, but a constitutional amendment now allows for dual nationality. While this is a major step, which means that Haiti is closer to conforming to the international standards in the statelessness treaties, the Haitian government's capacity to implement this law and other policies related to issuing identity and proof of nationality documentation in Haiti and in its embassies remains a challenge.

### ***C. Treatment of individuals of Haitian descent in host countries***

In the Dominican Republic, the Caribbean country where there is the largest population of individuals of Haitian descent, nationality laws were recently changed to not allow for birthright citizenship. This change in law will most likely have a disproportionately negative impact on Dominico-Haitians, many of whom are among the third generation born in the Dominican Republic who only speak Spanish, not Haitian Creole, and either have no ties or minimal ties to Haiti. These individuals, whose grandparents were born in the Dominican Republic, but have faced generations of racial discrimination, are unable to get birth certificates either from the Dominican government or from the Haitian embassy. The lack of a birth certificate prevents these individuals and their children to apply for any legal status, and the documents showing that status, in the Dominican Republic, let alone citizenship. This lack of legal status makes these Dominico-Haitians vulnerable to exploitative employers who pay rock bottom wages to work in unsafe workplaces, landlords who charge exorbitant rent for substandard housing and even perpetrator neighbours who threaten to report them if they have a dispute to the police who will deport them.

As for those migrants from Haiti who have recently arrived in the Dominican Republic, even credible asylum-seekers who under international law deserve protection in the Dominican Republic are made more vulnerable by the laws of the Dominican Republic. For example, asylum-seekers are forced to immediately look for any way to earn money, without a work permit, because they must pay annual high fees to apply for asylum and keep their application current, which is required for many years as the government takes years to convene to decide on the asylum cases of asylum-seekers from Haiti. The charging

of a fee to apply for asylum is a practice that the Office of the United Nations High Commissioner for Refugees (UNHCR) discourages in every country where it works and it encourages countries to issue valid work permits to asylum-seekers so that they can work when able.

However, in the Dominican Republic, not only are asylum-seekers forced to work illegally, but arguably individuals of Haitian descent who qualify for Dominican nationality are forced to work illegally and deprived of national documentation, without which they cannot exercise any civil rights or duties. The Dominican Republic will deny certain rights to the estimated 1.2 million individuals of Haitian descent on its territory even though the government would acknowledge that the sugar industry and construction would probably come to a halt without these individuals.

### **III. The impact of the undocumented/stateless persons of Haitian descent on the Caribbean region and the U.S.**

#### ***A. Haitian economy and society***

The annual remittances to Haiti from the diaspora are estimated to constitute between 25 percent and 30 percent of Haiti's annual budget. But this can come at a price in Haiti, including creating a large, non-governmental, private sector, arguably at the expense of a healthy public sector, which can be more efficiently regulated and compared against international norms. For example, over the last few decades there has been an explosion in expensive private schools that are educating the children of parents who have migrated outside of Haiti and would not exist but for the money coming from the diaspora. These schools reflect how certain Haitian parents venerate education, but the government has found it a great challenge to hold these schools accountable for achieving specific educational benchmarks let alone meet international standards.

Migration has largely negative impacts on Haiti when the migrants cannot access a legal status, including nationality. The negative impacts include the separation of family members from each other for decades and the creation of a great percentage of women-headed households (World Relief has estimated that 50 percent of Haitian households are

headed by women). The aforementioned two negative impacts result in the creation of more individuals who in the Haitian context are considered particularly vulnerable—single women with children and children in the care of distant or non-family members. These women are vulnerable to gender-based and sexual violence and these children whose quality of care often is significantly diminished are vulnerable to being exploited, resulting in the breakdown in the rule of law and violations of human rights in this country with a government that acknowledges its difficulties in protecting its citizens. Stateless individuals of Haitian descent are unable to return to Haiti with the certainty that they can return to the country where they work illegally, while documented individuals of Haitian descent can mitigate the challenges associated with migration, while lifting whole communities out of poverty.

### ***B. Dominican Republic economy and society***

When Haiti was an independent republic in 1804, the part of the island that would later become the Dominican Republic was a Spanish colony. For a period of time after the 1820's, leaders in Haiti unified the island under one Haitian government and some historians and politicians in present-day Dominican Republic continue to refer to this period, in racially-charged terms, as historical evidence of Haitians wanting to “take over” the Dominican Republic. Many experts, including renowned Harvard history professor Henry Louis Gates, Jr., have concluded that these references reflect a deep discomfort among Dominicans of their African origins who identify their relative economic success with their association with whites and are deeply uncomfortable with the Haitians’ embrace of their African origins. Individuals of Haitian descent live every day the discomfort of Dominicans with their African origins when they are refused birth certificates for their children born in the Dominican Republic because their family names are not Spanish or when their children are deported to locations in Haiti where they know no one and their parents are not notified or when rape victims not only get no justice in the courts, but are re-victimized by police and required to go into hiding because they have no protection from perpetrators. All of these violations would be mitigated if this population in the Dominican Republic had access to a legal status, including nationality.

### ***C. Bahamas***

While individuals of Haitian descent are represented in a variety of professions and socio-economic backgrounds, according to the Bahamian government, the majority of undocumented individuals in the Bahamas are of Haitian descent and these undocumented are in the informal sector, often in the tourism industry. Because the Bahamas is physically closer to the United States than the Dominican Republic, the Bahamian government tends to believe that undocumented Haitians arriving only want to transit through the Bahamas on their way to their final destination, the United States. Thus, stateless persons of Haitian descent heading out by boat to the Bahamas are more vulnerable to interdiction, or direct return to Haiti before arriving on Bahamian shores, than those arriving in the Dominican Republic. Bahamian authorities also cooperate with U.S. authorities to conduct joint interdiction operations to prevent Haitians from arriving on U.S. shores. UNHCR regularly advises the governments of the Bahamas and the United States of how interdiction violates article 33 of the 1951 Refugee Convention, which prohibits states from returning refugees to where they will face persecution.

