

# The Invisible among Us

“As we journey on the Pilgrimage of Justice and Peace, *The Invisible among Us* is a reminder for the Christian family to bring to the centre those who are left on the margins, are forgotten and rendered ‘legally invisible.’”

– Rev. Dr Cornelia Füllkrug-Weitzel  
President, Brot für die Welt / Bread for the World

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# The Invisible among Us

Hidden, Forgotten, Stateless

Semegnish Asfaw

Promo



**World Council  
of Churches**  
Publications

THE INVISIBLE AMONG US

*Hidden, Forgotten, Stateless*

Semegnish Asfaw

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*For my late father*

*For my mother, brothers, and sister*

*For my friends*

*With gratitude*

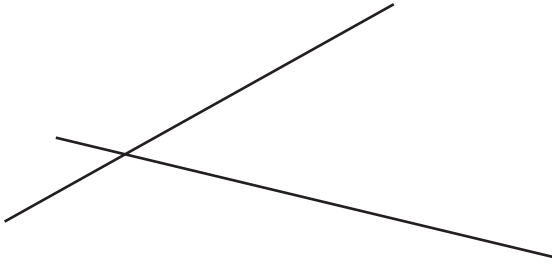
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Some of them have left behind a name,  
so that others declare their praise.  
But of others there is no memory;  
they have perished as though they had never existed;  
they have become as though they had never been born,  
they and their children after them.  
– Sirach 44: 8-9

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## Preface

Nationality is the legal link between an individual and a state. It is an element of membership, of belongingness to a group, a nation, a state. Recognized as a fundamental right by Article 15 of the Universal Declaration on Human Rights (UDHR), it is a right to which all human beings are entitled by virtue of being part of the human family.

Statelessness is the antonym of nationality: it is the absence of nationality, of this legal link proving our membership to a state. Not being recognized as citizens by any state, stateless persons do not benefit from the protection of any state. Statelessness is an anomaly of the modern state system and of the international legal framework developed over the last seven decades. It is about being vulnerable, defenceless. Since they do not legally exist, stateless people are “invisible” to the state system, hidden, marginalized, forgotten, yet living in our midst. *Invisible among us.*

Stateless persons are deprived of the fundamental right to be full members of the society in which they were born and are living. Just like any other human being, they aspire for recognition, for a place in the world, in the community of beings. They yearn to be accepted and be part of a community, a history, a country. For without citizenship, they are often unable to have access to health care, get a decent education, vote, travel freely, find accommodation, open a bank account, own property, etc. All these aspects of life that nationals often take for granted are inaccessible and out of reach for stateless persons.

In the face of increasing security concerns that have affected several Western countries in the last years, deprivation of nationality has been a topical and controversial issue, for instance prompting the resignation in early 2016 of Christiane Taubira from her position as France's Minister of Justice, as a sign of protest to the French government's intention to amend its constitution in order to strip French bi-nationals accused of terrorist acts of their French nationality. France is not an isolated case: several other countries have also been considering deprivation of nationality as a tool in responding to such security threats.

The World Council of Churches (WCC), through its Commission of the Churches on International Affairs (CCIA), has a long tradition of upholding and defending human rights for all, especially for those who are marginalized

and rendered voiceless. The plight of stateless persons, and the lack of attention they receive, are no exceptions to this tradition.

During its 50th meeting in September 2010 in Albania, the CCIA was given the mandate to take up the issue of statelessness as one of its advocacy focuses. Much has been achieved since then, including solidarity visits to stateless communities in Bangladesh and Nepal followed by a regional consultation in Dhaka (December 2011), as well as a major international conference in Washington DC (February 2013).

The process led to the first WCC statement on the human rights of stateless people adopted during the WCC 10th Assembly in Busan, Republic of Korea, requesting “the WCC to take up the issue of stateless people as one of its programmatic priorities until the forthcoming WCC 11th Assembly.” In the spirit of the assembly mandate, the WCC/CCIA and *Kerk in Actie* organized, a few days prior to the first Global Forum on Statelessness (The Hague, 15-17 September 2014), an international ecumenical consultation in Den Dolder. At the consultation, participants came up with a series of recommendations to help guide churches and church-related groups in action when dealing with matters of statelessness.

