

## The Human Rights of Stateless Persons

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### ABSTRACT

By exploring statelessness through legal, theoretical, and practical lenses, this article presents a broad examination of the human rights of stateless persons. The article delineates the rights of stateless persons as enunciated in various human rights instruments; presents the mechanisms of, and paths to, statelessness; illustrates the practical struggles of stateless persons by highlighting the plights of various stateless populations; examines how the problem of statelessness is being addressed; and considers the complex political and regional forces affecting policies towards stateless persons. The article concludes with recommendations regarding remedies and solutions for statelessness.

### I. INTRODUCTION

Article 15 of the Universal Declaration of Human Rights (the Universal Declaration) states that “[e]veryone has the right to a nationality”<sup>1</sup> and that “no one shall be arbitrarily deprived of his nationality.”<sup>2</sup> Statelessness,<sup>3</sup> or

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1. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, art. 15, U.N. Doc. A/810 (1948), *reprinted in* 43 AM. J. INT’L L. 127 (Supp. 1949) [hereinafter Universal Declaration].
2. *Id.*
3. According to Article 1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person is “a person who is not considered as a national by any State under the

the condition of having no legal or effective citizenship,<sup>4</sup> is a large and critical problem.<sup>5</sup> Provisions intended to prevent or reduce statelessness are embedded in several international human rights treaties, including the International Covenant on Civil and Political Rights,<sup>6</sup> the Convention on the Rights of the Child,<sup>7</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>8</sup> the Convention on the Nationality of Married Women,<sup>9</sup> the Convention on the Reduction of Statelessness,<sup>10</sup> and the Convention Relating to the Status of Stateless Persons,<sup>11</sup> as well as the Universal Declaration. Indeed, the right not to be stateless, or the right to a nationality, is widely recognized as a fundamental human right.<sup>12</sup>

The International Covenant on Civil and Political Rights addresses the problem of statelessness by providing that “[e]very child has the right to acquire a nationality.”<sup>13</sup> The Convention on the Rights of the Child further elaborates on the child’s right to a nationality by stating that children “shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality. . . . States Parties shall ensure the implementation of these rights . . . in particular where the child would

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operation of its law.” Convention relating to the Status of Stateless Persons, *adopted* 28 July 1951, G.A. Res. 429 (V), 360 U.N.T.S. 117 (*entered into force* 6 June 1960) [hereinafter 1954 Convention].

4. For the purposes of this article, the terms *citizenship* and *nationality* will be used synonymously.
5. Although no rigorous effort has been made to count the number of stateless persons worldwide, the United Nations High Commissioner for Refugees (UNHCR) estimates that there are several million stateless persons. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), WHAT WOULD LIFE BE LIKE IF YOU HAD NO NATIONALITY? (1999), available at [www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b8f92124](http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b8f92124).
6. International Covenant on Civil and Political Rights, *adopted* 19 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) [hereinafter ICCPR].
7. Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989) [hereinafter Children’s Convention].
8. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980) (*entered into force* 3 Sept. 1981), 1249 U.N.T.S. 13, *reprinted in* 19 I.L.M. 33 (1980) [hereinafter CEDAW].
9. Convention on the Nationality of Married Women, *opened for signature* 29 Jan. 1957, G.A. Res. 1040 (XI), 309 U.N.T.S. 65 (*entered into force* 11 Aug. 1958) [hereinafter CNMW].
10. Convention on the Reduction of Statelessness, *adopted* 30 Aug. 1961, G.A. Res 896 (IX), 989 U.N.T.S. 175 (*entered into force* 13 Dec. 1975) [hereinafter 1961 Convention].
11. 1954 Convention, *supra* note 3.
12. See generally Michael R. Geske, State Building, Citizenship and Statelessness (1997) (unpublished report for the Forced Migration Projects of the Open Society Institute), available at [www2.soros.org/fmp2/html/build\\_intro.html](http://www2.soros.org/fmp2/html/build_intro.html) (Mar. 1997).
13. ICCPR, *supra* note 6, art. 24, ¶ 3.

otherwise be stateless.”<sup>14</sup> This right must be enforced regardless of the parent’s gender.<sup>15</sup> Similarly, the Convention on the Elimination of All Forms of Discrimination against Women provides that states parties should ensure that “neither marriage to an alien nor change of nationality by the husband during marriage shall . . . render [a woman] stateless.”<sup>16</sup> In much the same manner, the Convention on the Nationality of Married Women protects women from automatically losing their nationality upon marriage or divorce, or from being rendered stateless by changes in a husband’s nationality.<sup>17</sup>

While the treaties identified above were not solely created to address the problem of statelessness, the 1961 Convention on the Reduction of Statelessness (the 1961 Convention) focuses exclusively on decreasing statelessness. Under the citizenship rules that states parties to the 1961 Convention must adopt, many persons who might otherwise be stateless are able to acquire a citizenship.<sup>18</sup> For example, under the 1961 Convention, states parties must curb situations in which persons may lose their citizenship without gaining another.<sup>19</sup> Additionally, states parties also must afford the means for persons born on their territory to obtain citizenship.<sup>20</sup> In contrast to the 1961 Convention, which focuses on reducing statelessness, most of the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention) is devoted to the protection of stateless persons rather

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14. Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, art. 7, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989). States should seek to reduce the number of stateless persons, with priority for children, *inter alia* by encouraging parents to apply for citizenship on their behalf. *See Concluding Observations of the Committee on the Rights of the Child: Lithuania*, U.N. ESCOR, Comm. on Rts. of the Child, 26th Sess., ¶ 26, U.N. Doc. CRC/C/15/Add.146 (2001) [hereinafter *CRC Concluding Observations: Lithuania*]. States should regularize the status of stateless persons, especially those who have been precluded from applying for residence permits or citizenship, for example by simplifying procedures for applying for residence permits and through campaigns to make it clear that stateless persons would not risk expulsion when identifying themselves to authorities. *Prevention of Discrimination, The Rights of Non-Citizens, The Final Report of the Special Rapporteur, Mr. David Weissbrodt*, U.N. ESCOR, Comm’n on Hum. Rts., 55th Sess., Agenda Item 5, ¶ 35, U.N. Doc. E/CN.4/Sub.2/2003/23/Add.2 (2003) [hereinafter *Weissbrodt Final Report*]. Stateless persons should not be involuntarily repatriated to the countries of origin of their ancestors. *Prevention of Discrimination, The Rights of Non-Citizens, Progress Report of the Special Rapporteur, Mr. David Weissbrodt*, U.N. ESCOR, Comm’n on Hum. Rts., 54th Sess., Agenda Item 5, ¶ 15, U.N. Doc. E/CN.4/Sub.2/2002/25/Add.1 (2002) [hereinafter *Weissbrodt Progress Report*].
  15. *See id.* ¶¶ 14, 50, 51, 63, 66.
  16. CEDAW, *supra* note 8, art. 9, § 1.
  17. CNMW, *supra* note 9.
  18. Geske, *supra* note 12.
  19. *Id.*
  20. *Id.*

than the elimination of statelessness. The 1954 Convention does, however, prescribe that “[c]ontracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons.”<sup>21</sup>

The human right not to be stateless, or the right to a nationality, is important because many states only allow their own nationals to exercise full civil, political, economic, and social rights within their territories. Further, nationality enables individuals to receive their nation’s protection both domestically and internationally and allows a state to intercede on behalf of a national under international law. In this manner, “the rules of international law relating to diplomatic protection are based on the view that nationality is the essential condition for securing to the individual the protection of his rights in the international sphere.”<sup>22</sup> For these reasons, the right to be a citizen of a state has been called “man’s basic right for it is nothing less than the right to have rights.”<sup>23</sup> With citizenship being the “right to have rights,”<sup>24</sup> stateless persons have traditionally been seen as having no rights. This traditional concept of statelessness, which comes from an international law perspective, follows the logic that because one generally needs to be a citizen in order to receive diplomatic protection from a state, no international wrong is committed if another state’s citizen is wronged (i.e., if a stateless person is wronged).<sup>25</sup> While international law scholars might claim that the right to a nationality is the right to have rights, the principles of human rights would indicate otherwise. The principles of human rights would maintain that being human is the right to have human rights. As one human rights scholar has noted, “[h]uman rights are, literally, the rights that one has simply because one is a human being.”<sup>26</sup> Although “[n]ational governments may have the primary responsibility for implementing internationally recognized human rights in their own countries . . .

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21. 1954 Convention, *supra* note 3, art. 32.

22. L.V. OPPENHEIM, INTERNATIONAL LAW 669 (1955), cited in Rachel Settlage, Note, *No Place To Call Home: Stateless Vietnamese Asylum-Seekers In Hong Kong*, 12 GEO. IMMIGR. L.J. 187, 192 (1997).

23. *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, C.J., dissenting).

24. *Id.*

25. Paul Weis illustrates such a disconnect by referencing the Dickenson Car Wheel Company Case between the United States and Mexico (Case No. 115, 4 U.N. Rep. 688, Ann. Dig. 1931–32):

[The bond of nationality] is the link between the law and individuals and through it alone are individuals enabled to invoke the protection of a State and the latter empowered to intervene on their behalf.

A State, for example, does not commit an international delinquency in inflicting an injury upon an individual lacking nationality, and consequently no state is empowered to intervene or complain on his behalf either before or after the injury.

PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 162 (2d ed. 1979).

26. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY & PRACTICE 10 (2d ed. 2003).

