
Statelessness: The Impact of International Law and Current Challenges

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4 November 2014

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Introduction

This is a summary of an event held by the International Law Programme at Chatham House.¹ The meeting explored the impact of international law on the treatment of stateless persons, as well as the prevention of statelessness. Issues discussed included the causes of statelessness and the impact on the individuals concerned, together with the challenges involved in the office of the UN High Commissioner for Refugees' (UNHCR) pursuit of its campaign to eradicate statelessness within the decade. There was also discussion of recent developments concerning statelessness in the UK. The meeting coincided with the publication of a Briefing by the International Law Programme: *Out of the Shadows: The Treatment of Statelessness in International Law*.²

The meeting was not held under the Chatham House rule.

The causes and impact of statelessness

A 'stateless person' is defined in the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) as an individual 'who is not considered as a national by any state under operation of its law.'³ The UN estimates that at present there are at least 10 million stateless people globally. However, it was noted that problems in gathering reliable data mean that the figure currently derived from government statistics/estimates stands at 3.5 million. While instances of statelessness occur throughout the world, the problem is particularly acute in the Middle East and Asia; more than 40% of the world's known stateless people live in Southeast Asia.

The causes of statelessness are manifold, including complexities or conflicts in nationality laws, state succession, forced displacement, historic migration and problems with registering the birth of children. A key element is discrimination: discriminatory policies against particular communities on ethnic, religious or racial grounds, or on the basis of gender, can result in cases of statelessness.

The nexus with displacement means that many stateless persons are refugees. Stateless populations who are displaced include the Rohingya, Syrian and Iraqi Kurds, and Palestinians. Risks of statelessness among Syrian refugees born in neighbouring Lebanon, Jordan and Iraq were noted. Some 70 per cent of children born to refugee parents in Lebanon in 2013 did not have their birth registered, as the procedures are overwhelmed. UNHCR is working with authorities in asylum countries to ensure that civil registration is available to refugees, for example by conducting civil registration in the refugee camps in Jordan. In the context of refugees, it was noted that UNHCR now considers durable solutions to require the acquisition, reacquisition or confirmation of nationality, for example upon voluntary repatriation of stateless refugees.

In terms of the impact of statelessness, individuals affected often lack a formal identity and consequently are not entitled to the protection extended to those considered citizens of a state. This protection includes many civil, political, economic and social rights – for example, the right to education, to medical care, to vote and to employment. It was emphasized that stateless people are among the most vulnerable and marginalized in society.

¹ The summary was prepared by Niamh Diskin.

² http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20141029StatelessnessMandalGray.pdf.

³ Article 1(I) Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117; <http://www.refworld.org/docid/3ae6b3840.html>.

Gender Discrimination in nationality laws

It was noted that at present the nationality laws of 27 countries (predominantly in the Middle East and North Africa) contain provisions that discriminate on the basis of gender;⁴ mothers are unable to confer nationality on their children. If their children are unable to rely on their father to acquire nationality, they are born into statelessness. Where the father is stateless, the problem becomes intergenerational. It was emphasized that these mothers often experience guilt and depression at their inability to give their children the opportunities provided by nationality. However, although gender discrimination in nationality laws is often framed in terms of women's rights, it is important that stateless men are affected by this gender discrimination. For instance, nationality laws generally provide that by marrying a citizen a stateless woman can acquire the nationality of her spouse and their children will also acquire his nationality, thereby ending the cycle of statelessness. However, gender discrimination in nationality laws means that such an avenue is not available for stateless men. It was emphasized that statelessness cannot be categorized solely as a women's or children's rights issue, as men are also vulnerable and statelessness has adverse consequences for the entire family. A coalition has been established to fight gender discrimination in nationality laws, involving UN Women, UNHCR, the Women's Refugee Commission, Equality Now, the Statelessness Program at Tilburg University and the Equal Rights Trust.

The protection of stateless people under international law

The Universal Declaration of Human Rights was the first UN instrument to address the issue of statelessness, in stating that 'everyone has the right to a nationality' and that 'no one shall be arbitrarily deprived of his nationality'.⁵ Two subsequent UN conventions focus on statelessness exclusively: the 1954 Convention, which is concerned with the protection of stateless persons; and the 1961 Convention on the Reduction of Statelessness (1961 Convention), which aims to prevent instances of statelessness.⁶ Speakers noted that the protection of stateless people is also addressed to some degree in the international human rights standards.

