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Her Internship Report (May 2013-July 2013)

Note of Thanks

I would like to begin by expressing my sincere thanks to everyone at the CRG who has made my time here so memorable and taught me so much about the value of academic research in promoting social and political change. Special thanks to Madhurilata, my comrade and friend. Many thanks to Anasua, Atig, Dishari, Dr. Banerjee, Dr. Samaddar, Dr. S.P. Basu, Mohonda, Mrs. Chatterjee, Samaresh, and Ratanbabu. Whether behind the scenes or by being directly involved in helping guide my research, you have all demonstrated interest in and support for my work. Thank you. I will miss the lively discussions we have all shared - and the food and tea, too!

Involvement

I helped out with various research, editing, and logistical tasks. Through these, I learned about a number of the CRG's research areas including democracy, governance, and social justice; experiences of rural migrants in cities; and conflict and post-conflict realities for women in India's northeast. It was a pleasure to contribute to the work of the CRG in these ways. I was especially happy to be able to help with the CRG's bid for ICSSR recognition and wish the organization all the best in this endeavor.

Research

While at the CRG, I prepared a legal brief on statelessness, which discussed the international legal framework on statelessness as well as the regional and national legal mechanisms available for the prevention and reduction of statelessness and the protection of stateless populations. The purpose of this research was to provide a legal analysis that compliments the extensive work conducted by the CRG over the last three years in mapping the statelessness situation in India.

Summary of Findings

Article 1 of the 1954 Statelessness Convention, a stateless person is one "who is not considered a national by any State under the operation of its law."¹¹ Since that definition is now widely understood to be customary international law, meaning it should be applied by all states including those not party to the convention and Article 51(c) of the Indian Constitution provides that India "shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with another," it follows that, regardless of whether or not the state accedes to either statelessness convention, this definition of statelessness carries the weight of law in India.

However, this definition rests on an assumed binary opposition of the citizen or national against the stateless person, which fails to account for the complexity of lived realities. In practice, many stateless people are unable to have their status recognized as such and legal bonds of citizenship are not always effective. States generally operate with a presumption of nationality, which makes it impossible for those whose nationality is unknown, but who have not been found to have established that they are without nationality to access protection as stateless people. Additionally, many states have demonstrated reluctance to classify certain people as stateless and others do not recognize the stateless status of those whose citizenship they have denied. Matters are substantially complicated when the effectiveness of a person's nationality are considered.

Despite these definitional issues, the response of international organizations and groups whose work and study concerns stateless populations is largely to continue to call on states to accede to the 1954 and 1961 UN conventions on statelessness. In the Indian context, the UNHCR calls for accession to the 1954 Statelessness Convention as "a general step to strengthen the international legal framework applicable to India," which would "protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met."

In my research, I found that the legal situation of stateless people in India cannot be understood simply by the fact that India has not acceded to either of the statelessness conventions. Instead, while India's decision not to accede is certainly part of the state's reluctance to commit to addressing the issue of stateless, it must not be understood as meaning that India has no statelessness law. Instead, I argue that we should understand statelessness law as including both the law which produces situations of statelessness and the law which seeks to address it. If we accept this then clearly India has a great deal of Statelessness law.

On the one hand, India has numerous legal provisions which actively produce statelessness. A number of explicit provisions in the Citizenship Act of India, 1955 provide legal means by which a person in possession of Indian citizenship may lose that legal bond. First, renunciation (under section 8) entitles Indian citizens to renounce their citizenship even if by doing so, they would become de jure stateless and can deprive children of their Indian citizenship on the basis of their father's actions in such a way that may leave them stateless until they reach the mandated age to resume their Indian citizenship by declaration. Second, termination (under section 9) leaves open the possibility that those whose citizenship is terminated end up de facto stateless^[ii], because there is no guarantee that the non-Indian citizenship that has been voluntarily acquired is an effective one. Finally, in no uncertain terms, provides for creates statelessness by prescribing it as punishment for certain action and inaction.

On the other hand, India is a party to numerous human rights conventions which offer protection to stateless people. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (notwithstanding the limiting declarations India made when acceding) all provide more substantial rights protection for the stateless than the 1954 and 1961 statelessness conventions. So, the fact that India has not signed the statelessness conventions does not lower the bar for the level of civil, political, economic, social, and cultural rights to which stateless populations in India should have access.

As such, while acceding to the two statelessness conventions would no doubt be a decision welcomed by the international community of agencies and organizations concerned with those who are stateless, there is much for India to do to address their plight besides acceding to either convention. First, India must stop legally sanctioning the production of statelessness. It should revise its citizenship laws such that citizenship cannot be revoked from those who would be rendered stateless by such an act. Second, India should act on its human rights commitments. By acceding to the ICCPR and the ICESCR conventions, India has already promised to protect a wide range of civil, political, social, cultural, and economic rights of the stateless. It should turn those international commitments into domestic law and policy.

In the end, however, it must be remembered that addressing statelessness in India, like elsewhere in the world, is not merely a legal question. The existence of effective rights and entitlements goes much beyond the courtroom to the political arena and socio-cultural milieu.

Notes

^[i] This definition of de jure statelessness generally covers those who are not automatically granted nationality at birth by the application of state legal instruments, those without nationality who are unable to obtain it through established legal provisions for its acquisition, and those whose nationality is revoked or terminated for any reason and who do not have a second nationality.

^[ii] Generally, this term refers to those who are unable to disprove the assumption that they have nationality and those whose legal bonds of nationality are ineffective. However, there is no legal meaning for the term de facto statelessness.