[h]uman rights are the rights of all human beings, whether they are citizens . . . or not."<sup>27</sup>

Because being human is the sole requirement entitling one to human rights, whether or not one possess a nationality should have no bearing on whether one enjoys all of her or his human rights. As a practical matter, however, this article demonstrates that international protection is still a problem. The notion that statelessness should not bar one from realizing her human rights is embodied in the 1954 Convention. This Convention provides that, within certain domains, states parties should grant stateless persons rights on par with the rights that the state gives to its own nationals or to foreign nationals legally residing within its territory. For example, states parties should grant stateless persons rights in areas such as religion, elementary education, access to courts, public rationing of scarce goods, labor legislation, public relief, and intellectual property that are "at least as favourable as [those] accorded to their nationals."<sup>28</sup> Similarly, states parties should grant stateless persons rights in areas such as housing, the right of association, freedom of movement, wage-earning employment, and ownership property that are "not less favourable than [those] accorded to aliens generally in the same circumstances."<sup>29</sup> It should be noted, however, that stateless persons unlawfully residing within the territory of a state party are only granted a limited set of the rights and protections by the 1954 Convention.<sup>30</sup>

In addition to the 1954 Convention, many other human rights instruments support the notion that holding a nationality is not a prerequisite to enjoying human rights. Some human rights scholars have even argued that several human rights instruments purposefully diminish the importance of nationality in order to prevent statelessness or status as a noncitizen from being used as a basis for discrimination:

[D]espite the central role the concept of citizenship played in the rise of human rights culture, the words "citizen" and "citizenship" are rare in the major international human rights instruments. Indeed, the sense of the instruments themselves is to erode the importance of the very concept which originally gave rise to the idea of fundamental human rights [i.e. citizenship], in the interest of doing away altogether with boundaries between privileged and non-privileged.<sup>31</sup>

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27. *Id.* at 159–60.

28. 1954 Convention, *supra* note 3, art. 4.

29. *Id.* art. 13.

30. *See generally id.*

31. Claude Cahn, Editorial, *Privileging the Document*, ROMA RTS. Q. 3/2003, available at [www.errc.org/cikk.php?cikk=1055](http://www.errc.org/cikk.php?cikk=1055).

The Covenant on Civil and Political Rights, for example, requires states "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status";<sup>32</sup> the Covenant on Economic, Social and Cultural Rights contains an almost identical clause.<sup>33</sup> Additionally, the Human Rights Committee, the treaty body for the Covenant on Civil and Political Rights, has further elaborated on this principle of nondiscrimination as it applies to noncitizens (including stateless persons) in its General Comment 15:

In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof.<sup>34</sup>

The Universal Declaration also contains a nondiscrimination statement that is almost identical to the nondiscrimination provision in the Covenant on Civil and Political Rights.<sup>35</sup> Similarly, Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms requires states parties to "secure to everyone within their jurisdiction the rights and freedoms [of the Convention]."<sup>36</sup>

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32. ICCPR, *supra* note 6, art. 2, ¶ 1. It should be noted that this is not one of the non-derogable articles mentioned in Article 4. *Id.* art. 4, ¶ 2. Also, Article 25 specifies that "every citizen" has the right to vote, take part in public affairs, to be elected, and to have access to public service. *Id.* art. 25.
33. International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art. 2(2), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).
34. *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. GAOR, Hum. Rts. Comm., 27 Sess., ¶¶ 1–2, U.N. Doc. HRI/GEN/1/Rev.1 (1994).
35. See Universal Declaration, *supra* note 1, art. 2.
36. European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* 4 Nov. 1950, 213 U.N.T.S. 221, Europ. T.S. No. 5, art. 1 (*entered into force* 3 Sept. 1953).

## II. *DE JURE* AND *DE FACTO* STATELESSNESS AND THE 1954 AND 1961 STATELESSNESS CONVENTIONS

According to the 1954 Convention, a stateless person is “a person who is not considered as a national by any State under the operation of its law.”<sup>37</sup> This definition of statelessness has been classified as *de jure* statelessness because it is a purely legal description; the characteristics and value of a particular person’s nationality as it is realized in his particular home state is irrelevant to the definition. Some have lauded the conciseness and brevity of this definition of statelessness, favoring it because it sets down a single, clear, and unambiguous criterion for statelessness: a person simply is or is not a citizen according to a state’s laws and court system.<sup>38</sup>

Some legal scholars, however, believe that the concept of statelessness should encompass more than *de jure* statelessness. These legal scholars believe that the 1954 Convention’s definition of statelessness is too narrow and limiting because it excludes those persons whose citizenship is practically useless or who cannot prove or verify their nationality. To be sure, it is often pointed out that the problem with the *de jure* definition of statelessness is that it excludes those individuals who might technically have a nationality yet are not able to obtain or enjoy the concomitant benefits and protection.

[The definition of statelessness outlined in the 1954 Convention] precludes full realization of an effective nationality because it is a technical, legal definition which can address only technical, legal problems. Quality and attributes of citizenship are not included, even implicitly, in the definition. Human rights principles relating to citizenship are not delineated, despite the inspiration of the Conventions themselves by article 15 of the Universal Declaration of Human Rights. The definition is not one of quality, simply one of fact.<sup>39</sup>

These statements epitomize the argument that persons with no effective nationality are, for all practical purposes, stateless, and should be labeled and treated as such. In this view, the definition of statelessness should be broadened to include *de facto* statelessness. Persons who are *de facto*

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37. 1954 Convention, *supra* note 3, art. 1. In addition to defining *statelessness* in the 1954 Convention, this definition is presumed to define *statelessness* in the 1961 Convention on the Reduction of Statelessness.

38. Carol Batchelor, from the Division of International Protection at UNHCR, has argued that a person either is or is not a citizen according to the laws and court system of a state, by noting that “[w]hile there may be complex legal issues involved in determining whether or not an event has occurred by operation of law, national courts have means of resolving such questions.” Carol A. Batchelor, *Stateless Persons: Some Gaps in International Protection*, 7 INT’L J. REFUGEE L. 232, 232 (1995).

39. *Id.*

stateless often have a nationality according to the law, but this nationality is not effective or they cannot prove or verify their nationality. *De facto* statelessness can occur when governments withhold the usual benefits of citizenship, such as protection, and assistance, or when persons relinquish the services, benefits, and protection of their country.<sup>40</sup> Put another way, persons who are *de facto* stateless might have legal claim to the benefits of nationality but are not, for a variety of reasons, able to enjoy these benefits. They are, effectively, without a nationality.

The drafters of the 1954 and 1961 Conventions did not define statelessness to include *de facto* statelessness for at least three reasons.<sup>41</sup> First, the drafters wanted to sidestep an overlap between the 1954 Convention and the 1951 Convention relating to the Status of Refugees.<sup>42</sup> At the time, an overlap between the 1954 Statelessness Convention and the 1951 Refugee Convention seemed superfluous because the drafters of the two Statelessness Conventions incorrectly assumed that all *de facto* stateless persons were, and would conceivably be, refugees.<sup>43</sup>

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40. See generally *id.*

41. Despite the reluctance of the drafters of the 1954 Convention to acknowledge *de facto* statelessness, the Final Act of the 1961 Convention does recommend “that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.” *United Nations Conference on the Elimination or Reduction of Future Statelessness*, 30 Aug. 1961, Final Act, ¶ 23, U.N. Doc. A/Conf./9/14 (1961).

42. Carol A. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*, 10 INT’L J. REFUGEE L. 156, 172 (1998).

43. *Id.* As previously mentioned, the drafters of the 1954 and 1961 Conventions assumed that all *de facto* stateless persons were, and would conceivably be, refugees. Time has shown, however, that this assumption was incorrect. In fact, Carol Batchelor, the Legal Advisor on Statelessness and Related Nationality Issues to the UNHCR, has claimed that “the majority of *de jure* and *de facto* stateless persons requiring assistance on questions relating to their nationality status are not, today, refugees.” *Id.* at 173. According to the 1951 Refugee Convention, a refugee is someone who is outside of her country or country of former habitual residence and is “unwilling or unable to return to it” because of a “well-founded fear of being persecuted” or is unable to unwilling to “avail himself of the protection of that country” for fear of being persecuted. Convention Relating to the Status of Refugees, adopted 28 July 1951, art. 1, § a, ¶ 2, U.N. Doc. A/CONF.2/108 (1951), 189 U.N.T.S. 150 (entered into force 22 April 1954), reprinted in 3 WESTON III.G.4. There are several reasons why *de facto* stateless persons might not qualify as refugees under this convention and, hence, would not receive protection under its auspices. For example, a *de facto* stateless person might not be outside of her country or country of former habitual residence. Because a person must—in an attempt to flee from persecution—transverse an international border into another country to be considered a refugee, all *de facto* stateless persons who stay within their country cannot be considered refugees. Additionally, an individual who is not considered a refugee under international law and is unable to demonstrate that she has no nationality (that she is *de jure* stateless) will not necessarily be protected under the two statelessness conventions or the refugee convention. See Carol A. Batchelor, *UNHCR and Issues Related to Nationality*, 14 REFUGEE SURV. Q. 91 (1995). Also, the fact that one is *de facto* stateless does not necessarily mean that one has a well-founded fear of persecution.



The definition of a *de jure* stateless person was chosen in order to exclude the question of whether the person has faced persecution, as there are conflicts of laws issues which might result in statelessness without any wilful act of neglect, discrimination, or violation on the part of the State. *De facto* statelessness, on the other hand, was presumed to be the result of an act on the part of the individual, such as fleeing the country of nationality because of persecution by the State. The drafters of the 1954 and 1961 Conventions felt that all those who faced persecution, and who did not have an effective nationality, would be considered refugees and would receive assistance from the international community under the terms of the 1951 [Geneva] Convention relating to the Status of Refugees. Quite intentionally, then, the drafters of the 1954 Convention relating to the Status of Stateless Persons adopted a strictly legal definition of stateless persons.<sup>44</sup>

Additionally, the drafters of the 1954 and 1961 Conventions, respectively, wanted a clear definition of statelessness in order to preclude situations where a person might be considered *de facto* stateless but not *de jure* stateless, or vice versa.<sup>45</sup> Further, the drafters did not want the Conventions to be the impetus for persons to attempt to secure a second nationality, if they felt they were *de facto* stateless.<sup>46</sup>

### III. MECHANISMS OF STATELESSNESS

There are many paths to statelessness. In the information and accession package for the 1954 and 1961 Conventions, the Office of the United Nations High Commissioner for Refugees lists ten reasons why people become stateless. These reasons are as follows: conflict of laws; transfer of territory; laws related to marriage; administrative practices; discrimination; laws related to registration of births; *jus sanguinis*; denationalization; renunciation of citizenship; and automatic loss of citizenship by operation of law.<sup>47</sup> Rather than attempting to delineate the reasons for statelessness, a task that would require one to consider everything from human motivation to the climate of international relations, it is more suitable to identify the

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Certainly, there are countries in which *de facto* stateless persons do not live in fear of persecution but still do not enjoy all benefits of citizenship such as the right to work, health care, and education.

44. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*, *supra* note 42, at 172.

45. *Id.*

46. *Id.*

47. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), INFORMATION AND ACCESSION PACKAGE: THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS AND THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS (rev. ed. 1999).

mechanisms by which people become stateless. This latter methodology provides a more concrete aim with a narrower scope.

### A. Mechanisms of *De jure* Statelessness

As stated before, a person is *de jure* stateless if she is not considered a national under the laws of any country. As such, the mechanisms of statelessness are almost always citizenship laws and the guiding principles behind citizenship laws. Perhaps the two most ubiquitous principles of citizenship are *jus soli* and *jus sanguinis*. *Jus soli* and *jus sanguinis* are principles that dictate the criteria used to grant or deny citizenship. *Jus soli* literally means law of the land; and according to the most common interpretation of this principle, citizenship is based on place of birth. The principle of *jus soli* is often contrasted with *jus sanguinis*, which dictates that citizenship is based on family heritage or descent. *Jus sanguinis* generally dictates that citizenship should be given to individuals with a certain heritage or whose parent, usually the father, is a citizen of a given state.

Instead of being pure reflections of either *jus sanguinis* or *jus soli*, most countries' citizenship laws reflect a mixture of these two principles. For example, the U.S. "recognizes the U.S. citizenship of individuals according to . . . *jus soli*, or right of birthplace, and *jus sanguinis*, or right of blood."<sup>48</sup> That is, individuals born in the U.S. are granted citizenship regardless of their parents' citizenship, according to the principle of *jus soli*,<sup>49</sup> and individuals born abroad to US citizens are also given US citizenship, according to the principle of *jus sanguinis*.

Unfortunately, the *jus sanguinis* nationality laws of some countries grant citizenship through paternal descent alone. In these countries, a mother cannot independently pass her nationality on to her children. Hence, in many countries with *jus sanguinis* nationality laws that only recognize paternal descent, if a woman marries a stateless person or has children out of wedlock with a man of her own nationality, then her children would be born into statelessness.<sup>50</sup> Discrimination against children born out of wedlock, however, is prohibited by Article 25(2) of the Universal Declara-

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48. U.S. Dept. Homeland Security, U.S. Citizenship and Immigration Services, Citizenship: Naturalization Information (Eligibility and Procedures), available at <http://uscis.gov/graphics/services/natz/citizen.htm>.

49. One exception, however, is that children of foreign diplomats or heads of state are not given US citizenship.

50. Geske, *supra* note 12.

tion, which states that “[a]ll children, whether born in or out of wedlock, shall enjoy the same social protection.”<sup>51</sup>

There are other ways in which *jus sanguinis* nationality laws can engender statelessness in newly born children. Let us take, for example, a case in which a child is born in one country to stateless parents. If the *jus sanguinis* laws governing the territory where the child is born only allow citizenship through parental descent, such a situation would render the child stateless. Kuwaiti nationality laws, for example, provide no means for the child of two stateless parents to obtain nationality at birth.<sup>52</sup> Furthermore, only limited citizenship opportunities exist for children born to a Kuwaiti mother and a stateless father, and these options all involve petitioning the Minister of the Interior.<sup>53</sup> Similarly, a citizenship bill that was put before the Indonesian house in February 2003 regulates the citizenship of children “born out of both legitimate and illicit relationships.”<sup>54</sup> The bill grants citizenship to children born within the borders of Indonesia from a lawful marriage between a stateless or foreign father and an Indonesian mother. Children with noncitizen fathers who are born out of wedlock to Indonesian mothers are still denied Indonesia citizenship, regardless of where they were born.<sup>55</sup>

Under certain circumstances, *jus sanguinis* nationality laws, which only recognize parental descent, can also produce statelessness in the newborn children of married, non-stateless, parents. Let us take, for example, a situation in which a male citizen of the United States moves to Belgium, marries a Belgian woman, and fathers a son. According to the principle of *jus sanguinis*, the son would have US citizenship by virtue of having a parent with US citizenship. If the son were born prior to 1984, however, the child would not receive Belgian citizenship, because prior to 1984, Belgium’s *jus sanguinis* nationality laws granted citizenship via parental descent only.<sup>56</sup> If the son married a Belgian woman and never set foot in the United States, then the son’s children, born prior to 1984, would be

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51. Universal Declaration, *supra* note 1, art. 25.

52. CLARISA BENCOMO, KUWAIT, PROMISES BETRAYED: DENIAL OF RIGHTS OF BIDUN, WOMEN, AND FREEDOM OF EXPRESSION, at ch. 4 (2000), available at [www.hrw.org/reports/2000/kuwait/kuwait-04.htm#P168\\_23590](http://www.hrw.org/reports/2000/kuwait/kuwait-04.htm#P168_23590).

53. *Id.*

54. Moch N. Kurniawan & Berni K. Moestafa, *Citizenship Bill Maintains Institutionalized Racism*, JAKARTA POST, 6 Feb. 2003.

55. Although the provisions of this bill do not grant Indonesian citizenship to children, born in Indonesia, whose parents are both stateless, the bill’s provisions are an improvement over the existing laws of Indonesia. The bill provides greater protection to women married to stateless men or foreign citizens, *id.*, and this protection does not often co-exist with *jus sanguinis* laws.

56. See generally Edwige L. Lefebvre, *Belgian Citizenship: Managing Linguistic, Regional, and Economic Demands*, 7 CITIZENSHIP STUD. 111 (2003).

stateless. Indeed, the son's children would not be granted Belgian citizenship because their father is not Belgian; the children also would be denied US citizenship because, with little exception, the United States denies citizenship to children of parents with US citizenship who have never lived within its territory.

As the above examples have shown, *jus sanguinis* nationality laws not only produce statelessness, they also perpetuate statelessness from one generation to the next. Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) arguably precludes *jus sanguinis* nationality laws by providing that "States Parties undertake to . . . guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (d) [o]ther civil rights, in particular . . . (iii) [t]he right to nationality."<sup>57</sup> In addition, the situation of children born to noncitizen parents is addressed in the Convention on the Rights of the Child. Under Article 7 of that Convention, a child "shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality . . . . States Parties shall ensure the implementation of these rights . . . , in particular where the child would otherwise be stateless."<sup>58</sup> In view of the near universal ratification of the Convention on the Rights of the Child, the principle of *jus soli*, citizenship based on the place of birth, has emerged as the overriding international norm governing the nationality of children born to noncitizen parents.<sup>59</sup> This right must be enforced without discrimination as to the gender of the parent.<sup>60</sup> Furthermore, Article 7 of the

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57. U.N. G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14), at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 (entered into force 4 Jan. 1969), cited in AMNESTY INTERNATIONAL, BHUTAN: NATIONALITY, EXPULSION, STATELESSNESS AND THE RIGHT TO RETURN (2000), available at [web.amnesty.org/library/index/ENGASA140012000](http://web.amnesty.org/library/index/ENGASA140012000).

58. States should seek to reduce the number of stateless persons, with priority for children, *inter alia* by encouraging parents to apply for citizenship on their behalf. See *CRC Concluding Observations: Lithuania*, *supra* note 14, ¶ 26. States should regularize the status of stateless persons, especially those who have been precluded from applying for residence permits or citizenship, for example by simplifying procedures for applying for residence permits and through campaigns to make it clear that stateless persons would not risk expulsion when identifying themselves to authorities. See *Weissbrodt Final Report*, *supra* note 14, ¶ 35. Stateless persons should not be involuntarily repatriated to the countries of origin of their ancestors. See *Weissbrodt Progress Report*, *supra* note 14, ¶ 15.

59. See *id.* ¶¶ 7–9, 55, 58; ASBJØRN EIDE, CITIZENSHIP AND INTERNATIONAL LAW WITH SPECIFIC REFERENCE TO HUMAN RIGHTS LAW: STATUS, EVOLUTION AND CHALLENGES (2001); *Asbjørn Eide, Working Paper on Citizenship and the Minority Rights of Non-Citizens*, U.N. Doc. E/CN.4/Sub.2/AC.5/1999/WP.3 (1999). Efforts by states to end discrimination in their nationality laws between children born in and out of wedlock are welcome. *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, U.N. ESCOR, Comm. on Rts. of the Child, 31st Sess., ¶ 22, U.N. Doc. CRC/C/15/Add.188 (2002).

60. See *Weissbrodt Progress Report*, *supra* note 14, ¶¶ 14, 50, 51, 63, 66.

Convention requires transmittal of citizenship from a parent to his or her adopted child.<sup>61</sup> Article 7 should be read in conjunction with Article 8 (preservation of identity, including nationality, name, and family relations); Article 9 (avoiding separation from parents); Article 10 (family reunification); and Article 20 (continuity of upbringing of children deprived of their family environment).

Another common mechanism of *de jure* statelessness is dependent nationality.<sup>62</sup> Dependent nationality refers to the practice of linking the nationality of a married woman to her spouse,<sup>63</sup> thus making the wife's nationality dependent upon her husband's citizenship. When the rules of dependent nationality are strictly applied, a woman can be rendered stateless by divorce or the death of her husband because the wife's link to a citizenship bearing husband has been severed by these events.<sup>64</sup> Similarly, "[i]f a woman from a state that automatically deprived her of her nationality on marriage (based on some form of dependent nationality) [weds] a man from a state that [does] not automatically grant her nationality on marriage (based on some form of independent nationality), then she [would become] stateless."<sup>65</sup> Further, on the principle of dependent nationality, a woman who marries a foreign national would lose her citizenship and acquire the citizenship of her husband simply because of her new marriage. Furthermore, if the woman's husband changed or lost his nationality, her nationality would consequently be altered or lost altogether.<sup>66</sup>

A new set of problems can arise for a woman who loses her original citizenship after marriage to a man of another nationality, due to dependent nationality laws, and moves to another country. For example, if the woman divorces her husband or her husband dies, she may be unable to reenter her

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61. See *Weissbrodt Final Report*, *supra* note 14, ¶ 60. Inter-country adoptions must allow adopting parents to transfer their nationality to adopted children, who must be allowed to own or inherit land or to benefit from health, education, and social service subsidies. *Concluding Observations of the Committee on the Rights of the Child: Palau*, U.N. ESCOR, Comm. on Rts. of the Child, 26th Sess., ¶ 40, U.N. Doc. CRC/C/15/Add.149 (2001).