### ***D. The United States***

When Haiti became a republic in 1804, it has been widely reported that U.S. slaveholders, including Thomas Jefferson, were deeply troubled and feared similar rebellions in the United States. The U.S. did not recognize Haiti until well after the U.S. Civil War, but since the 20-year U.S. occupation of Haiti from 1915 to 1934, the U.S. has been involved in Haiti's internal affairs, sometimes supporting known violators of human rights, including President Duvalier in the 1950s and 60s. The U.S. support of such Haitian regimes led to the non-recognition of the refugee claims of individuals claiming to fear persecution by these regimes, which led to long detentions in challenging conditions far from supportive communities in the U.S. and deportations from the U.S. Many refugee law experts, after studying decades of U.S. case law, have found a pattern of asylum decisions erroneously based on U.S. foreign policy rather than international law. This trend of denying refugee status based on political considerations and not legal standards and the arrival of Haitians seeking employment, even if unauthorized, has contributed

to the population of undocumented Haitians in the United States, some of whom are at risk of statelessness. The number of undocumented and potentially stateless persons of Haitian descent in the United States is unknown. In 2000, the then Immigration and Naturalization Service (which is now in the new Department of Homeland Security) estimated the undocumented population of Haitian descent to be at 76,000. Some non-governmental groups estimate the undocumented of Haitian descent to be 125,000.

However, the U.S. has laws, which reduce statelessness or the vulnerabilities of the stateless, including those which provide for birthright citizenship regardless of the status of the parents and the granting of Temporary Protected Status (TPS) and legal authorization to work to qualified individuals of Haitian descent physically present in the United States after the 2010 earthquake took place in Haiti. Currently, the U.S. Administration and Congress are considering comprehensive immigration reform legislation to address the estimated 12 million undocumented population, some of whom are stateless persons of Haitian descent.

#### **IV. Recommendations for addressing the needs of stateless/undocumented persons of Haitian descent in the Caribbean and governments in the region**

##### ***A. Recommendations to governments***

###### **1. Haiti**

- a. Facilitate the issuance of birth certificates and national identity documents within Haiti;
- b. Facilitate the registration of and issuance of identity documents to non-refugee undocumented individuals of Haitian descent outside of Haiti; and
- c. Implement laws allowing for dual nationality and disseminate information to the Haitian diaspora regarding Haiti's nationality laws.

## 2. Dominican Republic

- a. Grant Dominican nationality to individuals of Haitian descent who qualify under current Dominican law
- b. Conduct census on the population of individuals of Haitian descent
- c. Amend provisions of national laws, including nationality laws, which create statelessness, in order to ensure that no provisions increase the numbers of stateless persons
- d. Pass and implement laws and policies which create a safe space for individuals to come out of the shadows (out of the informal economy) to share their stories of challenges in accessing nationality
- e. Establish procedure for determining statelessness or nationality to be a possible example/good practice for the region
- f. Engage the general public in addressing statelessness

## 3. The Bahamas

- a. Conduct census on the population of individuals of Haitian descent
- b. Pass and implement laws and policies which create a safe space for individuals to come out of the shadows (out of the informal economy) to share their stories of challenges in accessing nationality
- c. Establish procedure for determining statelessness or nationality to be a possible example/good practice for the region
- d. Engage the general public in addressing statelessness

## 4. United States

- a. Address the needs of all stateless persons and undocumented persons of Haitian descent in the United States in any comprehensive immigration reform legislation in order to enhance leverage to impact the policies of Caribbean countries
- b. Pass and implement laws and policies which create a safe space for individuals to come out of the shadows (out of the informal



economy) to share their stories of challenges in accessing nationality

- c. Establish procedure in the U.S. for determining statelessness or nationality to be a possible example/good practice for the region
- d. Engage the general public in addressing statelessness

## ***B. Recommendations to international organizations***

### **1. UNHCR**

- a. Lead efforts to increase numbers of States, including the U.S., acceding to the international treaties on statelessness
- b. Lead efforts to have the countries in the Caribbean and the U.S. establish procedures for determining whether an individual is stateless
- c. Help governments understand their interest in addressing statelessness

### **2. IOM**

- a. Lead efforts to establish bilateral and multilateral migration agreements, which comply with international human rights standards for the treatment of workers

### **3. World Bank and Inter-American Development Bank**

- a. Expand work on the impact of remittances in the economic development of Haiti
- b. Expand national capacity to leverage remittances more efficiently to address national needs

## ***C. Recommendations to civil society, including the undocumented/stateless***

- a. With regard to NGOs that advocate on behalf of and provide services to migrants or internally displaced persons, assess the extent of challenges among such persons in accessing a nationality and the impact of this challenge on their status and ability to benefit from your services

- b. With regard to individuals of undetermined nationality or potential statelessness, including those fearful of deportation, as a matter of first priority, seek advice and support from and share your stories with nationals in the host country with whom you share cultural, national, linguistic or religious ties.

**V. Conclusion: if the global community cares, what is the way forward?**

- A. Assess the extent of statelessness
- B. Craft messages regarding statelessness that reflect not only the values of those addressing the issue of statelessness, but resonate with those whom we seek to influence
- C. Forge partnerships with all relevant stakeholders, including governments and stateless persons
- D. Engage in National Political Processes

## **The Risk of Statelessness in South Sudan**

*- Sarnata Reynolds*

As the newest nation in the world, the Republic of South Sudan (RoSS) is undertaking the monumental task of building a nation state. Creating a functioning government would be an epic challenge for any country, but it is even greater for RoSS because it is faced with millions of displaced people, internal and external conflict, widespread food insecurity, a stagnant economy, and a population that includes dozens of tribes, ethnicities, indigenous communities and identities. The situation is further complicated by the internal conflict that re-ignited in South Sudan following the decades-long civil war. During the war, southerners were pitted against a common enemy in Khartoum. Now, with the absence of that enemy, competing tribal and ethnic interests are fueling internal conflict, such as in Jonglei state. To ensure the successful transition of RoSS to a functioning nation, an identity must emerge that trumps all these competing interests. Citizenship should be based on place of birth, familial origin or where a person has genuine and effective ties, without any regard to the person's colour, faith, tribe, ethnicity, or other attribute.

As a starting point I would like to talk about the difference between technically being a citizen of a country, and being recognized as a citizen (often through the acquisition of nationality documentation). This is an important distinction generally, and also specifically in the case of the South Sudanese as the nationality law is very generous but that does not mean that all those eligible for nationality will be issued nationality documentation.