Statelessness as an issue is of particular pertinence to our Christian tradition: as the 10th Assembly Statement on the Human Rights of Stateless People rightly puts it,

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. We are instructed in Micah 6:8 to “do justice.” And the commandment of love, the greatest commandment of our Lord Jesus Christ, is to love God and to love one another.

There are several causes of and consequences of statelessness, as we will see in the following chapters. In some contexts, statelessness can be the product of interrelated causes, thus calling for a holistic and comprehensive response. It is therefore helpful to collaborate with the United Nations High Commission for Refugees (UNHCR) and other United Nations (UN) bodies, faith-based organizations, civil society, and all relevant stakeholders in order to achieve a meaningful and sustainable impact.

Depending on their local realities, churches and other religious communities will find the question of statelessness pertinent to their respective contexts. For instance, the issue

of statelessness is of particular importance today for churches grappling with the refugee crisis from Syria and Iraq. As a result of discriminatory nationality laws that do not allow mothers to pass on their nationality to their children or even register their birth, an entire generation of children born without the presence of their father in refugee camps or on other migratory routes risks becoming stateless in the future.

WCC constituency can also get involved in the issue of statelessness, for instance by protecting stateless persons and making sure their basic rights are respected, or by preventing new cases of statelessness from arising in order to reduce vulnerabilities to exploitation, marginalization, and discrimination.

This publication is an attempt to provide an introduction and serve as a guide elaborating on basic elements of statelessness. It aims to raise awareness among the ecumenical family about some aspects of this little known problem, and to inform churches and church partners about possible avenues to prevent statelessness and protect stateless people.

The WCC 10th Assembly in Busan has invited the ecumenical family to embark on a Pilgrimage of Justice and Peace – Let us also include stateless people in this journey and build just and inclusive societies.

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# 1. Who Is Stateless? Why? Where?

On April 1, 1999, an article in the *New York Times* contained the following paragraph:

Kenneth D. Kaunda, the father of modern Zambia and the country's President for 27 years, was declared a stateless person by the country's High Court today. Ruling on a case brought by high-ranking members of the present governing party, the court ruled that Mr Kaunda is not a Zambian citizen under the Constitution because his parents were from the former British Nyasaland, now called Malawi. Mr Kaunda renounced his Malawian citizenship years ago, when he was President, so he is now effectively stateless.<sup>1</sup>

This excerpt is not an April's fool prank. Kenneth Kaunda, founder and president of Zambia for 27 years, was

indeed declared stateless by a High Court ruling in 1999. His opponent, Frederick J. Chiluba from the Movement for Multiparty Democracy, filed a petition against him and later tried to deport him to Malawi on the grounds that his parents were born there. Former Zambian President Kaunda's lawyers appealed to the Supreme Court, and after months of his living as a stateless person, the Supreme Court finally recognized him again as a citizen of Zambia in 2000.

This widely publicized case involving a well-known political figure brought our attention to the issue of statelessness. This case also shows us that even high profile people can be affected by statelessness. Unfortunately, most of the world's stateless people do not benefit from such notoriety, and therefore their fate is completely overlooked and forgotten. Statelessness is a silent, hidden and neglected tragedy of our modern times, disrupting the existence of millions of people and impacting on the lives of these individuals, their families, and their communities. Women and children are disproportionately affected by this issue.

But what is statelessness about? Who are these stateless people? How does one technically become stateless? What are the concrete effects it has on the lives of these millions of people?



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## Definition and Scope of Statelessness

Most of us usually take our nationality for granted. Unless we are asked to show our passport at immigration counters when traveling, or unless we have to show an identity card in order to be able to vote, our everyday life provides us with few opportunities to reflect on and appreciate our citizenship and the countless rights derived from this status. We usually take for granted simple things of life, such as benefitting from medical care when we or our family members become ill, registering our children in schools, applying for a job, owning property, opening a bank account, or getting married. Our citizenship provides us daily with a wide range of possibilities that we naturally enjoy, without even questioning them. But what about those who are not citizens, and particularly those who are not recognized as citizens by any country?

