

International guarantees and Legal protection for Statelessness

الضمانات الدولية والحماية القانونية لعدمي الجنسية



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Abstract:

This study aims to high light the statelessness issue under International Law.

It is estimated that at least 10 million people are stateless all over world, they are not considered as nationals, by any State under the operation of its law. Statelessness is sometimes referred to as an invisible problem because stateless people often remain unseen and unheard. They aren't allowed most of the time to go to school, see a doctor, get a job, open a bank account, buy a house or even get married.

Firstly, we will try to give an Introduction to Nationality and statelessness by introducing Definition and cross-cutting issues.

Secondly we will discuss the prevention and reduction of statelessness under the unhcr.

Key- words :Statelessness – unhcr – Human Rights – Stateless – Nationality

ملخص:

تهدف هذه الدراسة الى تسليط الضوء على موضوع انعدام الجنسية عبر العالم، حيث يعيش اليوم ملايين الأشخاص حول العالم محرومين من الجنسية و نتيجة لذلك كثيرا ما لا

يمكنهم من الذهاب إلى المدرسة أو الحصول على منصب عمل أو زيارة الطبيب أو فتح حساب بنكي أو شراء بيت أو حتى الزواج.

وقد يواجه الأشخاص العديمي الجنسية عوائق في الحصول على حقوق أساسية مثل التعليم و الصحة و العمل و حرية التنقل، و من دون هذه الأمور، قد يواجهون العقبات و خيبات الأمل طول حياتهم.

سوف نقسم هذه الدراسة الى مبحثين، بحيث نتناول في المبحث الأول الإطار العام للجنسية و انعدام الجنسية، ثم نعرض في المبحث الثاني الى دراسة دور المفوضية السامية للاجئين كآلية دولية لحماية عديمي الجنسية.

كلمات مفتاحية: عديمي الجنسية ، الجنسية ، المفوضية السامية للاجئين ، حقوق الإنسان ، انعدام الجنسية

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INTRODUCTION

Today, questions around nationality and statelessness are increasingly on international and national agendas and the dedication of an edited collection to the intersection of nationality and statelessness is therefore timely, if not long awaited.

The break-up of the Soviet Union and the former Yugoslavia in the 1990s gave rise to renewed questions around nationality in the context of state succession and saw the agreement of new legal instruments. Resolving nationality questions and avoiding statelessness have also been fundamental to ending the conflicts between Ethiopia and Eritrea, and have been central to the peace negotiations between South Sudan and Sudan and the transition of the south into independent statehood in 2011.

It is estimated that at least 10 million people are stateless worldwide, they are not considered as nationals, by any State under the operation of its law. Statelessness is sometimes referred to as an invisible problem because stateless people often remain

unseen and unheard. They often aren't allowed to go to school, visit a doctor, get a job, open a bank account, get a house or even get married, so how the international community can reduce or make end to this issue ?

To answer to this problematic we have divided this study in tow chapters, the first one we will study the most important generalities of Nationality and Statelessness by introducing Definitions and cross-cutting issues .

The second chapter we high light the prevention, and reduction of Statelessness under unhcr organisation.

1. Introduction to Nationality and Statelessness

At this chapter, we will try to give an Introduction to nationality and statelessness by introducing Definitions and cross-cutting issues

Section 1. Nationality

Nationality defines the legal relationship or 'legal bond' between the citizen/national and her state, based on social facts of attachment, and which gives rise to rights and duties on the part of both side on that relationship .

This section is interested in what 'nationality' means as a matter of international law today, particularly with the growth in human Rights , which apply, in theory at least, to all human beings, irrespective of their nationality.

The International Court of Justice (ICJ) in the Nottebohm case indicated that 'Nationality serves above all to determine the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to

or imposes on its nationals.

In its most frequently cited passage as to the meaning of nationality, the ICJ held that: ‘Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties⁽¹⁾.

Nationality is thus determined by one’s social ties to the country of one’s nationality, and when established, gives rise to rights and duties on the part of the state, as well as on the part of the citizen/national. In turn ‘citizenship’ is a way to maintain common norms and values of the state as a social and political community.

Conceptually and linguistically, the terms ‘nationality’⁽²⁾ and ‘citizenship’ emphasize two different aspects of the same notion: State membership. ‘Nationality’ stresses the international, ‘citizenship’ the national, municipal, aspect.