The information I share today was gathered through desk research, interviews with government officials, NGOs, UN agencies, and dozens of South Sudanese who had or were trying to acquire nationality documentation. Some had returned to South Sudan while others had never left. Almost all of the South Sudanese with whom we spoke were the best placed in terms of receiving nationality documents – they were employed by NGOs or UN agencies, well educated, could afford the

application process and had employers who permitted them significant absences from work.

## **Background**

RoSS is home to over eight million people and more than 60 ethnic groups. The population grows daily as southerners arrive from Sudan, neighbouring countries, and other nations of refuge during the civil war. More than 40,000 citizens hold nationality certificates in Juba, South Sudan, while a few thousand have nationality certificates and more than 10,000 emergency travel documents issued in Khartoum. In January 2011, Sudan's President Omar Al-Bashir assured those participating in the secession referendum that their rights to the "four freedoms" (*freedom of movement, residence, property, and employment*) would be safeguarded. Instead, in August 2011 the Government of Sudan (GoS) amended its nationality law to preclude "southern" Sudanese from holding dual nationality, denationalized en masse all southerners of their Sudanese citizenship, fired southern civil servants, and gave all southerners nine months to regularize their status or face deportation similar to any other unlawful foreigner.

Almost certainly, the longer the period between departure from Sudan and recognition as South Sudanese nationals, the more vulnerable southerners are to violence, exclusion, and poverty.

## **Preventing statelessness in Sudan**

Because Sudan's Nationality Act prohibits only South Sudanese from holding dual nationality it is inherently discriminatory. Moreover, restricting the rights of southerners because they may have automatically acquired South Sudanese nationality through birth or descent violates international law as it occurs regardless of the person's preference or whether they will in fact be recognized as South Sudanese. It is in Sudan's interest to develop an administrative system that individually assesses whether a person remains a national. Currently thousands of people who want to return to South Sudan are stuck at departure points where they live without any provisions or shelter. Often times, movement out of Sudan is almost impossible because the GoS stops barges down the Nile for security reasons. Neither trains nor

buses are viable options as they require movement through Southern Kordofan, where ongoing fighting between the Sudan Armed Forces and the Sudan People's Liberation Movement - North makes passage unsafe. Bad roads and the onset of the rainy season also complicate travel south. These conditions inevitably create logjams for those waiting to leave Sudan. Hundreds of thousands of southerners very likely still live in Sudan. Among the most vulnerable to attack and discrimination are the 100,000 or so in Khartoum who have registered their intent to leave.

With assistance from the international community, “denationalization” hearings for southerners who elect this process would create time and space to alleviate backlogs for departure, the adjudication of nationality certificates at the RoSS embassy in Khartoum, and it would facilitate the voluntary, safe, and dignified return of those found to be South Sudanese.

In the meantime, RoSS and the GoS must assume full responsibility for protecting each other's nationals and bring into force the Framework Agreement on the Status of Nationals of the Other State and Related Matters, which includes respect for the Four Freedoms.

### **Preventing statelessness in the RoSS**

RoSS' 2011 nationality law and regulations require only that a person submit a birth certificate or age assessment and present a witness from his tribe who can attest to the person's place of origin. While the burden of proof is on the applicant, they need only demonstrate that they are likely to be a national (put simply, the interviewer must be at least 51percent satisfied the applicant is a national). Unfortunately, included in the definition of a national are people born in or originating from “indigenous communities,” which is a subjective assessment without reference to a designated list. If a question exists as to a person's place of origin, two local authorities (at Boma and Payam levels) may attest to the origin of the individual. The nationality law contains a right to judicial review, but the Director of the Nationality, Passport and Immigration office told me in May 2012 that no one had elected the process as most of the 80-100 denied applications were fraudulent. I did request but was unable to review the applications or adverse decisions.

The general flexibility of RoSS' Nationality Act and regulations, if implemented correctly, should result in high rates of nationality certification and the prevention of statelessness. However, if implemented incorrectly, too rigidly, or in a discriminatory or arbitrary manner, the risk of statelessness will increase exponentially. Unfortunately, early indications suggest that all three concerns are present in the adjudication of nationality applications in Juba.

### ***Early indications of discriminatory decision-making***

Opened in January 2012 in Juba, the Directorate of Nationality, Passports and Immigration is processing thousands of applications for nationality certificates, identification cards, and passports. While queues for an application can be days long, for many the result is a nationality certificate. For other South Sudanese, however, the experience is exceptionally burdensome and time consuming. Based on observations and discussions with individuals and organizations, people from communities or tribes outside the Juba area, particularly in the Equatorias and border regions, are finding it more difficult to demonstrate they are "likely" South Sudanese. Even after providing a witness and attestations from two local authorities, some nationality officers are requesting more evidence. But the evidence required to dispel an officer's concerns are neither articulated nor provided in writing. Individuals in process said that excessive demands were discouraging them from continuing to pursue a nationality certificate, which may ultimately constitute *de facto* denials without the right of review.

On numerous occasions, nationality office employees, applicants going through the nationality process, and employers of South Sudanese nationals told me that not "looking" South Sudanese creates barriers to successfully acquiring a nationality certificate. Not "looking" South Sudanese is a reference directly to the skin colour of an applicant – the lighter the applicant's skin, the more likely they will be assumed to originate from outside RoSS. There is nothing objective about this analysis; rather it is based on an individual officer's perception of a person absent of any oversight or accountability. Even if all other requirements are met, a person's skin colour could result in the need for

more documentation, regardless of whether the person's origins are actually in question.

Historically migrant populations, including the Falata and Mbororo, are at an exceptionally high risk of statelessness despite their decades-long presence in the nation. Falata, the term used in both Sudan and RoSS for Muslims of West African migrant origin, already faced barriers to fair nationality proceedings in the former united Sudan, and there is little indication that the process will be easier in the RoSS. While the Mbororo have historically been a semi-nomadic people, many have a habitual residence in RoSS that goes back decades. Some have left the pastoral livelihood and are settled business owners. Yet the government and many South Sudanese believe the Mbororo are “outsiders” from Chad. Moreover, some government officials claim that the Mbororo are allied with the GoS. These misconceptions and prejudices give rise to significant concerns that Mbororo and Falata individuals will not be recognized as nationals of South Sudan and will be rendered stateless. To avoid this outcome they will require specific identification and assistance in acquiring nationality applications.