62. "Until the First World War, the nationality laws of virtually all countries made a married woman's nationality dependent on her husband's nationality." Alexander N. Makarov, *La Nationalité de la Femme Mariée [The Nationality of Married Women]*, in *RECUEIL DES COURS [REVIEW OF COURSES]* 199 n.72 (1938).

63. Dependent nationality can be seen in contrast to independent nationality, according to which women retain their nationality regardless of their marital status.

64. COMMITTEE ON FEMINISM AND INTERNATIONAL LAW, FINAL REPORT ON WOMEN'S EQUALITY AND NATIONALITY IN INTERNATIONAL LAW 17 (2000).

65. *Id.* at 29.

66. *Id.* at 17. See also *Working Paper on the rights of women married to foreigners, Submitted by Vladimir Kartashkin in Accordance with Subcommission Decision 2002/112*, U.N. ESCOR, Comm'n on Hum. Rts., 55th Sess., Agenda Item 6a, U.N. Doc. E/CN.4/Sub.2/2003/34 (2003).

former country because she no longer holds the country's nationality.<sup>67</sup> Even if the woman manages to regain her former citizenship and enter her former state, there is a strong possibility that her children will not be granted their mother's former citizenship provided the mother's former country employs strict *jus sanguinis* laws that grant citizenship solely based on paternal descent.<sup>68</sup> Often, the result of dependent nationality and the principle of paternal descent and *jus sanguinis* is that statelessness is inherited and "passed from generation to generation regardless of place of birth, number of years of residency, cultural ties, or the fact that in some cases the individuals concerned have neither entered nor resided in another state."<sup>69</sup> Of course, these problems of statelessness do not occur in isolation:

Documentary requirements may compound these problems. Wars, other conflicts, and administrative mistakes often create insuperable obstacles to documenting birth, marriage, parentage, or residence. Children born in a refugee area outside of their parents' state of citizenship during an armed conflict may later find it difficult or impossible to document their parentage or date and place of birth. If secure and accessible document depositories for birth and marriage records are not maintained, such children may not be able to prove or successfully apply for citizenship.<sup>70</sup>

The unfortunate effects of dependent nationality laws are addressed by the Convention on the Nationality of Married Women. Under this Convention, states parties "[agree] that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife."<sup>71</sup> However, the Convention requires that states parties allow a noncitizen wife of one of its nationals, "at her request, [to] acquire the nationality of her husband through specially privileged naturalization procedures."<sup>72</sup> Also, the Convention on the Nationality of Married Women requires citizenship laws that make it so that "neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national."<sup>73</sup>

Both patrilineal descent laws as well as dependent nationality laws are addressed by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

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67. Geske, *supra* note 12.

68. *Id.*

69. Batchelor, *UNHCR and Issues Related to Nationality*, *supra* note 43, at 104–05.

70. Geske, *supra* note 12.

71. CNMW, *supra* note 9, art. 1.

72. *Id.* art. 3, ¶ 1.

73. *Id.* art. 2.

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.<sup>74</sup>

Changes in citizenship laws are another common mechanism of statelessness. Changes of citizenship laws often create the risk that persons who were considered citizens according to old laws might be rendered stateless by new laws. For example, in Zaire, a law passed in 1971<sup>75</sup> granted nationality to the Banyarwanda people, who thus obtained certain civil and political rights such as the right to stand for election and the right to vote. In 1981, however, Law No. 81-002 amended the previous legislation and retroactively denied nationality to thousands of Banyarwanda.<sup>76</sup> These Banyarwanda, having no other nationality, have been rendered stateless.<sup>77</sup> Likewise, in 2001, Zimbabwe instituted laws that revoked Zimbabwean citizenship from Zimbabwean nationals who held a foreign citizenship or who had failed to renounce any claim to foreign citizenship, even if they did not know about the claim.<sup>78</sup> Essentially, Zimbabweans with dual citizenship or with a potential claim to foreign citizenship had to renounce their foreign citizenship or their claims to foreign citizenship in order to keep their Zimbabwean status.<sup>79</sup> The result of the Zimbabwean legislation was that millions of Zimbabweans with foreign parentage or with foreign sounding names,<sup>80</sup> most of whom were born and raised in Zimbabwe, have had their citizenships withdrawn and have had their national "identities . . . confiscated by the state until they prove that they have renounced any claims to foreign citizenship."<sup>81</sup>

Persons can also become stateless by renouncing their citizenship before acquiring another nationality. For example, in order to avoid the

74. CEDAW, *supra* note 8, art. 9, ¶¶ 1–2.

75. See Zaire Decree Law No. 71-020 (26 Mar. 1971) (*cited in Report on the Situation of Human Rights in Zaire, Prepared by the Special Rapporteur, Mr. Roberto Garreton, in Accordance with Commission Resolution 1994/87*, U.N. ESCOR, Comm'n on Hum. Rts., 51st Sess., Agenda Item 12, ¶ 26, U.N. Doc. E/CN.4/1997/6/Add.1 (1995)).

76. *Report on the Situation of Human Rights in Zaire, Prepared by the Special Rapporteur, Mr. Roberto Garreton, in Accordance with Commission Resolution 1994/87*, U.N. ESCOR, Comm'n on Hum. Rts., 51st Sess., Agenda Item 12, ¶ 26, U.N. Doc. E/CN.4/1997/6/Add.1 (1995).

77. *Id.*

78. *Zimbabweans Team Up to Fight New Citizenship Act*, FINANCIAL GAZETTE, 20 Dec. 2001.

79. *Pressure Group to Sue Govt*, FINANCIAL GAZETTE, 7 Jan. 2002.

80. *Zimbabweans Team Up*, *supra* note 78.

81. *Id.*

Vietnam War draft, a US citizen named Thomas Jolley went to the US Consulate in Toronto, Canada, in 1967 and renounced his citizenship. Because Jolley had no citizenship other than his US citizenship, he had made himself stateless through his actions.<sup>82</sup> Similarly, in the early 1990s, a few hundred Romanians simultaneously filed for political asylum in Germany and renounced their Romanian citizenship, thereby instantly making them stateless.<sup>83</sup>

Persons may also become stateless if their government revokes their citizenship and they do not have a second citizenship. This situation can be illustrated by the case of John Demjanjuk, a former German citizen who had immigrated to the United States. Having been charged by the Israeli Supreme Court of being "Ivan the Terrible," an infamous concentration camp guard during World War II, the United States stripped him of his citizenship and sent him to Tel Aviv, where he was acquitted by the Israeli Supreme Court and sent back to the United States as a stateless person.<sup>84</sup> The United States and other nations, such as Canada, have on several occasions denaturalized, and often rendered stateless, persons believed to have purposefully concealed their Nazi involvement when applying for US or Canadian immigration and citizenship.<sup>85</sup> Often, states revoke citizenship from naturalized citizens for performing subversive activities, for generally being a threat to state security, for voting in another country's elections, or for giving incorrect or inaccurate information when registering for citizenship.

Revoking citizenship under such conditions is not uncommon. Many countries denaturalize and deport their own nationals if naturalization was gained through misrepresentation, or if a national's actions critically threaten the state's interests. In such cases, the state's right to deprive citizenship is not out of step with international principles, even if such a deprivation would render a person stateless. For example, the provisions of

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82. Milton C. Lorenz, Jr., *Renunciation of Nationality Leaves Individual Stateless and Excludable as Any Alien*, 46 *TUL. L. REV.* 984, 987 (1972).

83. Cristian Stefanescu, Editorial, *Daily Deplores German Arguments for Maintaining Visa Requirements for Romanians*, *EVENIMENTUL ZILEI*, 3 Feb. 2001 (on file with author).

84. See John W. Heath Jr., Note, *Journey Over "Strange Ground": From Demjanjuk to the International Criminal Court Regime*, 13 *GEO. IMMIGR. L.J.* 383, 384 (1999). It should be noted that although Demjanjuk was not found to be the infamous death camp guard "Ivan the Terrible," Demjanjuk was found to have purposefully concealed his Nazi involvement when applying for US citizenship. This concealment was the basis for Demjanjuk's denaturalization.

85. Claire I. Farid, *A Primer on Citizenship Revocation for WWII Collaboration: The 1998-1999 Federal Court Term*, 38 *ALTA. L. REV.* 415 (2000). See generally Charles Mahaleris, *Nazi Prison Guard to be Deported*, *TALON NEWS*, 26 Mar. 2004, available at <http://mensnewsdaily.com/archive/newswire/news2004/0304/032604-nazi.htm>; Press Release, U.S. Dept. Justice, Justice Department Files Suit to Revoke Citizenship of Former Member of Lithuanian Mobile Killing Unit (20 Sept. 1994), available at [www.usdoj.gov/opa/pr/Pre\\_96/September94/536.txt.html](http://www.usdoj.gov/opa/pr/Pre_96/September94/536.txt.html).



the 1961 Convention do not apply where "nationality has been obtained by misrepresentation or fraud,"<sup>86</sup> or where a person has, "inconsistently with his duty of loyalty to the Contracting State . . . conducted himself in a manner seriously prejudicial to the vital interests of the State."<sup>87</sup> Likewise, the 1954 Convention does not apply to persons about whom "there are serious reasons for considering that . . . [t]hey have committed a crime against peace, a war crime, or a crime against humanity . . . [or] [t]hey have committed a serious non-political crime outside the country of their residence prior to their admission to that country."<sup>88</sup> Because countries typically do not strip their native-born nationals of citizenship, it has been argued that the practice of depriving citizenship from naturalized citizens is discriminatory, because this practice creates a lesser class of citizens whose citizenship can be revoked.<sup>89</sup>

Statelessness also occurs when states are dissolved, succeeded, or broken up or when territory is transferred. Indeed, transfer of territory resulting from state dissolution, succession, or breakup is one of the most well-known and common causes of statelessness. Statelessness following state dissolution became a notable human rights issue after a number of political transitions in Central and Eastern Europe.<sup>90</sup> After the dissolution of the Soviet Union, Czechoslovakia, and Yugoslavia, succeeding states sought to redefine citizenship requirements. This resulted in statelessness and general uncertainty surrounding the citizenship status of former Soviet, Czechoslovakian, and Yugoslavian citizens, respectively.