Progress made and challenges remaining in tackling statelessness

Measuring progress

In comparison to other UN human rights treaties – for example, the Convention on the Rights of the Child, or the Convention for the Elimination of all forms of Discrimination against Women – accession to the statelessness conventions has been relatively low. One possible reason is that no UN body was charged with promoting the statelessness conventions until 1995, when UNHCR was given this mandate. Since then, accession to the conventions has improved. As of 4 November 2014, there are 83 states party to the 1954 Convention and 61 states party to the 1961 Convention, with 26 accessions to the 1961 Convention occurring post-2010 (equalling the number of accessions made in the four decades prior to this).⁷

The UN Human Rights Council's Universal Periodic Review (UPR) was identified as another method of measuring progress. At the first UPR, in 2008, only one recommendation was made that related to

⁴ See UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*; <http://www.unhcr.org/4f5886306.html>.

⁵ Article 15 of the Universal Declaration of Human Rights.

⁶ Note that the International Law Commission's Articles on Nationality of Natural Persons in Relation to the Succession of States endorses the duty of states to prevent statelessness in the context of state succession.

⁷ Since the meeting, by the end of 2014 the number of states parties had risen to 84 for the 1954 Convention and 63 for the 1961 Convention.

statelessness. By contrast, recent sessions routinely receive between thirty to forty recommendations that explicitly address statelessness.

Nationality law reform was put forward as another marker – for example, reforms in Côte d’Ivoire and in Senegal in 2013, as well as in the Russian Federation and in Turkmenistan in 2012. The recent adoption of statelessness determination procedures in the UK, in Georgia, in Moldova and in Philippines were raised as further evidence of growing momentum towards addressing statelessness.

It was noted that progress has been made in the mapping and research of statelessness at national level. Regional meetings have also taken place where actors from civil society, UNHCR and government have come together to share information, and it was noted that this is perhaps the first step to finding solutions.

Opportunities

Although much progress has been made in raising awareness, challenges still remain. The post-2015 Sustainable Development Goals, which will replace the Millennium Development Goals, were identified as a significant opportunity to position statelessness as a priority on the international agenda.

UNHCR has launched the 2014 iBelong, campaign calling for an end to statelessness within 10 years. The 10 point Global Action Plan is a major component of the UNHCR campaign, and seeks to resolve existing situations and to prevent the emergence of new cases of statelessness by closing gaps in procedures and laws. The action plan encourages states to: resolve existing situations of statelessness; ensure that no child is born stateless; remove gender discrimination from nationality laws; prevent denial, loss or deprivation of nationality on discriminatory grounds; prevent statelessness in cases of state succession; grant protection status to stateless migrants and facilitate their naturalization; ensure birth registration for the prevention of statelessness; issue nationality documentation to those entitled; accede to the UN Statelessness Conventions; and improve quantitative and qualitative data on stateless populations.

Despite a muted reception in the past, UNHCR has had success recently in engaging other UN agencies on the issue of statelessness. The UN High Commissioner for Human Rights and the heads of the UN Children’s Fund (UNICEF), UN Women and the UN Development Fund signed UNHCR’s open letter calling for an end to statelessness within 10 years. At the European level, the open letter attracted support from regional institutions including the Council of Europe’s Commissioner for Human Rights and the OSCE (Organization for Security and Co-operation in Europe) High Commissioner on National Minorities.

In some regions, progress in tackling statelessness has been stilted. It was emphasized that in order to overcome this, accession to the statelessness convention is crucial. Also key is engagement of the UN country team in each state with a major population, including by ensuring that the UN development assistance framework addresses statelessness. While progress has been slow, governments of countries with significant stateless populations in the Middle East and Asia have become more open to discussing the issue with UNHCR. Expert meetings and workshops have proved successful in these regions in engaging different actors, including government officials in their personal capacity. UNHCR has found that providing a forum where good practices can be discussed on a regional basis increases receptiveness among the governments concerned. Dialogue with states is facilitated through the acceptance that international law imposes constraints on the withdrawal or denial of nationality, thus these acts no longer lie entirely within states’ sovereign discretion and are, rather, of legitimate concern to the international community.

An element of self-interest exists when states address situations of statelessness; such actions help them avoid large numbers of disenfranchised and undocumented people living within their borders. It was noted that of the 4 million stateless people who have either acquired nationality or had nationality confirmed in the last decade, most were in countries which are not parties to the UN statelessness conventions. This may indicate that governments see benefits beyond compliance with relevant international human rights standards when they seek to prevent or reduce statelessness. While a human rights-based approach may be appropriate to appeal to certain decision-makers, in order to advance legal reform on a national level it is important to be aware of the domestic context and to frame the discussion in a way that will appeal to specific actors – for example through highlighting the women’s or children’s rights angle. The success of UNHCR’s action plan will also depend on increased public engagement on the issue of statelessness. This will require advocacy that is better informed and thus better able to communicate the impact of statelessness on the individuals affected.