A variety of other factors may exclude, or make very difficult, the acquisition of nationality certificates. Several additional ethnic groups are at high risk of statelessness due to their cross-border populations. Some reside on both sides of the new Sudan-RoSS border - several in disputed areas. There were early reports that some individuals belonging to these groups had affirmatively moved north to Sudan because they were afraid that they would not be accepted as nationals of RoSS, especially those in mixed marriages or who have family members from both sides of the border. Opening nationality offices with local employees in all 10 of RoSS' states should be a priority, as officers from the area are more likely to know the presence, history, and nuances of communities. South Sudan opened its second Nationality Directorate in November 2012 and the government expects that offices will be opened in all 10 South Sudanese states soon. This is a tremendous step for the world's newest country and should greatly decrease the risk of statelessness.

In the meantime, mobile nationality teams that can go from village to village should be developed and funded. Moreover, the United Nations Refugee Agency (UNHCR) should be adequately staffed to provide

training for all nationality officers on the right to nationality, consequences of statelessness, and the principle of non-discrimination, as well as consistent oversight of adjudications in partnership with an impartial government unit.

For the vast majority of RoSS' nationals, the fees associated with making an application are prohibitive. Supported by the international community, the government should waive application fees when appropriate so that millions of nationals in RoSS who cannot afford the process will be able to access a nationality certificate.

### ***Arbitrary decision-making***

Over several days in April 2012, I observed the processing of nationality certificates and noted that at times applicants were required to submit evidence of South Sudanese origin beyond regulatory requirements and even after the submission of formal letters by authorities at local levels. At other times, applications were approved without the inclusion of a required birth certificate, age assessment, and/or the presence of a witness who had previously acquired a nationality certificate. These irregularities could reflect the different review procedures of adjudicators at the Nationality Directorate rather than a discriminatory factor, and reinforce the need for oversight by an independent government unit together with the UNHCR to ensure a process that is consistent, fair, and transparent. The UNHCR staffed a statelessness protection officer in December and that is an important step.

### ***Incorrect implementation of the nationality act***

Although not required by the Nationality Act or regulations, the Nationality Directorate requires that the results of a blood test be attached to a nationality application. Purportedly to promote the good public policy of easily identifiable blood type, this extra obligation instead creates another financial hurdle for applicants and is ultimately not useful, as blood type is neither identified on the nationality certificate nor the identification card. Contrary to the regulations, the Directorate also requires that the witness to a nationality application already possess a nationality certificate. Given that only about 40,000 individuals currently possess a nationality certificate out of a population



of more than eight million, for many, particularly outside Juba, this requirement will create an insurmountable obstacle to the successful acquisition of nationality.

### ***South Sudan and corruption***

Under South Sudan's Transitional Constitution, a South Sudanese national may acquire the nationality of another country, however, this right may be under threat. Just this month, a senior member of South Sudan's ruling party, the SPLM, stated that dual citizens in outside countries remain the impetus behind corruption practices in South Sudan. As a corruption fighting measure, he is recommending that the country's leadership institute a law limiting the number of people seeking dual citizenship in other countries, as a remedy to the fight against corruption.

This approach would threaten the right to nationality and create a heightened risk of statelessness in a number of ways. While there is no right to dual nationality under international law, South Sudan's generous nationality law technically extends citizenship to all those eligible – no application for citizenship is required. However, without proof of nationality certain individuals and populations are less likely to be recognized as citizens due to discrimination and longstanding tension and conflict between different ethnic groups. An individual who is a citizen of a nation that does not permit dual nationality could lose that nationality automatically due to the automatic acquisition of South Sudanese nationality, but due to discrimination on a number of grounds, be vulnerable to statelessness during the gap between the termination of nationality and recognition of South Sudanese citizenship. This is exactly the situation facing denationalized "southerners" arriving in South Sudan. Hopefully this will not be a problem in the vast majority of cases, but as I have discussed, there are already indications of discrimination based on a variety of grounds. For those individuals who are more likely to face difficulty being recognized as citizens of South Sudan, this creates a gaping protection hole.

The proposal is also dangerous, because it would not have the force of law (unless it were amended). Instead, implementation of the proposal

would likely be subject to the discretion of South Sudanese officials, and discretion without oversight and accountability is never an effective way to secure rights.

Finally, citing a risk of corruption often has the same impact as stating that a particular situation is a national security issue – it silences dissent and serves as a “legitimate” ground for narrowing rights. This is always perilous, but when it is the right to nationality it is a particularly grave approach.

### **Concrete actions for safeguarding the right to nationality**

- The Republic of South Sudan (RoSS) and the Government of Sudan (GoS) should make all efforts to protect nationals of both countries through respect of the *Four Freedoms*, including *freedom of movement, residence, property, and employment*, as stated in the UN Security Council Resolution 2046.
- The GoS should provide all southerners with access to an individual hearing to determine whether they remain nationals of the country, as well as facilitate the return of vulnerable southerners awaiting passage to RoSS
- RoSS should:
  - Consider all southerners in possession of a travel document issued by a South Sudanese embassy as nationals
  - Increase its capacity to identify citizens by hiring and training more officers authorized to review and approve nationality certificates and identification cards
  - Include oversight as an integral component of the nationality adjudication process through visits by independent and impartial officers, and the use of *pro bono* paralegals and attorneys by applicants
- Major donors, in particular the U.S., the UK, and Norway, should allocate funds to support the RoSS Directorate of Nationality, birth and civil registrar, and the successful completion of a nationwide census planned for 2014.

### ***Travel documents issued by RoSS embassies***

Leaving Sudan requires an emergency travel document, which the RoSS embassy has issued to 12,000 people deemed to be South Sudanese. The travel document, however, cannot be used as proof of South Sudanese nationality, which undermines its utility. While emergency travel documents do not require as much evidence as a nationality application, not considering them as proof of presumptive nationality is a waste of administrative resources in Khartoum and Juba, and it leaves this population even more vulnerable to statelessness if they are not recognized as nationals of RoSS. If ultimately denied South Sudanese nationality, such individuals will almost surely be deprived of Sudanese nationality as well, since they were granted *prima facie* proof of nationality by RoSS and the Sudanese nationality law does not permit dual nationality.