Under the laws of most States citizenship connotes full membership, including the possession of political rights; some States distinguish between different classes of members (subjects and nationals).

Section 2. Modes of nationality acquisition

There are three main methods in which nationality is acquired or conferred by states, namely by descent/parentage (jus sanguinis – law of the blood), birth on the territory (jus soli – law of the soil) or by way of naturalization including jus domicili or long residence⁽³⁾. In each case, the idea is that nationality reflects a link with the state, either through a connection with the territory

(jus soli, jus domicili) or through lineage such as through a family member who is already a national (jus sanguinis including legitimation, adoption, or marriage). This relates to the fact that nationality, as already noted, is a bond of membership that is based on a ‘social fact of attachment.

Territorial or family links are commonly viewed as demonstrating such an attachment. There are also modes of nationality acquisition in the specific context of state succession and dissolution, although these are not discussed in this chapter. which is incompatible with the provisions, aims and objectives of human rights law, and not reasonable in the particular circumstances.

When does deprivation of nationality become arbitrary ?

International law prohibits any deprivation of nationality that is arbitrary, but what does this mean? The Oxford Dictionary defines the word ‘arbitrary’ as acts that are based on random choice or personal whims rather than on any reason or system. Such a ‘system’ may, for instance, be a country’s laws, which means that deprivation of nationality is arbitrary whenever it is not undertaken in accordance with these laws ⁽⁴⁾.

Arbitrariness extends beyond this dictionary definition, however, to certain situations where an act is based on law.

According to the UN Human Rights Committee, arbitrary interference can extend to interference that is provided for by law, but The issue of statelessness has, with some notable exceptions, been largely ignored by scholars, practitioners and government officials in the decades since World War II⁽⁵⁾. This neglect, which

stands in stark contrast to the international attention focused on refugees, asylum seekers and immigrants (in their various incarnations), is particularly notable because the current estimated number of stateless people in the world is comparable to the total number of refugees at 15 million⁽⁶⁾.

Arguably, the position of the stateless in the shadows of international society merely reflects their abject disempowerment. That said, there has been a flourishing of interest in statelessness in the last few years, buoyed by new scholarship, commissioned reports, and a commitment by international bodies, organizations and states to engage with the issue.

Section 3. Statelessness, Terms and definitions

The issue of statelessness has, with some notable exceptions, been largely ignored by scholars, practitioners and government officials in the decades since World War II.

This new interest is important not only because it offers the possibility of encouraging collective action to reduce statelessness, but also because the issue of statelessness raises important normative and political questions about the international order of states itself.

At the heart of international efforts to tackle statelessness lie two United Nations (UN) Conventions⁽⁷⁾: the 1954 Convention relating to the Status of Stateless Persons (hereafter also 1954 Convention) and the 1961 Convention on the Reduction of Statelessness (hereafter also 1961 Convention). Article 1/1 of the 1954 Convention defines the term “stateless person :”

For the purpose of this Convention, the term ‘stateless

person' means a person who is not considered as a national by any State under the operation of its law .

(i) Stateless persons are defined as persons who are not considered as nationals by any State under the operation of its law, as set out in Article 1 of the 1954 Convention .

(ii) De facto stateless persons are described as persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as to provide diplomatic and consular protection and assistance generally, including in relation to return to the state of nationality .

(iii) Persons with undetermined nationality are considered as such when a preliminary review has not determined whether they possess a nationality or are stateless. Such cases arise in a wide range of contexts and, in most instances, can be resolved through existing State procedures for confirmation of nationality and provision of related identity documentation. these persons can fall within unhr's statelessness mandate if they :

lack proof of possession of any nationality; and have links to more than one State on the basis of birth, descent ,marriage or habitual residence; or have links to more than one State on the basis of birth, descent ,marriage or habitual residence; or are perceived and treated by the authorities in the State of residence as possessing links which give rise to a claim of nationality of another State on the basis of such elements as historic ties, race,

ethnicity, language or religion.

2. Prevention, and Reduction of statelessness under unhcr

In this chapter we will focus our study on how the international community would make the best prevention and reduction of Statelessness by the implementation of the international mechanism.⁽⁸⁾

Section 1. Why wait for people to become stateless?

