

Statelessness: what it is and why it matters

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Since the Second World War, a right to nationality – though difficult to define and rarely enforced – has emerged under international law.

For many of us, citizenship only really matters when we travel abroad, when the Olympic Games are on, or when we vote in national elections. We do not think about our citizenship on a daily basis. For others, citizenship is an ever-present issue, and often an obstacle. Because recognition of nationality¹ serves as a key to a host of other rights, such as education, health care, employment, and equality before the law, people without citizenship – those who are ‘stateless’ – are some of the most vulnerable in the world.

The inclusion of the right to nationality in Article 15 of the Universal Declaration of Human Rights, like the UDHR as a whole, was motivated by the impulse to respond to the atrocities committed during the Second World War, among them mass denationalisations and huge population movements. Hundreds of thousands of Jews who survived the Nazi-perpetrated genocide fled their home countries, while millions of ethnic Germans were expelled from eastern European states, and millions of Poles, Ukrainians, Byelorussians and other minority populations of the Soviet Union either were forcibly expelled or fled for their safety.

Estimates of the current number of stateless persons in the world range from about 11 to 15 million. There is not only a lack of systematic attention given to collecting reliable statistics but also a lack of consensus on whom to include when counting stateless people. There is general agreement that people who are *de jure* (legally) stateless – those who are not considered as nationals by any state under its laws – should be counted. However, there are many millions of people who have not been formally denied or deprived of nationality but who lack the ability to prove their

nationality or, despite documentation, are denied access to many human rights that other citizens enjoy. These people may be *de facto* stateless – that is, stateless in practice, if not in law – or cannot rely on the state of which they are citizens for protection.

Although individuals who have legal citizenship and its accompanying rights may take both for granted, what they enjoy is one extreme of a continuum between full, effective citizenship and *de jure* statelessness, in which individuals have neither legal citizenship nor any attendant rights. In between these extremes are millions of *de facto* stateless persons denied effective protection.

Statelessness may result from various circumstances. States may simply cease to exist while individuals fail to get citizenship in their successor states; political considerations may dictate changes in the way that citizenship laws are applied; an ethnic minority may be persecuted by being denied citizenship; or a group may live in frontier areas and frequently cross borders, causing states on both sides of the border to deny them citizenship. There are individuals who become stateless due to personal circumstances, rather than persecution of a group to which they belong. Statelessness can arise from legal differences between countries, people renouncing one nationality without having acquired another or even, more simply, from failure to register the birth of a child. Added to this is a potential new category: small islands which, condemned by a changing climate to be swallowed by the sea, will see their entire populations become stateless.

The state of being stateless

Stateless people face a range of different problems, depending on where they live and why they are

stateless. Typically, because they lack access to identification papers to prove their citizenship, they are ineligible to vote and participate in political processes, unable to obtain travel documents and unable to access a range of government services and employment. In the European Union (EU), for example, stateless people, like other non-citizens, typically are not able to vote and may be barred from certain public sector jobs. In some EU states, large numbers of stateless people – such as Slovenia’s ‘erased citizens’² – are systematically denied access to both health care and education on a par with citizens. In Malaysia, stateless children in Selangor and Sabah are frequently denied access to basic education. In Niger, more than a hundred thousand Mahamid Arabs³ have had the threat of mass expulsion hanging over them for years.

Most of us never think about our nationality because we acquire it automatically when we are born. Indeed, the two most commonly employed principles for granting citizenship operate at the moment of birth: in legal terminology *jus soli* and *jus sanguinis*, the ‘law of the soil’ and the ‘law of blood’, respectively. *Jus soli* provides that those born in the territory of a country have the right to citizenship of that country, except for a few common exceptions such as children of foreign diplomats. *Jus sanguinis* confers citizenship on children whose parents are citizens of a given country. International law has not historically expressed a preference for one principle for granting citizenship over the other, and the legal regime of many states is effectively a hybrid of these two principles. For those who do not receive citizenship at birth or who need to change citizenship, most countries permit, at least in principle, the acquisition of citizenship by naturalisation. In some countries there is also a limited opportunity to acquire citizenship

by a simpler process known as 'registration' or 'declaration'.

One of the main reasons people are denied or deprived of nationality, and thus rendered stateless, is racial or ethnic discrimination. The denationalisation and expulsion of tens of thousands of black Mauritanian citizens in 1989 were racially motivated. In Estonia, ethnic Russians have struggled with statelessness since independence in 1991.⁴

Gender discrimination is also a crucial factor in creating and perpetuating statelessness. Many countries around the world still do not have gender-neutral citizenship laws; in the worst cases, women lose their citizenship upon marriage to foreigners, and are unable to pass on their citizenship to their children. In Swaziland, the constitution adopted in 2005 stipulates that a child born after the constitution came into force is a citizen only if his or her

father is a citizen. In Africa alone, over 20 countries still deny women the right to pass on nationality to a foreign spouse. There are positive developments. In Botswana in the early 1990s a challenge to the constitutionality of the country's Citizenship Act on the ground that it discriminated on the basis of gender led to the Act being amended. Several North African countries have also taken significant steps in the last 15 years to end government-sanctioned gender discrimination by amending their citizenship laws to make them gender-neutral. Nevertheless, there is a long way to go in many countries around the globe.