Travel documents issued by RoSS embassies around the world should be considered proof of nationality with all the rights and obligations of citizenship, until an individual is recognized as a foreigner after a formal administrative procedure with the right of review in South Sudan. To do otherwise is to put at risk the nationality of hundreds of thousands of individuals who are making the affirmative decision to reside in RoSS.

### ***Oversight and accountability***

Because no oversight or accountability is built into the system, the predispositions, mood, or personality of an adjudicator may be determinative as to whether a person receives a nationality certificate, is required to provide more information, or is denied proof of nationality. Because the authority to exercise or abuse discretion is a constant concern in all administrative offices throughout the world, a concrete system of oversight and accountability is critical for identifying and resolving cases of discriminatory or arbitrary decision-making. This mechanism does not exist in the Nationality Directorate, but could be implemented through spontaneous visits from impartial and knowledgeable reviewers. Moreover, oversight could be achieved through a programme that trained locals as paralegals to assist in the completion of applications and to monitor how applications are adjudicated - considering factors such as the time spent securing a

nationality certificate, origin of applicants, skin colour, the adjudicator, and other possible indications of discrimination or arbitrary decision-making. Work by paralegals could be buttressed by the addition of several attorneys with the knowledge and resources to challenge adverse decisions or excessive evidentiary requirements in court when appropriate.

### ***2014 national census***

South Sudan's national census scheduled for 2014 provides an opportunity to identify citizens already residing in the country. In April 2012, the Chairperson for the South Sudan National Census publicly pled for the \$99 million estimated funds required to conduct a timely and consistent process. The United Nations Population Fund (UNFPA) is the lead agency within the UN system that provides financial and technical support to census operations and should be consulting with South Sudanese counterparts to identify how it can best support the process. Funding of the census is vital, as the results will form the basis for the first national elections to be held in 2016. He revealed that the cabinet had resolved to hold a conference from which it expects donors and other development partners would make their contributions to support the exercise but did not say how much the government expected to raise.

“We know that the exercise requires huge funds, materials and human resources but because of the necessity, the government despite all the financial challenges will definitely take the lead. The cabinet had also resolved that a donor conference should be held in March to solicit funds to support the conduct of the exercise,” Yel recently told the *Sudan Tribune*.

The U.S. should commit to fully funding UNFPA's work with RoSS so that the census is timely and accepted as an accurate and credible record. Individuals who identify as South Sudanese during the census process should be presumed to be citizens of RoSS unless recognized otherwise in a formal individual hearing. In no way should the omission of individuals from census records negatively impact their ability to register

in South Sudan or acquire nationality certificates at a later date if they are otherwise able to demonstrate eligibility for citizenship under the nationality law.

### ***Registration***

Birth and civil registration lay the foundation for protecting and ensuring basic human rights by serving as proof of citizenship at the time of birth or by demonstrating the link between an individual and the state later in life (i.e., during nationality adjudications). The United Nations Children's Fund (UNICEF) should work with RoSS to make free birth registration accessible to all children and encourage the use of good practices such as coupling registration with nationwide public health campaigns, training community health officers to also act as registrars, and by placing registration offices in health institutions. All parents, regardless of geographic location or socioeconomic status, should be made aware of and have access to birth registration for their children. The establishment of an effective birth registration system could prove one of the most effective ways to prevent statelessness for future generations.

## **Lobby and Advocacy for Stateless Roma in the Netherlands – A Road with Blockades!**

- *Geesje Werkman / Roel Aalbersberg*

### **Statelessness in the Netherlands**

First let us talk about: What is statelessness?

The Convention Relating to the Status of Stateless Persons of 1954 defines as stateless anyone who is not considered a national under the law of any state.

In practice we know of two kinds of stateless persons:

1. Stateless de jure: this means the person is recognized as a stateless person, which means that one is entitled to the protection provided by the international law on statelessness.
2. Stateless de facto: these persons are registered as *nationality unknown*.

There is also the Convention on the Reduction of Statelessness of 1961. The Netherlands ratified both conventions, but...

Although the conventions say there must be a procedure by which a person can be defined as stateless (de jure), in the Netherlands we do not have such a procedure. People who are stateless de facto are told that they must leave the Netherlands and after some procedures they end up in detention where they are constantly told to leave the Netherlands. After detention they are put on the streets with a letter to leave the Netherlands within 24 hours.

There is a procedure that gives a permit to stay on the basis of innocence, but it takes years to prove that it is not your fault that you cannot leave the Netherlands. All this time people have no shelter, no possibility to raise an income, no access to health insurance and facilities, and the migrants are in danger of being locked up in prison.

Worldwide there are approximately 12 million stateless persons. In the Netherlands there are 2,000 stateless persons de jure and 80,000(!) stateless de facto persons. This last number is growing and growing, and the number of stateless de jure persons is going down.

Consequences of statelessness are/can be:

- No birth certificates
- No nationality by birth, therefore: no civil rights
- In risk of discrimination by authorities
- In risk of poverty
- No access to education, health , labour market

The UNHCR points out that after the Second World War millions of Roma all over Europe lost their citizenship. Today there are still many Roma who have difficulties in acquiring citizenship.

### **An example: the Pavlov family**

Kolja Dragon Pavlov was born on February 7 in 1948 in Italy. His parents did not announce his birth with the municipal authorities, so he became a child without citizenship, and grew up a stateless Roma man. Kolja met with Rubinta Petroff, born on 27 December 1948 in Italy, and she also was stateless. The parents of both came from Russia: they left during the Russian revolution because they were unsafe. They travelled through a lot of countries and during the Second World War many family members were murdered.

And so in Italy this boy Kolja and the girl Rubinta were born, without a nationality, stateless.

And this would turn out to create a huge problem for all the children and grandchildren to come.

Kolja and Rubinta became a couple and Rubinta gave birth to nine children. All of them became stateless, just like their parents. And also the children gave birth to children - Kolja and Rubinta became grandparents.

They traveled and were chased away, because they did not belong to any country in the world, unable to claim any citizenship, having no rights anywhere.

Finally Rubinta and Kolja ended up, through the United States, in the Netherlands. The only procedures available there are the asylum procedures, but they are not refugees, they are stateless Roma. Now they are living in the city of Almere in the Netherlands, a family of 13 members.