After the dissolution of the Soviet Union and Czechoslovakia and the break-up of Yugoslavia, millions of people needed to confirm a new citizenship status. Was a former Czechoslovak citizen now Czech or Slovak? Was someone born in Belgrade, raised in Sarajevo, now married to someone from Zagreb and living in Ljubljana, a Yugoslav, Bosnian, Croat or Slovene citizen? New states emerging from these dissolutions established their own criteria for citizenship. In some cases, people who did not meet those criteria became "stateless"; in other cases they failed to acquire citizenship where they lived.<sup>91</sup>

State succession is also problematic because newly formed successor states have had less time than established states to ratify and implement

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86. 1961 Convention, *supra* note 10, art. 8 ¶ 2.

87. *Id.* art. 8, ¶ 3.

88. *Id.* art. 1, ¶ 2.

89. Sarah Left, *Comment: Once a Citizen, Always a Citizen*, *GUARDIAN*, 25 Feb. 2003, available at [www.guardian.co.uk/print/0,3858,4613227-103601,00.html](http://www.guardian.co.uk/print/0,3858,4613227-103601,00.html). See also Jill Singer, *Once a Citizen, Always a Citizen*, *HERALD SUN*, 27 Dec. 2002, at 21.

90. Geske, *supra* note 12.

91. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), *THE STATE OF THE WORLD'S REFUGEES: FIFTY YEARS OF HUMANITARIAN ACTION* 185, 189 (2000).

human rights treaties that may provide protections against statelessness. Additionally, if a former state was broken up because of ethnic conflict and divided among major ethnic groups, the successor states likely will have less motivation or support for creating liberal citizenship laws or for ratifying treaties that may guarantee citizenship to large populations of ethnic minorities.

Certainly, when state succession occurs without constitutional or legislative provisions in place to ensure citizenship to all former citizens of the dissolved state, large numbers of persons are often rendered *de jure* stateless.<sup>92</sup> When a state is dissolved or broken up, the possibility always exists that persons considered citizens under the laws of the dissolved state, might not be granted citizenship by a successor state. For instance:

When the Baltic states regained independence, their nationality laws excluded hundreds of thousands of ethnic Russians who had lived there for decades. When many Crimean Tatars returned to Ukraine [after the break up of the Soviet Union], their families having been deported from there by Stalin in the 1940s, some arrived after the termination date for . . . access to Ukrainian citizenship, creating difficulties in finding jobs and housing. Yugoslavia's violent break-up displaced over four million people, and many records needed to trace citizenship were destroyed, creating numerous problems. When Czechoslovakia broke into two republics, many living on the Czech side were attributed Slovak citizenship, making them foreigners in their place of habitual residence.

In Asia, the Biharis (non-Bengali Muslims who moved from India to what was East Pakistan in the late 1940s) considered themselves to be Pakistani nationals and refused to take Bangladeshi nationality when Bangladesh gained independence in 1971. The government of Pakistan has since been reluctant to "repatriate" them, and over 200,000 are still in camps in Bangladesh.<sup>93</sup>

Indeed, whenever citizenship laws are changed, the possibility always exists that persons considered citizens according to the old laws might be rendered stateless by the new laws. Take, for example, an ethnic minority who was born and has always lived in the state of their nationality. The state's territory, however, is dissolved and succeeded by another state. The former citizen would expect to be given citizenship of the successor state, given that it took control of the territory in which the former citizen has always lived and resided. However, if the successor state strictly imposes *jus sanguinis* citizenship laws, and only grants citizenship to the territory's ethnic majority, then the former citizen would be rendered stateless.<sup>94</sup>

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92. Geske, *supra* note 12.

93. UNHCR, *THE STATE OF THE WORLD'S REFUGEES*, *supra* note 91, at 189.

94. The circumstances of this example could be reversed to produce the same result (statelessness). For example, let us consider a case in which a person (a citizen of one state) wishes to immigrate to, and obtain citizenship from, another state. The citizenship laws of the second state, however, do not allow dual citizenship and require the

Let us consider another hypothetical example in which a person resides in the state of her citizenship. This state, however, is dissolved and its territory is divided between two successor states. The former citizen might expect to be given the citizenship of the state controlling the territory that she calls home. Given her ancestry, she is initially allowed only the citizenship of the second successor state, the one that does not control the land on which she lives. If she does not have the resources to travel to the state of her new citizenship, or the documentation to prove her former citizenship, then she may be rendered stateless.

## B. Mechanisms of *De Facto* Statelessness

Although the category of *de facto* stateless persons is sufficiently broad to include all persons who have a citizenship yet do not receive the concomitant benefits and protection that typically accompany citizenship, the term *de facto* stateless is, more often than not, applied to those persons who do not enjoy the rights of citizenship enjoyed by other noncriminal citizens of the same state.<sup>95</sup> Consequently, most persons considered *de facto* stateless are the victims of state repression. Whereas *de jure* statelessness can simply result from the oversight of lawmakers who leave gaps in the law through which persons can fall, *de facto* statelessness typically results from state discrimination. Consequently, it is not surprising that the mechanisms of *de jure* statelessness differ from those of *de facto* statelessness.

One mechanism of *de facto* statelessness is slavery and human trafficking. Radhika Coomaraswamy, the UN Special Rapporteur on Violence Against Women, has highlighted problems of *de facto* statelessness among women trafficked to work in the sex trade.<sup>96</sup> For many trafficked women, "nationality is not a means to diplomatic assistance because often their passports are taken away by the pimp or brothel owner, and they are

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citizenship applicant to renounce his former citizenship in order to naturalize; the applicant does so and is granted a new nationality. Some time after naturalization, the person's new state is dissolved and succeeded by another state that implements strict *jus soli* citizenship and only grants citizenship to persons born within the territorial boundaries of that state. Such a case would render stateless the person used in this example.

95. Hence, someone is usually not said to be *de facto* stateless if he or she has been convicted of a crime and denied the right, for example, to vote.
96. *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Addendum: Report on the Mission of the Special Rapporteur to Poland on the Issue of Trafficking and Forced Prostitution of Women (24 May to 1 June 1996)*, U.N. ESCOR, Comm'n on Hum. Rts., 53d Sess., Agenda Item 9(a), ¶ 6, U.N. Doc. E/CN.4/1997/47/Add.1 (1996), cited in COMMITTEE ON FEMINISM AND INTERNATIONAL LAW, *supra* note 64, at 5.

unable to prove their nationality.<sup>97</sup> Therefore, even if these women were to gain freedom, they face the often impossible difficulties associated with attempting to return to their homeland without proof of nationality.<sup>98</sup>

Unfortunately, criminals and traffickers are not the only ones who can render persons stateless by denying citizens of the means to prove their citizenship. Sometimes governments commit what is known as administrative ethnic cleansing, or erasure. For example, in 1992, the Ministry of the Interior of the Government of Slovenia surreptitiously removed the files of many non-Slovene Roma from registers of the permanent residents of Slovenia.<sup>99</sup> The files were moved from the "active" Registrar of Permanent Residents (RPR) to the inactive or "dead" RPR. This maneuver had the effect of making the "erased persons," also known as "the erased," appear, at least on paper, as former permanent residents who no longer reside in Slovenia for reasons such as death or permanent emigration.<sup>100</sup> Apparently the erasure was executed in order to preclude non-Slovene Roma from being numbered among the original group of nationals of the newly created Slovenian state. According to the Government of Slovenia, 29,064 persons were erased;<sup>101</sup> the Helsinki Monitor of Slovenia (HMS) argues, however, that the number was in fact around 80,000.<sup>102</sup>

#### IV. OBSTACLES, HARDSHIPS, AND HURDLES FACED BY STATELESS PERSONS

Statelessness is a very difficult problem for those who face it. The increased vulnerability that often accompanies statelessness is illustrated by the plight

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97. COMMITTEE ON FEMINISM AND INTERNATIONAL LAW, *supra* note 64, at 5.

98. *Id.*

99. Jasminka Dedić, *The Erasure: Administrative Ethnic Cleansing in Slovenia*, ROMA RTS. 3/2003, available at [www.errc.org/cikk.php?cikk=1109&archiv=1](http://www.errc.org/cikk.php?cikk=1109&archiv=1). The incident has come to be known as the "Slovenian Erasure." The Slovenian Erasure is not a clean and clear example of a mechanism of *de facto* statelessness. Those persons erased from the Registrar of Permanent Residents were either already stateless, or they were citizens of other republics of the former Socialist Federal Republic of Yugoslavia (SFRY) who migrated to Slovenia prior to Slovenia's independence from the SFRY in 1991–92. According to the Laws of Slovenia, many, if not most, of the erased were eligible for Slovenian citizenship at the time of the erasure. Therefore, for the erased that were stateless at the time of the erasure, the erasure only worked to perpetuate their statelessness; and for the erased who had established themselves in Slovenia and whose entire family lived there, the erasure arguably rendered them *de facto* stateless, or at least quasi-stateless, by denying them the citizenship that they most nearly had. *Id.* n.40.