Stateless persons, that is, individuals with no nationality, are defined in Article 1 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) as people who are “not considered as a national by any State under the operation of its law.” Stateless people have no links to any state through the legal bond of citizenship, and therefore are not recognized as citizens by any country in this world we live in. Statelessness, then, is the opposite of nationality. And so, in order to fully understand statelessness, let us

first look at what nationality is and how it is acquired. The United Nations High Commission for Refugees (UNHCR) has the mandate to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UNHCR works with governments, other UN agencies, and civil society at large in the following four areas: (1) through *identification* of stateless people, by collating information on the scope, causes, and consequences of statelessness; (2) through *prevention* of statelessness, by addressing the root causes and encouraging states to accede to the Statelessness Conventions; (3) through *reduction* of statelessness, by supporting governments to introduce changes in their laws and improving modalities to allow stateless people to acquire a nationality; and (4) through *protection* of stateless people, by making sure they are able to exercise their rights.

### **Nationality, the proof of membership**

Nationality is a central element to the Westphalian state system we live in. It is a formal form of allegiance to a state and also confers a sense of membership and belongingness to a given state. Nationality comes with a wide range of rights that nationals can enjoy, as well as a number of duties they have to perform. For instance, citizens have the right to vote during elections or to take public office; in terms of duties, some countries require citizens to perform military service when they reach a certain age. Through the legal bond of

nationality, the state also provides protection to its nationals, both within the country and outside (consular protection).

States have the primary responsibility of deciding who is a citizen and who is not. They enact the laws and define the criteria by which individuals can acquire or lose nationality. In most countries around the world, individuals become citizens of a given country either through parentage (*jus sanguinis*) or through birth place (*jus soli*), and in some cases through a combination of both.

### **A quick glance at the world's stateless communities**

An article from the *Forced Migration Review* notes,

The stateless typically are not free-floating, deracinated individuals, moving aimlessly around the globe. They are usually people settled in particular societies, albeit lacking legal recognition of and appropriate protection for their status as residents. The primary injustice the stateless experience, then, is not that they cannot find a state to grant them citizenship but that the state which should grant them citizenship will, for various reasons, not do so.<sup>2</sup>

Stateless people can be found in all continents. Statelessness affects people from all horizons and all social ranks. The anecdote that opened this chapter about former Zambian

President Kaunda is an illustration that not even high-profile persons are spared from becoming stateless.

As a result of their lack of documentation, stateless people and communities are often unknown, overlooked, “hidden.” It is difficult to accurately estimate the number of stateless people worldwide either because stateless people are hiding due to fear that the state will identify and persecute them, or because states are unable (due to poor documentation systems) or reluctant to include them in the national census (due to political sensitivities). As part of its role in identifying stateless people, UNHCR is the main organization that systematically collects data on stateless people worldwide.

According to UNHCR, there are currently more than 10 million stateless people around the world. Statelessness is a global issue: to date, no region of the world has been left untouched. “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.”<sup>3</sup> Most of the world’s stateless people can be found in Asia and Africa, as well as in the Caribbean and Europe.

In Africa, Côte d’Ivoire has the highest number of stateless persons, with an estimated 700,000 at the end of 2013 according to UNHCR. Before independence, the colonial authorities forcibly imported labour from the territory of what is now Burkina Faso. Even after independence, Côte

d'Ivoire continued to welcome West African immigrants – particularly from Burkina Faso, Mali, and Ghana – who came to work on cocoa, coffee, and cotton plantations. However, since 1972, restrictive nationality rules targeting particularly descendants of emigrants have been enforced, bringing about the concept “*ivoirité*,” that is, of national identity. Later on, the nationality law was changed to follow the *jus sanguinis* rule, that is, purely on descent. After the death of former President Houphouët Boigny in the mid-1990s, the country’s legislations denied identification documents to all those who were perceived to be of foreign descent, thus leading to the rebellion that broke out in 2002.

The UNHCR also reports cases of statelessness in the Democratic Republic of Congo (DRC), Kenya, Madagascar, South Africa, and Zimbabwe. Unfortunately, for most of these countries, the UN agency has no clear data on the scale of the phenomenon.

UNHCR data indicate that Asia has the highest number of stateless people compared to other regions. These countries include Myanmar, Thailand, Malaysia, Vietnam, Bhutan, Nepal, and Cambodia. For instance, in Bhutan, the Lhotshampas account for more than 10 percent of the population. They are descendants of migrants of Nepali origin who came to Bhutan in the 19th century as labourers. Although they were granted Bhutanese citizenship by a 1958 Citizenship Act, a series of nationality reforms in the 1980s that retroactively

applied strict criteria rendered hundreds of thousands of them stateless. The government expelled over 100,000 ethnic Nepali to Nepal, where they became stateless refugees.