This is what Linda, one of the daughters and mother of two sons tells us:

*After years of roaming through Europe, sent away from city to city and from country to country, my family wanted a better life. They heard of the USA and made this huge life decision to go overseas. The only way it could be done was with false passports. So false German passports were bought.*

*At that time, which was early February 1974, a very large number of Roma families were at a camp site in the city of Utrecht. There were over 300, more or less and all together there were a 102 Romas leaving.*

*A few years later, the rest who stayed were all given General Pardon. Which was great for them, that put an end to statelessness for these families (this is not correct!) So back to the story, the plan was to go through Mexico. In total they stayed for ten days in Mexico. Next was a transfer to Nagles, which was on the border with Arizona. Once off the train, they had to search for the people (smugglers) to bring them over. They found a gang of men, who charged them 100 US dollar for adults and 50 dollars for children. These men had a few vans and went back and forth taking a family at a time, like man, wife, kids, grandpa, grandma etc. But sometimes the vans were overloaded and families were split. It was dark and they were told to hurry.*

*Almost all the families got across safely, when the last van broke down on interstate highway 19. There was smoke coming out of the hood. Arizona state troopers came. And everyone was so scared, also because people were split up. They told the police about the rest of the Romas. The police didn't know what to do: all those people and so many kids. They took everyone to a local motel, they got them rooms. There was a deportation hearing scheduled for March 12, 1974 in Phoenix, Arizona, but this was cancelled. "You are free to seek employment and move where*



*you wish” they were told, so they did. But they held on to their old ways for a few years longer. Still living in campers, then an apartment, then a house. Then they let us children go to school. My two elder sisters weren’t so lucky. So they don’t read or write. We went on with our lives, school, work.*

*Then the reason we left: lots of drama. My sister Rozi had a bad relationship with a very bad man who was a leader of a street gang called the Latin Kings. He is a killer, he killed our dear uncle in cold blood. So Rozi was beaten by him and locked in a room for days. He would not let her go.*

*So to save our lives we came here.*

*And since 1998 we had no luck, the laws are not on our side. We need to end this now with my kids. The way this will end is with an identity. It’s like we are here, but not here.*

*How do you prove that you are stateless? Isn’t this proof enough? I am so scared for my kids. Our life has been on hold since I got kicked out of my home.*

*I don’t wish this for anyone.*

*This was not how I wanted to live my life or I should say we. I speak for my whole family, we need help, we need to end this problem.*

*All I do is pray to God, all day long.*

*One day this has to end. But when?*

At this moment the sons have USA passports, but Linda has not. Will they be separated in the future? Other parts of the family have left for the USA and one part to one of the countries in Eastern Europe, so the family is split up in pieces.

## **Lobby**

The aim of the lobby for stateless persons is to achieve a change in status from *stateless de facto* to *stateless de jure*. The first thing is to get protection as a stateless person.

The national authorities in any European country fear that, if they would solve the problem of all those people who are *stateless de facto*, there will be a rush to that country from all other European countries. It is clear, therefore, that the best way would be to get a European solution for all the hundreds of thousands of stateless persons within the EU, including the Roma.

The Churches' Commission for Migrants in Europe (CCME) tried to put it on the agenda of the European Commission, but there was no interest.

We also tried, with the help of a political party in the Netherlands, to put it on the European Parliament's agenda, but no success.

In general, the best approach to a successful lobby is to follow the PPP-route: Protest-Public support-Political change. But to get the public support in the case of Roma is not easy. That is why we tried to raise awareness first, but even then: "Roma? Not interested!" is the usual attitude.

So it takes a long way to raise the necessary awareness. Having success in lobbying is therefore very difficult. You will find blockades on every road.

In our church we can lobby for children with sad stories, because they are "cuddly", and the public and the broadcasters as well as the newspapers will join you on the road of an effective lobby. But the Roma are all but cuddly, and it is hard to find solidarity for them.

Also on the national level our lobby activity did not succeed so far, and that is why we have looked for a strategy and we think we may have found one.

A nice Chinese girl puts in a request to be filed in the basic administration of the municipality as *stateless de jure*. This request is then turned down by the municipality (people from the municipality are partners in this strategy!). It is vital that this request is rejected, because now, a lawyer can appeal in court, and in this court case we can apply

jurisprudence from an earlier case in another city (Zwolle) in September 2010.

In that case in Zwolle the court decided that, in accordance with article 94 of the Constitutional Law, “treaties with a direct effect prevail over national law.” And so, in this case, the court decided that Article 1(2) b of the Convention of 1961 had a direct effect.

So, if this jurisprudence is used successfully for the case of the Chinese girl, the status of a big number of *stateless de facto* persons can be changed into *stateless de jure*, including many Roma.

We now are at the point that the municipality has in fact refused to register the girl as *stateless the jure*. We hope that, where lobby failed, this strategy might help.

May God bless our route.



## ***Appendices***

### **Background Paper of the Consultation**

Around the globe, millions of people are not recognized as citizens of any country and thus are denied of their basic fundamental rights. In reality, the stateless people do not exist anywhere: they are stateless. They live in this world without a nationality, although nationality is a fundamental human right.

Nationality grants people a legal basis for the exercise of a wide range of human rights, and is the foundation of identity, human dignity, and security. The right to nationality enables an individual to benefit from the relationship between individuals and the state through the legal bond of citizenship. Numerous international instruments, including the Universal Declaration of Human Rights (UDHR), affirm nationality rights. Article 15 of the UDHR provides that “Everyone has the right to a nationality” and that “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

It is estimated that statelessness, or the lack of effective nationality, affects some 12 million people worldwide. These stateless people live in a situation of legal limbo which can result from various factors such as political change, expulsion from a territory, discrimination, state succession, nationality based only on descent, laws regulating marriage and birth registration, etc. Statelessness is often a hidden problem – a sensitive topic often stuck in diplomatic deadlock – and therefore draws little international attention.

An individual’s legal bond to a particular state through citizenship is an essential prerequisite to the enjoyment and protection of the full range of human rights. Hence, stateless people being not recognized as citizens of any country, they are often denied basic rights such as the right to education and medical care, to get health care, to own property, to get married and found of a family, to legal protection, to a decent employment, to housing, to open a bank account, to get married legally, or register the birth or death of a child, to participate in political processes, etc. They face various forms of discriminations, restrictions and exclusion. They are vulnerable and become victims of trafficking,

harassment, and violence. Women and children are particularly affected by the lack of citizenship.