100. *Id.*

101. *Id.*

102. See INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, HUMAN RIGHTS IN THE OSCE REGION: THE BALKANS, THE CAUCASUS, EUROPE, CENTRAL ASIA AND NORTH AMERICA REPORT 2001 (EVENTS OF 2000) 271 (2001), cited in Dedić, *supra* note 99.

of stateless Jews during World War II. In Hannah Arendt's seminal book *Eichmann in Jerusalem*,<sup>103</sup> Arendt notes that at the Wannsee Conference,<sup>104</sup> prior to the Nazi's implementation of the "Final Solution" to the "Jewish Question," the Nazi government purposefully rendered stateless all Jews in its territory.<sup>105</sup> This action was done for at least two reasons: "[I]t made it impossible for any country to inquire into [the Jew's] fate, and it enabled the state in which they were resident to confiscate their property."<sup>106</sup> Additionally, Arendt explains that when the Nazis began deporting Jews from other states, such as Holland and France, the stateless Jews in those countries were more vulnerable than Jewish Dutch and French citizens. Indeed, "deportations [almost always] . . . started with stateless Jews."<sup>107</sup> In fact, Arendt asserts that "the Jews had to lose their nationality before they could be exterminated."<sup>108</sup> Certainly, the barbarous acts committed during the Holocaust seem to support Arendt's assertion that "one could do as one pleased" with the stateless.<sup>109</sup>

Stateless persons not only must deal with the challenges associated with being vulnerable targets for gross human rights violators, but also they must deal with the fact that, in many states, nationality is a practical prerequisite for accessing political and judicial processes and for obtaining economic, social, and cultural rights. One reason why stateless persons are unable to access these processes and rights is that stateless persons are often not issued identity documents by their states of habitual residence. Although the 1954 Convention on the Status of Stateless Persons does require states parties to supply "stateless persons such documents or certifications as would normally be delivered to aliens by or through . . . national authorities[,]"<sup>110</sup> few countries have ratified the 1954 Convention.

Without identity documents, many stateless persons also find it difficult to obtain political asylum. Consider, for example, the case of "RA," an asylum seeker who, fearing for his life, fled to Australia in 2001.<sup>111</sup> RA had no documentation to support his claim for asylum. He could not even support his claim that he had formerly resided in Algeria, and his appeal for

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103. HANNAH ARENDT, *EICHMANN IN JERUSALEM* (1963).

104. The Wannsee Conference (20 January 1942) was a "meeting of Nazi officials in the Berlin suburb of Grossen-Wannsee for the purpose of planning the 'final solution' (Endlösung) of the 'Jewish question' (Judenfrage)." *Wannsee Conference*, 12 *NEW ENCYCLOPEDIA BRITANNICA* 489 (15th ed. 1989).

105. ARENDT, *supra* note 103, at 115.

106. *Id.*

107. *Id.* at 167.

108. *Id.* at 240.

109. *Id.*

110. 1954 Convention, *supra* note 3, art. 25, ¶ 2.

111. See Sarah Stephen, *Government Risks Refugees' Lives*, *GREEN LEFT WEEKLY*, 24 Mar. 2004, at 10.

asylum was rejected. As a result, RA was held in detention until he could obtain documentation supporting his case—a period of three years.<sup>112</sup>

Being without identity documents also makes it difficult to obtain basic social services. In fact, lack of identity documents often preempts stateless persons from acquiring jobs, receiving medical care, marrying and starting a family, enjoying legal protection, traveling, owning property, gaining an education, or registering the birth of their children.<sup>113</sup> The undocumented and stateless Bidun population of Kuwait, for example, often found themselves “facing serious obstacles when seeking to register births, . . . divorces, and deaths, because they lacked the required identification and were typically required to go through lengthy security checks before the Ministry of Interior would issue a letter of no objection.”<sup>114</sup> Many Kuwaiti Bidun also have been deprived of their right to marry and start a family:<sup>115</sup> “Bidun face difficulty registering marriages between Bidun couples or between a Bidun and a Kuwaiti citizen because the Bidun member(s) of the couple lacks a civil ID and must obtain a letter from the Ministry of Interior and complete a lengthy security check.”<sup>116</sup>

The situation faced by the Kuwaiti Bidun,<sup>117</sup> numbering approximately 120,000,<sup>118</sup> bears resemblance to the plight of Rohingya of Myanmar (Burma). The Rohingya population of Myanmar,<sup>119</sup> which has been esti-

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112. See *id.* While it is not certain that RA was stateless, RA’s case is illustrative of the kind of challenges stateless persons without documentation often face.

113. UNHCR, *WHAT WOULD LIFE BE LIKE IF YOU HAD NO NATIONALITY?*, *supra* note 5.

114. BENCOMO, *supra* note 52.

115. The ICCPR states that “[t]he right of men and women of marriageable age to marry and to found a family shall be recognized.” ICCPR, *supra* note 6, art. 23, ¶ 2. In its General Comment 19, the Human Rights Committee stated that:

The right to found a family implies, in principle, the possibility to procreate and live together . . . [and] the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.

*General Comment on Article 23*, General Comment No. 19, U.N. ESCOR, Hum. Rts. Comm., ¶ 5, U.N. Doc. HRI/GEN/1/Rev.1 at 28 (1994).

116. BENCOMO, *supra* note 52.

117. In Arabic, the term *bidun* is a short for the phrase “without nationality” (*bidun jinsiya*). In Kuwait, *bidun* “refers to longtime residents of Kuwait who, under the terms of Nationality Law 15/1959, should be eligible for Kuwaiti nationality by naturalization but who have not been granted citizenship.” *Id.*

118. *Id.*

119. According to Rohingya leaders, the “Rohingya are an ethnically distinct group, descendants of the first Muslims who began migrating to northern Arakan state in the eighth century, though they also say that they are a mix of Bengalis, Persians, Moghuls, Turks, and Pathans who came to [northern Arakan, Myanmar].” ZAMA COURSEN-NEFF, *LIVING IN LIMBO: BURMESE ROHINGYAS IN MALAYSIA (2000)*, available at [www.hrw.org/reports/2000/malaysia/](http://www.hrw.org/reports/2000/malaysia/).

mated to range from 5,100 to 8,000 people,<sup>120</sup> also has experienced such problems. As one Rohingya welder explained, employers are “afraid to [hire] undocumented people”<sup>121</sup> so Rohingya “must rely on what they call ‘daily work’—poorly-paid, short-term manual labor.”<sup>122</sup> In addition to this, the undocumented and stateless Rohingya “are increasingly being denied access to health care . . . schools are turning away their children,” and Rohingya have faced tremendous difficulties obtaining housing.<sup>123</sup>

The Rohingya have not only faced difficulty obtaining social services and protections, they also have faced infringements on their civil and political rights, such as their right not to be subjected to arbitrary detention:<sup>124</sup>

Rohingya refugees and asylum-seekers in Malaysia are often detained for months in immigration camps where they suffer malnutrition, unsanitary conditions, and beatings before being pushed over the border into Thailand. The Malaysian government increasingly restricts their access to education and health services, and, to date, the office of the United Nations High Commissioner for Refugees (UNHCR), which has an office in Malaysia, has been unable to secure effective legal protection for the Rohingya.<sup>125</sup>

Unfortunately, the problem of prolonged and unwarranted imprisonment is not limited to stateless Rohingya. Unnecessary imprisonment is one of the most pervasive and most difficult problems faced by stateless persons. According to the UNHCR, when stateless persons are unable to return to their countries of habitual residence after having left them, often in search of asylum or refugee status, the result is often prolonged detention outside of the country in which they habitually reside.<sup>126</sup> The reason for such detention is that, without proof of identity or nationality, stateless persons often cannot reenter their state of habitual residence. Furthermore, the detaining state cannot resolve the question of where to deport the stateless detainee, and it is unwilling to let them illegally reside within its territory.<sup>127</sup> In such cases,

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120. *Id.*

121. Human Rights Watch Interview, in Kuala Lumpur, Malaysia (20 & 30 Nov. 1999; 2 Dec. 1999), *cited in* COURSEN-NEFF, *supra* note 119, ch. 3.

122. *Id.*

123. *Id.*

124. Universal Declaration, *supra* note 1, art. 9.

125. COURSEN-NEFF, *supra* note 119, ch. 1.

126. In such cases, the UNHCR recommends that “[t]he detaining authorities should make every effort to resolve such cases in a timely manner, including, through practical steps to identify and confirm the individuals nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence arrange for their re-admission.” UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), UNHCR’S GUIDELINES ON APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM-SEEKERS (1999).

127. *Id.* ¶ 6.

stateless persons have been held in prolonged or “indefinite detention” only because the question of where to send them remains unresolved.<sup>128</sup>

The problem of prolonged and unwarranted imprisonment is often exacerbated when states, having failed to resolve the question of where to send a particular stateless person, nonetheless attempt to rid themselves of the stateless person by deporting him or her to another state that is also unwilling to receive the person. In such cases, a stateless person may spend years in detention, being passed from state to state like an unwanted pariah. Consider the case of Eidreiss al Salih:<sup>129</sup>

Twenty-nine year-old Eidreiss al Salih arrived in Australia in 2000 to seek asylum. He was born in Kuwait to Sudanese immigrant parents, but Kuwait refused to accept his family as citizens. He spent three years in detention before the Australian government tried unsuccessfully to deport him to Sudan on December 13.

[The Australian Government] made no attempt to independently verify his nationality before they tried to deport him to Sudan, issuing him with a document stating his nationality as Sudanese.

Australian officials claimed that the Sudanese embassy in Tanzania was waiting for Salih. However, his [Australian-issued] identity papers were rejected by embassy officials on December 14.

[A] South African security firm contracted by [the Australian Government] to “accompany” deportees, falsely informed Tanzanian officials that Salih was deported from Australia for committing a criminal act. As a result, he was transferred from immigration detention at the Dar es Salaam airport to a police station cell, according to a lawyer who was present, where he was kept for a further five days.

He was then transferred back to South Africa, where he spent six nights at Johannesburg airport, in a room with no windows or bed, and denied visitors. He was flown back to Perth[, Australia,] on December 24[, 2003].<sup>130</sup>

As of May 2004, Mr. al Salih was still in an Australian detention center. He has reapplied for asylum.<sup>131</sup>

128. *Id.* at Guideline 9.

129. Stephen, *supra* note 111, at 10. Consider also the case of an eighteen-year-old stateless Hutu man named “C,” whose failed attempt to seek asylum in Australia led to three years of detention:

[A]fter nearly three years of detention, the Australian authorities sent [C] to Kenya. [C] is an 18-year-old Hutu, orphaned during the conflict in Kenya eight years earlier. He was escorted under guard to Johannesburg and on to a Kenya Airlines plane to Nairobi. He had emergency travel documents from the Australian authorities but these were taken from him at the airport in Nairobi. . . . Once again [C] became stateless and without documents with the predictable consequence of further imprisonment.