In the Americas, the incidence of statelessness is lowest compared to other regions. Among countries there, Dominican Republic has the highest number of stateless people. Similar to the circumstances in Côte d'Ivoire and Bhutan, people in Dominican Republic who have been retroactively rendered stateless are descendants of migrants from Haiti who came to work in the Dominican Republic decades ago. We will discuss their situation in detail in Chapter 2.

UNHCR data for the United States and Canada indicate cases of a few hundred stateless people in each country. These are mainly individuals registered as stateless in the countries' asylum and immigration channels.

Among the millions of stateless people worldwide, UNHCR estimates that more than 680,000 live in Europe. Latvia has the highest number of stateless people in the region, representing more than 10 percent of its population. Although most Roma people in Europe have a nationality, many of them still continue to face difficulties accessing the documents necessary to confirm it.

Regarding the Middle East and North Africa, UNHCR reports cases of hundreds of thousands of stateless Bidoons in the Gulf countries. Over 200,000 Kurds in Syria and Lebanon are also stateless. In addition, throughout the entire

region, including in Iraq, Lebanon, and Syria, gender-biased nationality laws do not allow women to pass on their nationality to their children

But how do individuals become stateless?

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## Causes of Statelessness

In our modern world, with the discourse on human rights at its height, more than ten million people are stateless and live with no legal identity. As a result, most of them are deprived of their fundamental human rights, which increases their vulnerability. Several factors cause statelessness.

We have seen that states are the primary agents responsible for assessing and defining the specific protocols for individuals to become citizens – and thereby to possess the legal bond of citizenship that links them to the state. States usually attribute nationality either based on place of birth (*jus soli*) or through descent (*jus sanguinis*). An ideal scenario is when both these rules are applied, that is, when nationality can be acquired through descent and place of birth.

The various preceding examples (Bhutan, Côte d'Ivoire, Dominican Republic) have shown us that statelessness can result from discriminatory practices targeted against specific groups in the population based on their origin or ethnicity. In these cases, statelessness resulted from strict nationality

laws granting citizenship to individuals meeting specific ethnic criteria. This has resulted in the deprivation of nationality of individuals who, a few decades ago, were considered as nationals. We will see in the next chapter that stripping individuals and communities of their nationality can be used as a weapon – a tool for discriminating further and subduing a targeted group of the population.

Some states have also been considering deprivation of nationality in cases of treason, espionage, or terrorist attacks. Debates in the United Kingdom since 2010 and in France since 2015 in the aftermath of various terrorist attacks are symptomatic of measures states contemplate when they believe individuals do not fulfill criteria of allegiance to the state and its values. Such measures can lead to statelessness if the individual does not have double or multiple nationality.

Statelessness can also result from conflicts of laws and gaps in nationality laws. Let us imagine the fictitious scenario of a child being born out of wedlock in Lithuania of a Bahraini mother and a Danish father. At the age of two, the child settles in Bahrain with his or her mother. The child is stateless for a number of reasons: Danish law holds that, in cases of children born out of wedlock, nationality is granted only if the child is born in Denmark; Bahraini nationality laws do not allow women to confer nationality to their children; and Lithuanian law stipulates that in order for the child to become Lithuanian, at least one parent needs to hold that



nationality. It is only after living in Bahrain for fifteen years that the child will be able to apply for Bahraini citizenship.

Twenty-seven countries in the world today do not allow women to confer nationality to their children on an equal basis with men. Gender discrimination in nationality laws can result in statelessness if the father is unable, unwilling, or not present to pass on his nationality to the child. The child will automatically be born stateless. Statelessness at birth also affects children born from stateless parents in countries that do not apply the *jus soli* rule, unless the nationality laws of the country where the child is born stipulate otherwise. In these latter cases, the child will be granted the nationality of his or her country of birth.

Linked to the issue of gender discrimination in nationality laws is the fact that in some countries women who marry a foreign national automatically lose their nationality. In case of divorce or death of the husband, the woman risks becoming stateless unless she is able to get her original nationality back.

Lack of birth registration can also put children at risk of becoming stateless. Without any official record confirming their existence, children can become stateless if they have no means of proving their nationality once they reach adulthood.

