

HELPING THE WORLD'S STATELESS PEOPLE



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Cover:

Kyrgyzstan: Sadakhan, 32 years old and stateless, is a mother of three children. State succession is one of the lead causes of statelessness. Statelessness is often passed down from one generation to the next.

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AN OVERVIEW – CHALLENGES, NUMBERS, SOLUTIONS

The discrimination may last from the cradle to the grave.

It is a world in which parents cannot register the birth of a newborn baby. As children grow they may not be able to attend school, obtain a job, travel or get married. When they die they suffer the final indignity of an anonymous burial without official recognition.

Up to 12 million people scattered across the globe inhabit this twilight world known as statelessness where they lack access to basic political and social rights and do not have a country they can call their own.

There are other disenfranchised global groups – 15.2 million refugees and an estimated 26 million internally displaced people (IDPs) in 2011. But while the plight of those two

groups is well documented, the stateless – virtual ‘non persons’ or ‘legal ghosts’ – receive far less attention, official understanding or assistance.

There are international instruments on statelessness. The Universal Declaration of Human Rights underlines that: “Everyone has the right to a nationality.” A statelessness protocol attached to the draft 1951 UN Refugee Convention was separated to form the 1954 Convention relating to the Status of Stateless Persons and, seven years later, the 1961 Convention on the Reduction of Statelessness was adopted.

And because refugee, IDP and statelessness problems often overlap, the UN General Assembly in 1974 designated the UN refugee agency (UNHCR) to assist with implementation of the 1961 Convention and, subsequently, to promote state accession to the legal instruments, identify, reduce and prevent statelessness and protect the rights of the disenfranchised.

“THE TERM ‘STATELESS PERSON’ MEANS A PERSON WHO IS NOT CONSIDERED AS A NATIONAL BY ANY STATE UNDER THE OPERATION OF ITS LAW.”

Article 1, the 1954 Convention

“IF THE LAW OF A CONTRACTING STATE ENTAILS LOSS OF NATIONALITY AS A CONSEQUENCE OF ANY CHANGE IN THE PERSONAL STATUS OF A PERSON SUCH AS MARRIAGE, TERMINATION OF MARRIAGE, LEGITIMATION, RECOGNITION OR ADOPTION, SUCH LOSS SHALL BE CONDITIONAL UPON POSSESSION OR ACQUISITION OF ANOTHER NATIONALITY.”

Article 5, the 1961 Convention



CITIZENSHIP

Most people are citizens of a country – effectively enjoying a legal bond between that particular state and the individual. Certain political, economic, social and other rights are guaranteed to citizens and, in turn, both governments and nationals are required to respect state law and fulfill certain responsibilities.

Nationality is normally granted either through descent, whereby children acquire the citizenship of their parents (*jus sanguinis*), or through birth on a country's territory (*jus soli*). Most countries grant citizenship by a combination of both birth and descent. Individuals who have resided in a country for a certain length of time or established particular links, for example through marriage with a national, may also be eligible for citizenship through naturalization.

Ukraine, 2009: Vadim, aged 43, moved to Ukraine from Uzbekistan in 1997. He met his wife when they worked on a farm. She has Ukrainian citizenship. Vadim did not claim Uzbek citizenship after Uzbekistan adopted its nationality law in 1992 and did not receive an exit stamp when he left Uzbekistan in 1997. Because he has been away from Uzbekistan for more than five years and because he doesn't have the exit stamp, he is unable to claim Uzbek citizenship. In 2000, his Soviet passport expired. He's tried for years to get Ukrainian citizenship.

STATELESSNESS

This can occur through a bewildering series of sovereign, political, legal, technical or administrative directives or oversights which, according to the 1954 Convention, may result in a person becoming someone “who is not considered a national by any state under the operation of its law.”

Pitfalls include transfer of territory between states or the formation of new nations which may alter the citizenship of some people, leaving them stateless. A child may be born in a country that grants citizenship by descent only, but the country of the parents denies citizenship to children born abroad.

“A FOUNDLING FOUND IN THE TERRITORY OF A CONTRACTING STATE SHALL, IN THE ABSENCE OF PROOF TO THE CONTRARY, BE CONSIDERED TO HAVE BEEN BORN WITHIN THAT TERRITORY OF PARENTS POSSESSING THE NATIONALITY OF THAT STATE.”

Article 2, the 1961 Convention

People may lose citizenship because of a prolonged absence abroad, by renouncing their citizenship without first acquiring another nationality, by failure to perform military or other obligations, by conflicts of law or by arbitrary deprivation of nationality of either individuals or groups by a government.

Laws may discriminate on grounds of sex, race, ethnicity or religion. A woman may be unable to pass on her nationality to children; girls in certain cultures who are not legally registered or children born out of wedlock may be denied citizenship.

Daunting administrative hurdles may also result in statelessness, including the failure to register children at birth or costly and onerous bureaucratic documentation, excessive fees, unrealistic deadlines and lack of appeal or review procedures.

In principle, individuals are entitled to most human rights protections regardless of their citizenship status and the potential problems already highlighted. But in practice, fundamental rights are often denied.

In the uncertain world inhabited by non-citizens, the boundaries can sometimes overlap. In certain circumstances, for instance, a stateless person may also

be a refugee. If a stateless person is forced to flee their country of habitual residence because of persecution he or she will enjoy the protection of the 1951 Refugee Convention.