*Id.*

130. *Id.*

131. Stephanie Kennedy, *Sudanese Asylum Seeker Sent around the World* (ABC News-Australia radio broadcast 26 May 2004), available at [www.abc.net.au/pm/content/2004/s1116633.htm](http://www.abc.net.au/pm/content/2004/s1116633.htm).



In addition to prolonged and unwarranted imprisonment, stateless persons are frequently subjected to other forms of civil and political discrimination. For example, the 2001 statistics gathered by Estonia's Ministry of Justice suggest that the Estonian criminal justice system is infringing upon stateless persons' human rights to equal protection before the law.<sup>132</sup> The report indicated that over a quarter of criminal convictions in Estonia were imposed upon stateless persons.<sup>133</sup> This percentage is quite remarkable when one considers that stateless persons comprise 13 percent of Estonia's population.<sup>134</sup>

Another civil and political right often denied to stateless persons is the right to leave and enter one's own country. This right is granted by both the Universal Declaration<sup>135</sup> and the Covenant on Civil and Political Rights.<sup>136</sup> The Covenant on Civil and Political Rights, for example, specifies in Article 12 that "[e]veryone shall be free to leave any country, including his own"<sup>137</sup> and that "[n]o one shall be arbitrarily deprived of the right to enter his own country."<sup>138</sup> Despite having ratified the Covenant on Civil and Political Rights, countries such as Kuwait continue to deny stateless persons the right to leave and return to their own countries. According to Human Rights Watch, "Kuwait refuses to acknowledge the right of return of, and arbitrarily denies re-entry to, many Bidun who can claim Kuwait as their 'own country[,]'. . . particularly with regard to Bidun who became stranded abroad after the 1991 liberation of Kuwait from Iraqi occupation."<sup>139</sup> In addition to denying Bidun the right to leave and return to Kuwait, the Kuwaiti Government has also "carried out deportations of Bidun, and then denied them re-entry to what effectively constitutes their 'own country.'"<sup>140</sup> Such problems with freedom of movement faced by stateless Kuwaiti

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132. *Estonian Statistics Show Quarter of Convictions Go to Stateless Persons*, TALLINN BNS, 11 Aug. 2001 (on file with author). The human right to equal protection before the law is protected by the Universal Declaration, *supra* note 1, art. 7; ICCPR, *supra* note 6, art. 26 (which Estonia has ratified without reservations).

133. *Estonian Statistics Show Quarter of Convictions Go to Stateless Persons*, *supra* note 132.

134. Commission of the European Communities, *2001 Regular Report on Estonia's Progress Towards Accession*, at 21, SEC (2001) 1747 (13 Nov. 2001), available at [www.eib.ee/files/pr2001ee.pdf](http://www.eib.ee/files/pr2001ee.pdf).

135. Universal Declaration, *supra* note 1, art. 13.

136. ICCPR, *supra* note 6, art. 12.

137. *Id.* art. 12, ¶ 2.

138. *Id.* art. 12, ¶ 4. It should be noted that, according to the United Nations Human Rights Committee, this language "does not distinguish between nationals and aliens" and therefore "permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence." *General Comment on Article 12*, General Comment No. 27, U.N. ESCOR, Hum. Rts. Comm., ¶ 20, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999).

139. BENCOMO, *supra* note 52.

140. *Id.*

Biduns are not isolated to this population.<sup>141</sup> To the contrary, these problems are characteristic of the plights of stateless persons everywhere.

To be sure, the problems and situations faced by stateless Rohingya and Bidun are typical of the difficulties faced by many other stateless populations, including the Roma of Eastern Europe, the Karens of Thailand, stateless Vietnamese asylum-seekers in Hong Kong, and ethnic Chinese in Taiwan. Like these ethnic minorities, stateless women are often particularly vulnerable to the vagaries of stateless life. For example, when “facilitation of the acquisition of nationality . . . depends on marriage to a national[,] . . . the national spouse [is given inordinate] control over the non-national spouse.”<sup>142</sup> In the United States, prior to the 1994 Violence Against Women Act (VAWA), only a permanent US resident or citizen spouse could petition for a stateless or foreign spouse to become a resident;<sup>143</sup> and the petitioner controlled if and when the residency application was filed.<sup>144</sup> All too frequently, this control over if and when the residency application was filed allowed physically abusive spouses, predominantly men, inordinate control over their nonresident spouses. For example:

A woman from the Philippines was abused by her U.S. citizen spouse. He threatened to have immigration authorities deport her to the Philippines if she tried to leave him. She stayed. He later cut her all over her back, head, and hands with a meat cleaver . . . .

A Dominican woman fled from her U.S. citizen husband’s violent assaults only after being hospitalized for the fifth time as a result of his beatings. Her husband bashed her head against the wall and threatened to kill her if she told her doctor what happened. She had been afraid to leave him because he controlled her immigration status.<sup>145</sup>

The nature of the pre-1994 US immigration process thus created the risk that the stateless or foreign spouse, more frequently the wife, might suffer domestic abuse in order to acquire residency status.<sup>146</sup>

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141. As another example, consider the situation faced by stateless Karens of Thailand. These stateless persons “are not allowed to travel outside to work . . . . Those who do out of necessity are regularly harassed physically and financially.” Sanitsuda Ekachai, *Thai Govt Urged to Find a Comprehensive Solution to Burmese Migration Problem*, BANGKOK POST, 26 Apr. 2002. Further, examples earlier in this chapter involving trafficked persons and female victims of dependent nationality laws are also illustrative of cases in which statelessness leads to obstruction of the right to return to one’s own country.

142. COMMITTEE ON FEMINISM AND INTERNATIONAL LAW, *supra* note 64, at 22.

143. See American Immigration Law Center, *How Do I Apply for Immigration Benefits as a Battered Spouse or Child?* (2003), available at [www.ailc.com/howdoi/battered.htm](http://www.ailc.com/howdoi/battered.htm).

144. COMMITTEE ON FEMINISM AND INTERNATIONAL LAW, *supra* note 64, at 22.

145. J.M. Calvo, *Spouse-Based Immigration Laws: The Legacy of Coverture*, in *CRITICAL RACE FEMINISM: A READER* 380, 380 (1997).

146. See *generally id.* at 380–86 (offering examples of the difficulties encountered by stateless women).

## V. ADDRESSING THE PROBLEM OF STATELESSNESS

The problem of statelessness can be addressed in a variety of ways. Generally, however, the remedies for statelessness can be classified in the following categories: (a) preemptive remedies; (b) minimization remedies; and (c) naturalizing remedies. Preemptive remedies, when properly implemented, stop statelessness before it develops. A recent Human Rights Watch report,<sup>147</sup> which focused in part on statelessness in Malaysia, suggested a preemptive remedy to the Malaysian statelessness problem. It recommended that Malaysia's "Department of Registration should make efforts to ensure that all children who are born in Malaysia, regardless of their nationality, are registered upon birth and provided with birth registration documents" and that "Malaysia should interpret its laws as applicable to Rohingya children" and grant them citizenship "under . . . Part II of Malaysia's Federal Constitution."<sup>148</sup>

Sections of the 1961 Convention and the Convention on the Rights of the Child are also illustrative of preemptive remedies. The 1961 Convention, for instance, essentially proscribes states parties from performing actions that would render stateless those persons living within the territories' of states parties. In the same spirit, the Convention on the Rights of the Child compels a state party to grant citizenship at birth to all children born within its territory, "in particular where the child would otherwise be stateless."<sup>149</sup> The remedies for statelessness suggested by the previously cited Human Rights Watch report, as well as the 1961 Convention and the Convention on the Rights of the Child, are preemptive, because when properly implemented, the remedies preclude statelessness in advance of its development.

While preemptive remedies prevent individuals from becoming stateless, thereby benefitting, for example, newly born children or women who might be rendered stateless by marriage, minimization remedies lessen the difficulties associated with statelessness and serve to protect stateless persons from discrimination. Minimization remedies, however, do not result in the elimination or prevention of statelessness and, therefore, can never be a replacement for citizenship. As the information and accession package for the 1954 and 1961 Conventions eloquently states: "[w]hile the extension of certain rights generally associated with nationality, such as voting, employment, or ownership of property, may be one means of normalising the status of noncitizens on a State's territory, there is no replacement for nationality itself."<sup>150</sup> Overall, the 1954 Convention prescribes a series of minimization

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147. COURSEN-NEFF, *supra* note 119.

148. *Id.*

149. Children's Convention, *supra* note 7, art. 7, ¶ 2.

150. UNHCR, INFORMATION AND ACCESSION PACKAGE, *supra* note 47.

remedies. For example, Article 27 of the 1954 Convention obligates states parties to “issue identity papers to any stateless person in their territory who does not possess a valid travel document.”<sup>151</sup> Such provisions may alleviate some of the difficulties associated with statelessness but do not fundamentally alter one’s status as a stateless person.

Naturalizing remedies for statelessness focus on securing citizenship for those already stateless. The Sri Lankan parliament, for example, implemented a naturalizing remedy for statelessness in 2003 when it passed a law granting citizenship to over 168,000 stateless Tamils.<sup>152</sup> The Indonesian government also executed a naturalizing remedy when it extended citizenship to some 140,000 ethnic Chinese.<sup>153</sup> Interestingly, none of the UN treaties mentioned in this chapter, including the 1954 and 1961 Statelessness Conventions and the Convention on the Rights of the Child, obligate states parties to implement naturalizing remedies for statelessness. The 1954 Convention, in Article 32, does require states parties to “as far as possible [to] facilitate the assimilation and naturalization of stateless persons.”<sup>154</sup> This provision, however, is weak and subject to flexible interpretation.

As long as statelessness exists, all three of the remedies mentioned above are important and essential. Preventative remedies are necessary for the total eradication of statelessness. Minimization remedies, while they should never be seen as a replacement for preemptive and naturalizing remedies, should be in place to alleviate the difficulties of statelessness while persons are naturalized or seek naturalizing. Finally, naturalizing remedies offer the only complete remedy for stateless persons.