State succession and the subsequent modification of borders are other factors that can lead to statelessness. When deciding who their nationals are, newly formed states may overlook, at times deliberately, a portion of the population,

thus rendering its members stateless. For instance, the dissolution of the former Soviet Union and Yugoslavia made more than half a million people stateless.

Renunciation of nationality can also be a voluntary decision taken by an individual who does not want to be the citizen of a given state and therefore refuses the state's protection. If such individuals do not have another nationality, they risk becoming stateless. For instance, German philosopher Karl Marx renounced his Prussian citizenship in 1845 and lived as a stateless person for 38 years until he died. Likewise, Friedrich Nietzsche gave up his Prussian citizenship in 1868 and remained stateless until his death in 1900. Albert Einstein also gave up his citizenship in the German Kingdom of Württemberg (to avoid military service), and was stateless from 1896 to 1901. He then became naturalized as Swiss citizen. Nowadays, states require individuals who want to renounce their nationality to show evidence that they hold – or are in the process of getting – another citizenship. If not, the individuals will become stateless.

The impact of climate change on low-lying islands such as Tuvalu and Kiribati leads some to fear that in a few decades these islands will be submerged by the rising sea level. With the absence of physical territory, will the nationals of these countries be considered stateless? There are already hundreds of climate-displaced persons coming from these low-lying islands. Do they risk becoming stateless when their islands completely

disappear? In the next section, we look at the impact statelessness has on the lives of individuals and their families – even unto generations – as well as on entire communities.

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## Impact of Statelessness

To be stripped of citizenship is to be stripped of worldliness:  
it is like returning to a wilderness as cavemen or savages . . .  
Rightless people . . . could live and die without leaving any trace.  
– Hanna Arendt, *The Origins of Totalitarianism*<sup>4</sup>

In practice, stateless people do not have many rights. Since no state claims them as their citizens, they do not have the benefit of state protection. No government stands up for them. Unless they manage to get a nationality, stateless people face a lifetime of challenges and hardship. Statelessness affects individuals, families, communities, and generations: “The lives of stateless people are put on ‘hold’ until their nationality status can be resolved.”<sup>5</sup> On the individual level, statelessness often leads to a sense of disenfranchisement, worthlessness, disempowerment, and voicelessness. Railya, a stateless ethnic Tatar born in Kazakhstan now living in France, compares statelessness to tumbleweed: “It rolls . . . with the breeze it rolls away. That is what it is. That is statelessness. . . . And me, I want to put down roots.”<sup>6</sup>

As human beings, most of us need to feel that we are members of a nation, that we belong to a history, that we are rooted in the traditions and customs of our ancestors. We like to feel that we are contributing to the society and the country we are living in. When travelling abroad, we are proud to share about our country, our history, our values. This feeling of belongingness is rooted deep in our very being. Without any “legal” connection to any state, stateless people are denied this membership. This can lead to a lack of confidence, or to mental health issues such as depression or suicide. Stateless people feel rejected by the countries they were born in and called “home.” They feel invisible, “valueless.” Lack of nationality is a form of denial of their personhood and of their very existence.

Stateless people are often marginalized and discriminated against – to some extent “ostracized” – thus prolonging their economic vulnerability and the precarious conditions in which many of them live. In search of a better future, many stateless people migrate abroad or seek asylum in another country. They often have to go through irregular channels because they lack travel documents, and in doing so risk the humiliating experience of being stopped without proper identification at borders by immigration officials. They face the threat of being detained for prolonged periods in immigration centres, where they can end up trapped indefinitely because there is no country to which they can be deported.

Furthermore, stateless people often cannot own or inherit property. Property rights in many countries are often reserved for nationals. In most countries, people must have identity documents in order to buy or inherit any form of property. As a result of their inability to register any property in their name, they will lose any claim over it.

Statelessness disproportionately affects women and girls, as it increases their vulnerability to sexual and gender-based violence, exploitation, and trafficking.<sup>7</sup> Being legally invisible, such women become easy prey for unscrupulous traffickers who can easily smuggle them to other countries and force them to work in slavery-like conditions. Because they have no legal identity, they do not benefit from the protection of the law and are afraid to report the violence they experience, including rape. Some stateless women choose to marry in order to secure a nationality, or some kind of legal status; however, even in these cases, the women risk becoming victims of domestic violence or exploitation since they entered this relationship in a position of vulnerability.