It belongs to the State to determine the procedures and conditions for acquisition and loss of citizenship. At the same time, statelessness and disputed nationality are ultimately resolved by governments. Consequently, since statelessness often originates from the understanding of what constitutes national identity, granting citizenship – which can only be done by national authorities – is therefore difficult. This being said, state determinations on citizenship must conform to general principles of international law enshrined in the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Although not widely ratified, these Conventions provide the international legal framework for stateless people.

The 1954 Convention defines a stateless person as someone who does not have the legal bond of nationality with any state. Stateless are persons who have legitimate claims to citizenship, but who cannot prove their citizenship, or whose governments refuse to give effect to their nationality. Unlike refugees, stateless individuals — and particularly those who cannot be classified as refugees — often cannot benefit from the protection and assistance of governments or UN agencies.

### **CCIA/WCC's response**

The World Council of Churches has a long history in upholding and defending human rights of uprooted people in general. However, during its 50th meeting of the Commission of the churches in International Affairs (CCIA) held in Albania, on October 2010 that the CCIA decided to focus on the rights of stateless people. A Working Group of CCIA was formed to address the concerns of Human Rights of Migrant Workers and Stateless People. This Working Group met in Kingston, Jamaica on 25-26 May 2011 and decided to address certain concerns as part of the mandate of the Working Group in relation to Stateless People. The CCIA organized a consultation on Stateless people in the South Asia which was held in Dhaka, Bangladesh in December 2011 and a report of a study on the situation of statelessness in South Asian countries was presented at the 51st meeting of the CCIA held in

People's Republic of China in June 2012. The China meeting of the CCIA has suggested focusing on the situation of the stateless people in other parts of the world including in the United States of America with an aim to develop ecumenical advocacy on rights and dignity of stateless people.

- It is in this context that this consultation will be organized in collaboration with American Baptist Church in the USA. To assess the situation of stateless people in the world including those who are stranded and confined to refugee camps during several generations, with often little or no hope to aspire for; to explore ways of bringing the issue of statelessness at the WCC 10th Assembly in Busan, Korea, and initiate discussion through a Public Issue Statement on the Human rights of Stateless People; to influence policy at the global, regional and national levels by projecting a Christian perspective rooted in ethical responses;
- To evolve ecumenical advocacy strategies to address the concerns of stateless people worldwide.

### **Issues to be addressed at the consultation**

- Right to a nationality
- Registration of stateless people
- Ratification of international instruments protecting stateless people and uprooted people in general.
- Ecumenical advocacy for the ratification of 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

### **Participants**

About 40 participants, drawn from WCC member constituencies in different continents, representatives of international organizations, civil society organizations, human rights and social activists, policy makers, etc., will be invited to attend the Consultation.

## **Communiqué**

*from WCC/CCLA Consultation on the Human Rights of Stateless People  
Held in Dhaka, Bangladesh, 16 to 18 December 2011*

We the participants, of an international consultation on *Human Rights of Stateless People* organized by the Commission of the Churches on International Affairs (CCIA) of the World Council of Churches (WCC) and hosted by the National Council of Churches in Bangladesh from 16 to 18 December 2011 at the HOPE Centre in Dhaka, Bangladesh share our experiences and concerns on the situation of the stateless people. We represented churches, national ecumenical councils, international organizations and the CCIA at this Consultation.

The information we received at the consultation, as well as our face to face meetings with stateless people during the field visits, helped us to understand the gravity of the problem of statelessness. Thematic presentations at the Consultation addressed various aspects of statelessness, such as human rights of stateless people and international instruments protecting their rights, stateless people of Nepal, stateless people in Bangladesh, situation of Rohingyas in Arakan state of Myanmar, and advocacy on the protection of the rights of stateless people.

### **Statelessness: a neglected concern**

The “stateless persons”, who are not recognized as nationals by any state have no nationality or citizenship and they live in vulnerable situations. As the stateless people living in particular geographical area are not protected by any national legislation, the consequences of their situations of statelessness are profound. Statelessness that affects all aspects of life is a massive problem for twelve million people, who are located in different parts of the world. These people became stateless due to various reasons and circumstances; as a result of the denial of citizenship in situations such as when states simply ceased to exist while individuals failed to get citizenship in their successor states; political considerations that dictated changes in the way citizenship laws were applied; persecutions of ethnic minorities and discrimination of indigenous people, etc. There are also individuals who became stateless



due to personal circumstances, rather than persecution of a group to which they belong. The statelessness of people in South Asia belongs to most of these categories and is due to several of these factors.

## **Our experiences**

Prior to the Consultation, four teams of participants have had the opportunities to visit camps and communities of stateless people in different parts of Bangladesh and Nepal which helped them to understand the miserable life situations of stateless people - the Rohingyas and Biharis in Bangladesh; and Bhutanese and Tibetans in Nepal. The group, which visited Cox's Bazar, where a large number of Rohingya stateless people are concentrated, listened to sharing by Rohingyas themselves about their vulnerable situations. In the 1990s, nearly a quarter of a million Rohingyas fled from Myanmar into neighbouring Bangladesh in order to escape persecution in Myanmar.

The government of Bangladesh declared the Rohingyas illegal immigrants and placed them in refugee camps. Since the mass exodus two decades ago, about 28,000 Rohingyas still live in official camps in Bangladesh, with more than 200,000 living without support in nearby makeshift camps, according to UNHCR sources in Dhaka. These unregistered Rohingyas are denied official refugee status and are labeled as "illegal economic migrants." They live without protection of the law and are restricted from formal education, reliable health care, and regular sources of food or income. Those Rohingyas who have remained in the Arakan state of Myanmar continue to face similar discriminations.

The second group of participants who visited the "Geneva camp" of Bihari stateless people (also known as stranded Pakistanis) in Mirpur, Dhaka city, could understand more about the plight of the Urdu speaking Muslim minority Biharis. About 200,000 Urdu speaking minorities who during Bangladesh's civil war with Pakistan took the side of Pakistan, losing their homes, jobs and positions in society, were forced eventually to take up residence in more than 70 overcrowded camp settlements. Although, many of the Urdu speaking minority hoped to get the permission to move to Pakistan, but only a small percentage were admitted.