### A. International Law and the Implementation of Remedies for Statelessness

States might implement remedies for statelessness because they are obligated to do so as parties to international treaties. Unfortunately, however, the treaties that were created to bear directly upon the problem of statelessness, the 1954 and 1961 Conventions,<sup>155</sup> have few states parties, as illustrated by Table 1. In addition, the effectiveness of the 1954 and 1961 Conventions are not only constrained by limited ratification, they also are

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151. 1954 Convention, *supra* note 3.

152. *Sri Lanka Grants Citizenship to More than 168,000 Stateless Tamils*, BBC WORLDWIDE MONITORING, 7 Oct. 2003.

153. “Stateless” Ethnic Chinese To Receive Indonesian Citizenship, BEIJING XINHUA, 27 July 2000.

154. 1954 Convention, *supra* note 3.

155. *See id.*; *see also* 1961 Convention, *supra* note 10.

**TABLE 1**  
**Ratification Information For, in the Given Order,**  
**the 1961 Convention on the Reduction of Statelessness (1961 Convention),**  
**the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention),**  
**the Convention on the Nationality of Married Women (CNMW),**  
**the International Covenant on Civil and Political Rights (ICCPR),**  
**the Convention on the Elimination of All Forms of**  
**Discrimination against Women (CEDAW), and the**  
**Convention on the Rights of the Child (Children's Convention), Respectively**

	<i>State Parties</i>	<i>Remaining Signatories</i>	<i>Day of Last Update</i>
1961 Convention	30	3	10/19/05
1954 Convention	58	6	10/19/05
CNMW	73	10	10/19/05
ICCPR	154	7	10/19/05
CEDAW	180	1	10/19/05
Children's Convention	192	2	10/19/05

limited by lack of monitoring. Indeed, none of the six bodies set up by the UN to monitor human rights treaties are responsible for monitoring the 1954 Convention or the 1961 Convention.<sup>156</sup>

Given that the 1954 and 1961 Conventions have been ratified by few states and are not monitored by associated UN treaty monitoring bodies, it is difficult to enforce the human rights standards delineated in these two treaties. Nonetheless, provisions designed to prevent statelessness and to protect stateless persons are contained within widely ratified<sup>157</sup> and monitored<sup>158</sup> human rights treaties, such as the Convention on the Rights of the Child, the Covenant on Civil and Political Rights, and the Convention on the Elimination of All forms of Discrimination against Women. Unfortunately, however, the Committee on the Rights of the Child and the Human Rights Committee have reprimanded only a few states for failing to comply with

156. Treaty bodies have been established to monitor the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

157. As indicated by Table 1 (Annex), the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women have been ratified by 192, 177, and 152 countries, respectively.

158. Implementation of the Convention on the Rights of the Child is monitored by the Committee on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women is monitored by the Committee on the Elimination of Discrimination against Women; and the Covenant on Civil and Political Rights is monitored by the Human Rights Committee.

provisions related to statelessness embedded in the Convention on the Rights of the Child and the Covenant on Civil and Political Rights. The Committee on the Elimination of Discrimination Against Women seems to have never reprimanded a state party for failing to comply with the provisions regarding statelessness embedded in the Convention on the Elimination of All Forms of Discrimination Against Women. Furthermore, the treaty bodies mandated to monitor the Convention on the Rights of the Child and the Covenant on Economic, Social, and Cultural Rights, the two most broadly ratified human rights treaties,<sup>159</sup> rarely monitor or give focus to the provisions related to statelessness embedded within the two treaties.

The Committee on the Rights of the Child and the Human Rights Committee, however, have advised states parties to reduce or to prevent statelessness on a handful of occasions. During its review of Cambodia's initial report,<sup>160</sup> for example, the Committee on the Rights of the Child expressed concern that Cambodia's "Law on Nationality (1996) might lead to discrimination against children of non-Khmer origin and might, in violation of Article 7 of the Convention [on the Rights of the Child], leave as stateless a large number of children born in Cambodia, such as children belonging to minority groups."<sup>161</sup> In light of this concern, the Committee on the Rights of the Child recommended that Cambodia's "Law on Nationality be reviewed in the light of the Convention with a view to eliminating all grounds of possible discrimination and eradicating and preventing children being stateless."<sup>162</sup> The Human Rights Committee has similarly advocated on behalf of stateless, or potentially stateless, children. For example, during its review of Columbia's fourth periodic report, the Human Rights Committee stressed "the duty of the State party to ensure that every child born in Colombia enjoys the right, under Article 24, paragraph 3, of the Covenant [on Civil and Political Rights], to acquire a nationality. It therefore recommends that the State party consider conferring Colombian nationality on stateless children born in Colombia."<sup>163</sup>

The treaty monitoring bodies' responses to violations of the right to nationality, quoted above, are admirable steps in the right direction. Such responses, however, are all too infrequent. Indeed, the plight of stateless

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159. As indicated by Table 1 (Annex), the Children's Convention has been ratified by 192 countries and the Covenant on Civil and Political Rights has been ratified by 152 countries.

160. *See Concluding Observations of the Committee on the Rights of the Child: Cambodia*, U.N. ESCOR, Comm. on Rts. of the Child, 24th Sess., ¶ 31, U.N. Doc. CRC/C/15/Add.128 (2000).

161. *Id.* ¶ 31.

162. *Id.* ¶ 32.

163. *Concluding Observations by the Human Rights Committee*, U.N. ESCOR, Hum. Rts. Comm., ¶ 43, U.N. Doc. CCPR/C/79/Add.76 (1997).

persons stands to improve greatly when the provisions related to statelessness embedded within broadly ratified and monitored human rights treaties, such as the Convention on the Rights of the Child and the Covenant on Civil and Political Rights, are given greater focus and attention by treaty monitoring bodies and governments. Nongovernmental organizations (NGO) also have a role to play. When treaty bodies are preparing to review a state party's compliance with a given treaty, they generally welcome information provided by NGOs in the form of oral and written reports.<sup>164</sup> Information on state party's compliance provided by NGOs often provides the only alternative account of a state party's compliance with treaty obligations. Furthermore, information provided by NGOs often results in the acceptance of recommendations that states parties are required to implement.<sup>165</sup>

## **B. The Role of Regional Cooperation and Interests in the Reduction of Statelessness**

The presence of large numbers of stateless persons in a given region can often produce regional instability. To be sure, displacement and flows of refugees, which frequently result from statelessness, often threaten the peace and stability of a region.<sup>166</sup> Because the instability created by statelessness makes reducing statelessness in the best interest of regions or regional organizations such as the European Union or the Organization of American States, regional relations are often improved when states work to eliminate statelessness and to resolve nationality disputes.<sup>167</sup> Often, regional pressures can impel an otherwise reluctant state government to naturalize stateless citizens or otherwise to address statelessness in its territory.

Regional pressures have certainly influenced Estonia's and Latvia's treatment of stateless persons. Latvia's recent entrance into the European Union was threatened by the country's large stateless population,<sup>168</sup> and the country responded. Since 1995, Latvia has naturalized nearly 70,000 persons, most of whom were stateless.<sup>169</sup> Furthermore, in 1999, Latvia began granting citizenship to children of stateless persons and noncitizens born within the country's territory.

Estonia's large stateless population also jeopardized the country's recent

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164. See Amnesty International, *The Role of Civil Society: Role of NGOs*, available at [web.amnesty.org/web/web.nsf/print/treaty-ngo-eng](http://web.amnesty.org/web/web.nsf/print/treaty-ngo-eng).

165. *Id.*

166. UNHCR, *WHAT WOULD LIFE BE LIKE IF YOU HAD NO NATIONALITY?*, *supra* note 5.

167. *Id.*

168. See *Nearly 70,000 People Naturalised in Latvia*, *EU BUSINESS*, 13 Jan. 2004, available at [www.eubusiness.com/Latvia/040113170059.xd7m165n](http://www.eubusiness.com/Latvia/040113170059.xd7m165n).

169. *Id.*

entry into the European Union. As Evelyn Sepp, a lawmaker with Estonia's Centre Party, noted, "[F]rom the point of view of a state or a union of states, a large number of stateless persons, who have been deprived of essential political rights, represents a threat to democracy and internal stability."<sup>170</sup> Estonia has thus taken steps naturalize stateless citizens.<sup>171</sup>

## VI. CONCLUSION

One way to ensure that stateless persons realize their right to a nationality,<sup>172</sup> as enunciated in Article 15 of the Universal Declaration, is through the doctrine of the genuine and effective link.<sup>173</sup> According to this doctrine, a person should be eligible to receive citizenship from states with which she or he has a substantial connection or a genuine and effective link. At the very least, a person should be eligible for the citizenship of the country with which she or he has the closest link or connection. A substantial link or connection to a state can be forged by, for example, long-term habitation in a state without a more substantial link to another state, descent from a state's citizen, birth within a state's territory, or citizenship in a country's former federal state.<sup>174</sup>

The doctrine of the genuine and effective link is a viable solution to the problem of statelessness because it is generally "not difficult to determine to which state an individual has a genuine effective link for purposes of nationality decisions. . . . [D]ifficulties in preventing or reducing statelessness often occur as a result of legislative, judicial, administrative, and political decisions which fail to recognize basic principles of international law with respect to nationality."<sup>175</sup> Indeed, there is hardly a person without a genuine and substantial link to a state. As a practical matter, however, a sovereign state has the right to determine who receives its citizenship. This right, however, should be congruent with relevant international standards and laws. At a minimum, these standards prohibit states from rendering their citizens stateless, oblige states to respect the human rights of stateless persons, and obligate states to grant citizenship to all children born within state borders.

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170. *Bill Tabled in Estonian Parliament to Coax Stateless Persons into Citizenship*, TALLINN BNS IN ENGLISH, 20 Dec. 2001 (on file with author).

171. *See id.*

172. Universal Declaration, *supra* note 1.

173. *See generally* Jeffrey L. Blackman, *State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law*, 19 MICH. J. INT'L L. 1141 (1998).

174. Geske, *supra* note 12.

175. *Id.*