Statelessness causes instability in a country, as it can potentially translate into unrest, population displacement, or conflict. When statelessness is used by the state as a political tool to weaken a group within its population, the stateless group becomes frustrated over time, which can lead to unrest and eventually internal strife. Nationality therefore contributes to human security.

Although matters of nationality belong primarily to states, states also have an obligation to respect international human rights law – including customary law – as well as internationally contracted agreements. The next section looks at the issue of nationality and statelessness on this broader, international stage.

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## **The Right to a Nationality and International Human Rights Law**

The human rights law framework was developed in the aftermath of the atrocities committed during the Second World War (WWII), during which national laws in some countries were manipulated, turned into weapons of persecution and mass deportation against specific groups of the population. Learning from these tragic events, the newly formed UN in 1945 made sure not to leave human rights within the sole control of states and subsequently set up an international framework for the protection of human rights to be applied by all states, the beneficiaries being all individuals. “The development of human rights law heralded both a move towards universally recognized rights as well as the possible denationalization of rights.”<sup>8</sup>

The Universal Declaration of Human Rights (UDHR) is a milestone document in the development of the international

human rights framework. Adopted in 1948, it sets basic standards of achievements for all peoples and all nations in terms of human dignity and rights. Already in its preamble, it affirms “the inherent dignity and the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice and peace in the world.” The UDHR also stresses that “all human beings are born free and equal in dignity and rights” (Article 1) and lays down a number of fundamental human rights to be universally protected. This includes, in Article 15, the right to a nationality, as it states, “(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

The right to a nationality is therefore a fundamental human right that all human beings on this planet can enjoy, and that all states should ensure for individuals living within their territory. If the right to a nationality is a fundamental human right, then lack of nationality – that is, statelessness – is therefore a human rights violation. Nationality is a gateway to a wide spectrum of basic human rights. Statelessness, or lack of nationality, can thus easily become a catalyst for the violation of the basic rights to which all individuals are entitled, such as the right to education, to own property, to freedom of movement and residence, to social security and health care, to get married, to register the birth of a child, or even to get a death certificate.

Eighteen years after the UDHR was proclaimed, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force in 1966. With these three main international instruments, the International Bill of Human Rights was formed, guaranteeing fundamental human rights applicable to the entire “human family” on the basis that they are human beings – that is, irrespective of their legal status (refugee, migrant, stateless, etc.). Some of these rights include the right to life, to education, to health care, and to freedom of religion or belief, as well as the right to freedom from torture and other degrading and inhuman treatment, from slavery and servitude, and from discrimination based on gender, religion, race, origin, political opinion, etc.

By simply being part of the human family, stateless people are therefore entitled to these fundamental rights as well. And it is the duty of states to avoid new cases of statelessness from emerging. Statelessness therefore occurs when the rights guaranteed by the nationality laws of a given state contradict the fundamental right to a nationality guaranteed by international law.

In practice, gaps do exist between the basic human rights stateless people are entitled to according to international human rights law and the actual state of affairs within each country. Still, we need to be reminded that stateless people are not without rights: they are entitled to many of these



fundamental rights provided by international human rights law. By establishing the right to a nationality as a fundamental human right, the International Bill of Human Rights and other international instruments, such as the Statelessness Conventions, include provisions that limit states' capacity to withdraw nationality from their nationals.

### **The statelessness conventions and other international instruments**

A look at the history of the development of international human rights law shows us that as early as the 1920s and 1930s, nationality matters were at the centre of discussions at the League of Nations. The Hague Convention of 1930, held under the auspices of the Assembly of the League of Nations, was the first international attempt to ensure that all persons have a nationality.<sup>9</sup> Indeed, Article 1 of the Hague Convention states, "It is for each State to determine under its own law who are its nationals. This law shall be recognised 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." When dealing with nationality matters, states should therefore respect international human rights law provisions, both international treaties and international customary law.

The massive population displacements following WWII brought questions pertaining to nationality, and therefore

statelessness, onto the international agenda. The development of international human rights law hence paved the way for the introduction of new international instruments addressing the issue of statelessness.

Other international instruments of human rights law have also been paramount in ensuring that all stateless people are entitled to basic human rights. Two UN instruments specifically dedicated to statelessness form the legal cornerstone in dealing with issues of statelessness: the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention).