The treatment of statelessness in British nationality law

The statelessness determination procedure

In 2013 the United Kingdom took its first significant step to transpose the 1954 Convention into domestic law by introducing a stateless determination procedure. Although this was noted as a welcome innovation, concern was expressed about difficulties that face applicants in accessing the procedure. Applications cannot be made upon arrival to the UK: the procedure can only be accessed once an individual has been admitted to the territory. As such, recognition of statelessness through this procedure can only determine an applicant’s entitlement to leave to remain in the country, rather than leave to enter. Moreover, where a stateless individual is lawfully resident in the UK, for example as a spouse of a British citizen, the procedure by which he/she can gain recognition as stateless from a competent authority remains unclear.

It was argued that the determination of statelessness under this procedure is not motivated by a desire to ensure protection within the UK, but rather a means to investigate removal to another country – e.g. former country of habitual residence. In deciding whether a stateless person has the possibility of going to another country, the UK authorities do not appear to be concerned about whether that state is party to the statelessness conventions or is willing to grant the individual permanent residence. Broad humanitarian reasons for granting a stateless person leave to remain in the UK are similarly deemed irrelevant.

Applicants to the statelessness determination procedure are not entitled to any form of legal aid or welfare support. It was queried whether this effectively acts as a bar to meaningful access. Moreover, the absence of both a statutory prohibition on expulsion pending a determination of statelessness and of a right of appeal (whether on a matter of law or fact) were identified as significant flaws in the statelessness determination procedure. The UNHCR *Handbook on Protection of Stateless Persons* offers guidance on how statelessness determination procedures can comply with the object and purpose of the UN statelessness conventions. However, the UK procedure deviates from these standards in that the burden of proof sits firmly with the applicant.

Although the provision of a statelessness determination procedure is to be commended, concern was expressed that in practice the procedure lacks the safeguards necessary to support applicants through the process. The fact that the number of individuals in UK granted leave to remain on grounds of statelessness remains in the single figures raises questions as to the effectiveness of the procedure in identifying and extending protection to stateless people in the UK. Despite UNHCR-funded training, it

was suggested that there is still a very low level of awareness of the particularities of statelessness both within the institutional framework of the UK and among immigration practitioners.

It was stated that there is no pull factor attached to recognition of statelessness in the UK. Stateless people are a very vulnerable group of people without a country of origin or residence, and the existence of statelessness determination procedures was not likely to encourage acts of self-induced statelessness. It was noted in this regard that the simple destruction or falsification of a passport would not be sufficient to gain recognition as a stateless person. An evidentiary threshold must be met.

Changes to the law on deprivation of British citizenship

Amendments to the British Nationality Act of 1981 (BNA) made by the Immigration Act 2014 now permit the Home Secretary to deprive a naturalized British citizen of his/her citizenship on the grounds of engagement in conduct deemed seriously prejudicial to the vital interests of the UK – provided there are reasonable grounds to believe that he or she is able to acquire another nationality. This change is significant, as it allows for such deprivation even if this risks statelessness.

Article 8 of the 1961 Convention provides that: 'A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.' However, the Convention does allow certain exceptions to this, for instance a contracting state may retain the right to deprive a person of his nationality on public good grounds if a declaration is made to this effect at the time of signature, ratification or accession to the Convention. It was noted that at the time of ratification, the UK had made such a declaration based on powers to deprive on grounds of treasonous behaviour by naturalized citizens. Subsequently, however, the legislation had been changed, narrowing the Home Secretary's powers in this regard.

The 'reasonable grounds to believe' standard creates a protection gap, as it does not require the Home Secretary to determine whether an individual is actually able to acquire another nationality. It was noted that this could constitute arbitrary deprivation of nationality under international human rights law and may raise issues justiciable before the European Court of Human Rights. It was acknowledged that under Section 40(b) of the BNA, the Home Secretary must review and produce a report on the operation of this new power to deprive after the first year, and then subsequently every three years. However, it was suggested that this safeguard alone is inadequate, not least because the report, which is to be circulated to both Houses of Parliament, can be redacted if the Home Secretary concludes that this is in on national security grounds.

It was suggested that the government's proposal to withdraw passports from British citizens overseas who are considered to be involved in terrorist activity may be contrary to article 12 of the International Covenant on Civil and Political Rights. However, withdrawal of a passport does not make an individual stateless, rather it means that consular protection has been withdrawn: the individual still has his or her nationality.

There was comment that UNHCR's decision to launch the iBelong campaign in the UK was somewhat ironic, given how the government here has chosen to handle statelessness: the new power to deprive individuals of citizenship provided an opportunity to manufacture statelessness.