

**Special round table jointly organized by CRG and maula Abul Kalam Azad Institute of Asian Studies (MAKAIAS) on Borders, States and Statelessness in the Eleventh Annual Orientation Programme on Forced Migration held on 12 December 2013**

## Concept Note

There is hardly any literature on mapping the stateless people in the postcolonial context of South Asia. The project is meant to address that lacuna. Statelessness is the quality of being, in some way, without a state. In fact it means being without a nationality, or at least without the protection that nationality should offer. Article 1 of the 1954 Convention relating to the Status of Stateless Persons defines that a 'stateless person' is someone who is not recognized as a national by any state under the operation of its law. They therefore have no nationality or citizenship and are unprotected by national legislation and left in the arc of vulnerability. Whether or not a person is stateless can be determined on the basis of an assessment of relevant nationality laws and how these laws are implemented by the state. In other words, nationality is the legal bond between a state and an individual. It is a bond of membership that is acquired or lost according to rules set by the state. Once held, nationality, or membership of a state, brings with it both rights and responsibilities for the state and for the individual. As the world has been parcelled out into states, not to be a member of any one of them is a matter of serious concern. While membership of a state is the norm, statelessness continues to be widespread and has not escaped the interest of the international community.

"Everyone has the right to a nationality. No one shall be arbitrarily deprived of *his* nationality, nor denied the right to change *his* nationality," declares Article 15 of the Universal Declaration of Human Rights (UDHR). The same year, the Economic and Social Council of the United Nations requested the Secretary General to undertake a study and to make recommendations on the situation of stateless persons. The problem appeared in the Refugee Convention of 1951 when it was felt that a separate treatment on statelessness was essential. *The 1954 Convention Relating to the Status of Stateless Persons* was formulated. Yet today thousands are still deprived of their nationality in many different parts of the world and South Asia is no exception. "In one recent global survey, 59.4 per cent of states responding reported that they have encountered problems of statelessness. However only 54.1 per cent of states surveyed indicated they have a procedure in place to identify cases of statelessness while only 44.6 per cent have general information available on the potential number of stateless persons in their country."<sup>1</sup> This happens because as per international law it is the state that decides who are its citizens and who are not, as long as the state does not apply measures that conflict with international principles relating to acquisition and loss of citizenship as per principles enunciated in the 1930 Hague Convention, the 1997 European Convention, and the case law of both Permanent Court of International Justice and International Court of Justice.<sup>2</sup> In this process of inclusion and exclusion many are denied citizenship by any state

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<sup>1</sup> *Final Report concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection*, Department of International Protection, UNHCR, March 2004, in Carol Batchelor, "Statelessness and the Problem of Resolving Nationality Status," in *International Journal of Refugee Law*, Vol. 10 (1998) p. 16.

<sup>2</sup> Carol Batchelor, "Statelessness," p. 157.

and, as a result, they become stateless. Normally statelessness emerges from succession of states or territorial reorganizations. But it also emerges from persecution of minorities and a state's majoritarian bias. Within the realm of public international law, rules have evolved in response to the problem of statelessness.

Statelessness is not merely a legal problem; it is also a human problem. In an introductory note to the text of the 1954 convention relating to the status of stateless persons, the office of the United Nations High Commissioner for Refugees reiterates its conviction to uphold the important minimum standards of treatment for those who qualify as stateless persons. It reminds us that stateless persons should have the same rights as citizens with respect to freedom of religion and education of their children. For a number of other rights, such as the right of association, the right to employment and to housing, the note reminds us that stateless persons are to enjoy, at a minimum, the same treatment as other non-nationals. In a world torn with strife and dislocation, historical dispossession and political repression, it is doubtful whether nation-states have advocated, let alone upheld, the noble intent of the 1954 convention.

In reality, failure to acquire status under the law can have adverse impact on the lives of individuals, including the right to vote, to own property, to have healthcare, to send one's children to school, to work, and to travel to and from one's country of residence. As a consequence many complications may crop up for those who have no nationality including, for some asylum seekers, indefinite detention in a foreign state when that state cannot determine the individual's citizenship. As groups of stateless persons continue to exist in conditions of abysmal disenfranchisement in South Asia and all over the world, this volume delves into certain concrete examples of such human-rights violation to understand the condition of statelessness in postcolonial South Asia

This project intends to bring to the surface **three** sets of questions:

- First, how are certain groups and communities rendered stateless? In the ethnically heterogeneous successor states in South Asia, why are the minorities more vulnerable to statelessness than others? Does protracted refugee-hood eventually result in statelessness? Is the distinction between refugee-hood and statelessness increasingly wearing thin?
- Second, is the existing legal regime adequate to deal with the problem of statelessness? What has been the experience with case laws in different situations related to statelessness in India? Can judicial activism as evident in some cases in recent years serve as an effective guarantee?
- Third, do policymakers need to think beyond legal terms? Why does mere judicial activism prove ineffective? Does all this call for activating and strengthening the civil-society institutions and initiatives? But how does one make the first move towards melting the ice of xenophobia against the outsiders who remain in the host country as stateless?

This project is exceptional in many ways. The research conducted in far-flung areas and among dissimilar groups presents its own particularities— even curiosities. No two experiences can ever be exactly the same. There are, as the case studies amply demonstrate, insidious currents that drive an overarching logic of statelessness. The pain of dispossession and non-belonging that scar the quotidian existence as well as the historical survival of stateless persons, one could say, in not much unlike, no matter the varied geographical coordinates or the various ethnic samples. In certain cases, the lesions are open. In others, they pull at the collective physiognomy like a surgically

concealed scar. The points of coherence are not easily missed and the contributors of this volume working in various parts of South Asia discovered as much. What may be these ties that bind the stateless groups in a terrifying history?

The case studies included in this project seem to indicate the following: The phenomenon of statelessness is invariably linked to the vagaries of citizenship and citizenship laws in India and entire South Asia. One reason for this is the way this country and the region has been decolonized. Statelessness in India cannot be described as one single clear category of legal existence; it consists of a range of what Hannah Arendt had called ‘rightlessness’, also of several levels of deprivation or enjoyment of rights; though there is no uniform law on communities whose citizenship status is not clear, also no serious effort to clarify them, there are sometimes good practices of the state with regard to these communities from a humanitarian angle. There have been, for instance, a series of bilateral agreements, understandings and treaties between states— an issue that each of the case studies has demonstrated in meticulous detail and with great vigour.

To understand the precarious nature of the life of these communities, both historical and legal approaches have been put to use; additionally, efforts have been made to marshal exhaustive demographic data, albeit and admittedly groups which are deliberately denied nationality by states were found to be extremely difficult to account for statistically. The fieldworks conducted in the disparate geographies of the cases mentioned above have almost uniformly indicated a lack of dependable demographic information. Estimates vary, numbers disagree *inter se*. For indeterminate human geographies, this is only to be expected.

It has been emphatically suggested, that in many cases a dialogic route is better than a simple rights-oriented one based on legalities. Keeping in mind the well-meaning international legal framework, it is also important to take into account how people narrate their daily difficulties and how they wish to envisage their future. A solution to the scourge of statelessness can be found only by way of such a fruitful and focussed methodological dialogue. It is incontrovertible that South Asia needs clearer legal provisions, greater international commitment, insofar as combating statelessness is concerned. In the final analysis, it seems that South Asia, with multitudinous stateless groups living in it, needs a regional convention on statelessness in conformity with international norms but addressing the region’s particular needs.

The three-year project has been divided into three phases. Separate notes on each of these phases are given below.