The 1954 Convention is the first international instrument ever adopted providing a definition of stateless people (Article 1), and it also establishes the status of “stateless person” under international law. Originally drafted as a Protocol to the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention), the text became a stand alone Convention in 1954 and is considered “the most comprehensive codification of the rights of stateless persons yet attempted at the international level.”<sup>10</sup>

In addition to improving and regulating the status of stateless people, the 1954 Convention guarantees that stateless people access the basic fundamental human rights to which they are entitled. One of its innovations is to provide that identity and travel documents (Articles 27 and 28) are

issued for stateless people, who would otherwise face many obstacles in their everyday lives that would render them more vulnerable to marginalization and discrimination. Article 31 prohibits the expulsion of stateless people, except “where compelling reasons of national security otherwise require.”

The Convention:

was adopted to cover, inter alia, those stateless persons who are not refugees and who are not, therefore, covered by the 1951 Convention relating to the Status of Refugees or its Protocol. The 1954 Convention contains provisions regarding stateless persons’ rights and obligations pertaining to their legal status in the country of residence. The Convention further addresses a variety of matters which have an important effect on day-to-day life such as gainful employment, public education, public relief, labour legislation and social security. In ensuring that such basic rights and needs are met, the Convention provides the individual with stability and improves the quality of life of the stateless person. This, in turn, can prove to be of advantage to the state in which stateless persons live, since such persons can then contribute to society, enhancing national solidarity and stability. Moreover, the potential for migration or displacement of large population groups decreases, thus contributing to regional stability and peaceful co-existence.<sup>11</sup>

The discussions at the UN Conference on the Elimination or Reduction of Future Statelessness – which met in Geneva in 1959 and in New York City in 1961 – focused mainly on reducing and preventing childhood statelessness, particularly statelessness at birth, as well as on the question of deprivation of nationality. The final text of these deliberations led to the 1961 Convention, which complements the 1954 Convention and provides rules to prevent new cases of statelessness from arising.

The 1961 Convention reminds states that, while the right to determine who is or not a citizen is an element of their sovereignty, states have an obligation to respect international human rights law – that is, to follow internationally contracted agreements and international customary law. The Convention also includes clear and concrete safeguards for avoiding further cases of statelessness from arising. Article 1, for example, provides for the acquisition of nationality for individuals who would otherwise be rendered stateless. States that are parties to the 1961 Convention therefore have an obligation to grant citizenship to children born in their territory, either at birth or upon request, if they would otherwise be stateless, including foundlings (Article 2).

The level of ratification of both the Statelessness Conventions, although on the rise, is still low. In 2014, only 83 states had ratified the 1954 Convention, and 61 states the 1961 Convention.

In addition to the Statelessness Conventions, a number of international legal instruments also provide for the right to a nationality, including the following:

Article 1 of the 1957 Convention on the Nationality of Married Women;

Article 5 (d) (iii) of the 1965 Convention on the Elimination of All Forms of Racial Discrimination;

Article 24 of the 1966 International Covenant on Civil and Political Rights;

Article 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women;

Article 7 of the 1989 Convention on the Rights of the Child; and

Article 29 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Recently, Article 18 of the 2006 Convention on the Rights of Persons with Disabilities also refers to nationality as a right, recognizing the right of differently abled persons “to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities,” as well as “to acquire and change a nationality” and not to be “deprived of their nationality arbitrarily or on the basis of disability.”

## **Regional instruments dealing with nationality**

In terms of regional instruments dealing with nationality issues, the 1969 American Convention on Human Rights provides for a right to a nationality in its Article 20:

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

The Convention therefore goes further than others in providing safeguards to prevent any cases of childhood statelessness from arising.

The European Convention on Nationality (ECN) is the only regional instrument solely dedicated to the issue of nationality. Adopted by the Council of Europe in 1997, the ECN to date has been ratified by only 20 member states. It confirms the right to a nationality for all and encourages states to ratify the UN Statelessness Conventions.

The ECN encourages the naturalization of long-term residents, and stresses the principle of nondiscrimination on the basis of gender, race, religion, ethnic origin or language. It also deals with the question of multiple nationalities given the current increase in mixed marriages as a result of globalization.

Finally, the 1999 African Charter on the Rights and Welfare of the Child is the most recent regional instrument dealing with nationality issues. Article 6 of the charter provides that

2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which 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.