The mandate responsibility to take preventive action sets UNHCR's work on statelessness apart from its activities with regard to refugees. unhcr generally reacts to refugee situations only with respect to those individuals who have crossed an international border. With respect to statelessness, however, UNHCR has a responsibility to take preventive action. A broad range of interventions may be undertaken to prevent statelessness .

These are often low profile and technical in nature but arguably the most cost-effective means of addressing statelessness. The first two preventions are inter-related: promotion of accession to the 1961 Convention and reform of nationality laws .

The third is action in the context of state succession, which generally includes an element of law reform.

The fourth area is civil registration. Largely because of increased migration, conflicts of law resulting in statelessness continue to occur with devastating consequences for the people concerned.

UNHCR emphasizes that states continue to have a degree of freedom to regulate acquisition, renunciation, loss and deprivation

of nationality, but must design their laws to prevent statelessness at birth and later in life .

Section 2. Reduction of Statelessness

UNHCR has promoted two approaches to resolve the situation of stateless populations. The first involves changing the law and/or policy defining who belongs in the body of citizens. In a number of situations around the world, additional or amended criteria have been introduced in nationality laws or as policy to recognize specific categories of individuals as nationals based on strong links to the state such as residence or birth in the territory⁽⁹⁾.

These changes generally operate automatically and may be accompanied by simplified procedures for acquisition of documentation proving nationality. They are therefore effective for addressing the situation of large stateless populations, and at relatively low cost.

Although some provisions of the 1961 Convention are of use for the resolution of existing cases of statelessness (e.g. Article 12 in relation to Articles 1 and 4), the principal standard at the global level is Article 32 of the 1954 Convention, which sets out that states parties ‘shall as far as possible facilitate the assimilation and naturalization of stateless persons.

CONCLUSION

Statelessness is a phenomenon that not only impacts millions of stateless people, it also has dire consequences for the peace and security of countries around the globe. In spite of the efforts made to diminish statelessness, the problem continues to grow. States

continue to change shape and borders and refugees continue to flee violent situations, resulting in additional stateless people.

To end statelessness, United Nations High Commissioner for Refugees' Global Action Plan to End Statelessness establishes a framework with ten action steps for States. The goal of this plan is to: (1) resolve existing situations of statelessness; (2) prevent new cases of statelessness from emerging; and (3) better identify and protect stateless populations. The ten actions steps to end statelessness include: (1) resolve existing major situations of statelessness; (2) ensure that no child is born stateless by amending nationality laws; (3) remove gender discrimination from nationality laws; (4) prevent denial, loss, or deprivation of nationality on discriminatory grounds; (5) prevent statelessness in cases of state succession; (6) grant protection status to stateless migrants and facilitate their naturalization; (7) ensure birth registration; (8) issue nationality documentation to those entitled to it; (9) accede to the UN statelessness conventions; and (10) improve data on stateless populations..

Marginalization

(1) See the International Court of Justice decision in the *Nottebohm (Lichtenstein v. Guatemala)* Case, 6 April 1955, available at: <http://www.icj-cij.org/docket/files/18/2674.pdf>.

(2) <https://www.unhcr.org/protection/statelessness/53d8ddab6/nationality-statelessness-handbook-parliamentarians-22.html>.

(3) Grant, Stefanie. "International Migration and Human Rights", Policy Analysis and Research Programme of the Global Commission on International Migration, 2005, pp.1-2

(4) See for example, *Trop v Dulles*, 356 US 86, 101-102 (1958), Warren CJ;

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(5) Open Society Justice Initiative. “Human Rights and Legal Identity: Approaches to Combating Statelessness and Arbitrary Deprivation of Nationality”, Thematic Conference Paper, 2006, p.4.

(6) **A special report : Ending statelessness within 10 years available in :** www.unhcr.org/protection/statelessness/546217229/special-report-ending-statelessness-10-years.html.

(7) Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) ECOSOC RES/526 A(XVII), (1954 Convention), Article 1(1).

(8) UN Doc A/CONF.9/11 (30 Jun. 1961), 4. As cited in Batchelor, Carol. “Stateless Persons: Some Gaps in International Protection”, 1995, 7 *International Journal of Refugee Law* 232, p.251.

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