Laws relating to statelessness

International law has traditionally recognised states' broad discretion to define eligibility for nationality. Article 15 of the UDHR grants the right to a nationality in general but gives no clue as to how responsibility for granting citizenship should fall on a particular state. This may

explain why the right to nationality has attracted little international attention and has developed slowly. But just as the discretion of states has been circumscribed by human rights norms in other areas, laws and practices on citizenship must be consistent with the principles of international human rights law.

Originally, norms to prevent statelessness were to be included in a Protocol to the 1951 Convention relating to the Status of Refugees but eagerness to deal with the large number of post-war refugees at the time led to adoption of the Convention without inclusion of the Protocol. Action on statelessness was thus delayed until the Convention relating to the Status of Stateless Persons⁵ was adopted in 1954. The Convention on the Reduction of Statelessness was adopted in 1961.

The 1954 Convention affirmed that the fundamental rights of stateless persons must be protected while the 1961 Convention created a framework for avoiding future statelessness, placing an obligation on states to eliminate and prevent statelessness in nationality laws and practices. Specifically, states may not deprive persons of citizenship arbitrarily or in such a way as to cause statelessness. While states retain broad control over access to citizenship, the legal power to withdraw citizenship once granted is more limited. Unlike the Refugee Convention, however, the two Statelessness Conventions have not been widely ratified.

In addition to the two treaties dealing specifically with statelessness, other international human rights instruments that have emerged since the adoption of the UDHR articulate principles that constrain states' discretion over nationality matters.⁶ These treaties have progressively given meaning to the scope and content of the right to nationality and in particular the right to be free from arbitrary deprivation of nationality.

On the whole, international law provides for a robust right to nationality and for special protection of vulnerable groups vis-à-vis this right. Although the record of ratification of relevant international instruments varies, the great majority of states are parties to one or several



Some 4,000 unregistered Rohingya refugees from Burma/Myanmar have set up a squalid unofficial camp outside the official Kutupalong Refugee Camp in Bangladesh.

treaties that guarantee the right to citizenship. As a group, children enjoy the most specific protections of their right to nationality, which is logical given that birth is the key moment for obtaining citizenship

for granting citizenship, a principle appears to be emerging whereby nationality is defined as a 'genuine and effective link' between the individual and the state. This focuses primarily on 'factual ties' as a basis

Conclusion

The world has a long way to go before the right to nationality is assured. The international community needs to:

- facilitate wider understanding of the different forms and grave consequences of statelessness
- enforce existing human rights norms – such as those prohibiting discrimination and ensuring due process – against citizenship regimes that are *prima facie* discriminatory or otherwise arbitrary
- enforce legal norms at the national and international levels to significantly reduce statelessness
- exert greater political pressure on states to acknowledge their protection responsibilities vis-à-vis individuals as citizens.

Wider acknowledgement of existing normative gaps relating to nationality should prompt the articulation of new and stronger norms that will require states both to grant citizenship and to refrain from arbitrarily depriving individuals of citizenship. States may well be reluctant to accept yet another principle that constrains their actions – but so it has been with every human right.

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1. For the purpose of this article, citizenship and nationality are used interchangeably.
2. In 1996, the Slovene government literally erased the names of 18,305 residents from its register of citizens. These names were placed on a register of foreigners residing illegally in Slovenia who have since been denied social services. See http://www.justiceinitiative.org/db/resource2?res_id=103920
3. The problems facing the Mahamid Arabs are common also among other pastoralist communities that live in border regions. See article on p18.
4. In November 2008 the Government of Estonia reported that 7.9% of the total population has 'undetermined' citizenship.
5. <http://www.unhcr.org/home/PUBL/3d4ab67f4.pdf>
6. See box on p10.
7. As articulated by the International Court of Justice in the 1955 *Nottebohm Case (Liechtenstein v Guatemala)*.



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and children are in particular need of state services and protection.

The link between state and individual

There is still, however, a genuine normative gap in international law. Specifically, despite the right of every person to citizenship under international law, international law is by and large silent on the procedures and criteria for establishing a bond of nationality between the state and the individual.

Consideration of *jus soli* and *jus sanguinis* regimes show that both are essentially proxies for a common-sense criterion for citizenship: where an individual is likely to live, and therefore have the need and desire for citizenship and the security and rights that go with it. In other words, a person's legal right to citizenship should be operative in the country in which that person is most deeply embedded. In this way, citizenship enables the fullest possible exercising of all social, economic and political rights and duties.

In the absence of a widely ratified international treaty defining criteria

for nationality rights, determined by "...the habitual residence of the individual concerned ... the center of his [/her] interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated into his children..."⁷

Application of this principle would solve most cases of *de facto* statelessness in the world – certainly those in which ethnic discrimination has led to denial of nationality to groups that have been resident in the same country for generations, as well as those in which women's inability to pass citizenship to their children or husband leaves these individuals stateless. The usefulness of 'genuine and effective link' as a criterion for citizenship is enhanced by the fact that it reflects to a significant degree a person's will and desire to belong to a country.

Enshrining the effective link principle in international human rights law could oblige states to grant citizenship to individuals who have fallen through the cracks of *jus soli* and *jus sanguinis* regimes.

Vietnamese Nguyen Thi Phuong, right, at the house of her mother Mai Thi Lieu. Phuong married a Taiwanese man but was abandoned by her husband because she gave birth to two daughters instead of sons. At present she has neither Vietnamese nor Taiwanese citizenship.