For almost 40 years, the camp residents were stateless, non-citizens of Bangladesh or Pakistan. They were denied access to citizenship or government services, including education, formal employment, property ownership, and driver's licenses. In 2008, a Supreme Court decision recognized their nationality rights. A large percentage of the adults were registered to vote in the 2009 election. After decades of isolation and discrimination, 94 percent of them are illiterate, almost double the national rate.

Despite being registered as voters by many of them, a large number of Urdu speakers still are unable to obtain proper documents, jobs, passports or compensation for their property confiscated during the war. Forty years after the independence of Bangladesh, the Urdu speaking minority people are still seeking restoration of justice. Several Biharis who had returned to Pakistan from the then East Pakistan when Bangladesh was born in 1971, still live in Pakistan without any right to nationality. They are not recognized as citizens and are denied all amenities of citizenship by Pakistan government.

The group which visited Nepal listened to and understood the situation of the stateless people in Nepal – especially the Bhutanese and the Tibetans who live in various camps. There are 56,366 Bhutanese and around 15,000 Tibetans live in Nepal as stateless. We also heard about the situations of other stateless people in Asia, such as the indigenous people in Northern Thailand, the ethnic Vietnamese and Laotians in Japan.

### **Nationality and citizenship: universal human rights**

While listening to and analyzing the international human rights protection mechanisms and existing legal instruments that define nationality and citizenship, we are convinced of the fact that citizenship based on nationality of an individual is a universal human right. There are substantial reasons for the international community to recognize that international law which records the nationality laws must be consistent with general principles of international law.

The Universal Declaration of Human Rights (UDHR) Article 15 stipulates that nationality unequivocally within the framework of universal human rights. Over the past five decades, the right to nationality has been elaborated in two key international Conventions that have brought the concept of statelessness into the United Nations framework: the 1954 Convention relating to the status of stateless persons and the 1961 Convention on the Reduction of Statelessness. These Conventions created a framework for avoiding future statelessness, placing an obligation on states to eliminate and prevent statelessness in nationality laws and practices.

However, it is with dismay that we noticed that the state parties to these conventions are far less than the states adhered to other Conventions and international treaties. Several international legal instruments offer means of protecting the rights of stateless people, but many states failed to ratify and comply with the Conventions on statelessness.

### **Biblical and theological basis for our prophetic witness**

We pondered on the question that why churches and Christian bodies be concerned about stateless people. The Bible itself bears witness to the stateless condition of the Hebrew people and God's involvement to facilitate for them a homeland and therefore statehood. A popular Confession of Faith among the Hebrews was: "A wandering Aramean was my father: and he went down into Egypt and sojourned there, few in number; and there he became a nation, great, mighty and populous. And the Egyptian treated us harshly, and afflicted us, and laid upon us hard bondage. Then we cried to the Lord the God of our fathers, and the Lord heard our voice, and saw our affliction, our toil, and our oppression; and the Lord brought us out with a mighty hand and an outstretched arm, with great terror, with signs and wonders; and he brought us to this place and gave us this land, a land flowing with milk and honey" (Deut. 26:5-9).

Not only the Israelites but other people and communities who experienced statelessness, were also the concern of God: "Did I not bring up Israel from the land of Egypt, and the Philistines from Captor and the Syrians from Kir?" (Amos 9:7) is another reminder of God's promise. God gave them all a homeland and thereby statehood.

All human beings, irrespective of their race are created in God's image and should therefore be respected. Likewise stateless people and minority/ethnic groups are God's creation. Therefore we are bound to see that justice is done to them. The word of God cautions the Hebrew people: "You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt" (Ex. 22:21). Jesus through the Nazareth Manifesto in Luke 4:18-19 also gives expression to God's reign of justice, liberation, and well-being of all. His parable of the judgment of sheep and goats also draws pointed attention to being in solidarity with people who are discriminated, marginalized and suffering (which would include stateless people and minority groups): "I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me"(Matt.25:35-36).

These biblical and theological bases motivate us to express our Christian commitment and to be engaged in our prophetic witness to speak for the rights of voiceless and the marginalized stateless people who live in our midst.

## **Recommendations**

We realized that the Church in each country that was represented in the Dhaka Consultation is numerically small. Since the issue of stateless people is a highly sensitive and political issue, it becomes rather difficult for the churches to take up this matter for advocacy at the governmental levels. This is mainly due to the fact that they could easily be branded as unpatriotic and are encouraging others for political dissension. It is also a matter of fact that the issue of stateless people has not yet received due attention in the churches.

Having heard the stories of the plight of stateless people in different contexts, we are reminded of our Christian call and witness to be in solidarity with the stateless people. We also underscore the need for churches to be sensitized on the problems of stateless people and the role of churches in advocacy on the basis of proper theological perspectives. It is important that churches should be encouraged to enter into alliances with likeminded civil society organizations working

for the human rights protection of the stateless people, especially to lobby with the governments to ratify the 1954 and 1961 United Nations Conventions on Statelessness.

We are convinced that it is utmost important that states should honour their human rights obligations to all those within the state's territory, irrespective of nationality status. States should put in place with adequate mechanisms to protect stateless people from abuses. Our role as responsible Christians should be in our respective countries as well as at the global level to be engaged in facilitating wider understanding of the different forms and grave consequences of statelessness; enforcing existing human rights norms and legal measures to be followed up at the national and international levels to reduce statelessness; supporting wider advocacy actions in order to exert greater political pressure on states to acknowledge their responsibilities to protect the rights of individuals as citizens.

We urge the World Council of Churches and the Christian Conference of Asia to take necessary follow-up actions to address the concerns of the stateless people in Asia, especially in emphasizing the seriousness of the situation and the importance of advocacy for the stateless people at governmental levels as well as at the international levels highlighting the situations and emphasizing the urgent need that due justice must be done.

In conclusion, we affirm that advocating the protection of the rights of the stateless people is our God-given commission. While this prophetic commitment is not an easy task in the prevailing political contexts in most countries, we believe that God being our source of strength, we are called to be engaged in this prophetic witness.

## List of Participants

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Ms	Catherine	Gordon	Presbyterian Church (USA)
Mr	Nathan	Hosler	Church of the Brethren/NCCCUSA
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Mr	Jason	Knapp	Church World Service
Mr	Sebastian	Köhn	Open Society Foundations
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