LEGAL INSTRUMENTS AND STATES' RESPONSIBILITIES

Several international and regional instruments affirm the right of every individual to a nationality or are designed to resolve the issue of statelessness:

- The 1948 Universal Declaration of Human Rights guarantees that: “Everyone has the right to a nationality” and should not be arbitrarily deprived of citizenship.
- The 1954 Convention relating to the Status of Stateless Persons defines who is stateless under international law and calls on signatory countries to grant them minimum rights, including lawful residence in appropriate cases, identity and travel documents.
- The 1961 Convention on the Reduction of Statelessness establishes safeguards to prevent children from becoming stateless at birth and to protect them against loss of nationality later in life.
- A series of international human rights instruments affirm the right to a nationality without discrimination and the right of children to acquire a nationality. They include the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1989 Convention on the Rights of the Child.
- Regional treaties such as the 1969 American Convention on Human Rights, the 2004 Arab Charter on Human Rights, the 1990 African Charter on the Rights and Welfare of the Child and the 1997 European Convention on Nationality affirm that everyone has the right to a nationality. They seek to ensure that states fully respect the right of individuals to a nationality.

Despite this impressive array of legal instruments and repeated calls for action by the UN General Assembly and other international bodies, states have been reluctant to act.

While 148 countries are party to the 1951 Refugee Convention and/or its 1967 Protocol, only 66 states are party to the 1954 Statelessness Convention and even fewer, 38, were party to the 1961 Convention as of June 2011.

UNHCR has used the 50th anniversary of the 1961 Convention in August 2011 to urge nations to accede to the two main statelessness documents.

The agency argued this would have a series of beneficial knock-on effects for everyone concerned – nations themselves and the stateless – by:

- strengthening global legal frameworks tasked with addressing the causes and consequences of statelessness;
- contributing to international peace and security and preventing future forced displacement;
- improving overall social and economic development in member states;
- promoting the rule of law and more efficient regulation of international migration and resolving conflict of law issues.

States and other international actors should also recognize that the displacement of stateless people may act as an early warning of larger refugee exoduses and, unless statelessness issues are resolved, solutions to refugee problems may also be severely impaired.

THE ROLE OF UNHCR

The UN General Assembly gave UNHCR a global mandate to act as the guardian of the world's stateless people.

Its involvement is usually triggered when there are indications that an individual or population could become stateless, perhaps through the creation of onerous new legislation, stricter requirements for proof of nationality or government statements singling out particular groups.

More generally, UNHCR works to promote and strengthen the relevant international legal instruments and promote accession to them.

The agency, working closely with the UN and other interested organizations, is directly involved in such areas as prevention, protection, the reduction of the number of stateless people and the analysis of issues.

To understand more fully the circumstances leading to statelessness and the magnitude of the problem, UNHCR employs the use of mapping, desk reviews, participatory assessments, academic studies, national censuses, population profiles, surveys and other statistics.

To prevent statelessness, UNHCR encourages regular registration and the issuance of documentation by states; the examination of nationality laws; the adoption and implementation of appropriate legal safeguards; and legal aid programmes.



Prior to the resolution of the statelessness situation, the husband of this 20-year-old Urdu-speaking girl left her to marry a local woman in the hope of obtaining Bangladeshi citizenship. The girl is going blind and has no family to help support her and her baby. She makes paper bags for money.

This vulnerable group can receive better protection through the training of government officials directly involved in the issue; the encouragement to ALL states – convention signatories or not – to respect international law, implement legal friendly remedial solutions and facilitate the naturalization of stateless people. The detention of people solely on the basis of their statelessness is vigorously discouraged.

UNHCR promotes the reduction of statelessness through such actions as socially integrating long-term stateless people, safeguarding the right of every child to a nationality and the dissemination of information on citizenship and naturalization procedures.

Analysis is regularly undertaken on related issues such as relevant national legislation and practices, arbitrary deprivation of nationality, state succession, administrative obstacles to registration, issuance of identity documents and determination of states.

As a result of such analysis, UNHCR can both assist governments to implement appropriate legislation and strengthen protection safeguards for the vulnerable.

PARTNERSHIPS: THE WAY FORWARD

UNHCR's mandate and universal awareness of the problems surrounding statelessness have grown in recent decades. A network of partnerships, ranging from grassroots local organizations to national and governmental agencies, regional organizations and UN and international groups has coalesced.

Each brings its own work ethic, discipline and objectives. National civil societies, academic institutions, non-governmental agencies (NGOs), legal aid organizations, religious and legal associations, trade unions and others form the bedrock for action at the local level.

International advocacy organizations such as Equal Rights Trust, the Open Society Justice Initiative, and Refugees International, research, analyze and develop recommendations.

Regional organizations such as the African Union, the Organization of American States, the League of Arab States, the Council of Europe, the Organization for Security and Cooperation in Europe, the European Union, Asian-African Legal Consultative Organization are increasingly involved.

UNHCR has forged closer ties with sister organizations such as the UN Children's Fund (UNICEF), the UN Population Fund (UNFPA) and the United Nations Development Programme (UNDP) and other international groups.

Ultimately, states themselves will play the central role in resolving statelessness and their accession to the 1954 and 1961 Conventions and adherence to other legal instruments will be key to reducing and ultimately eliminating the trauma of millions of legal ghosts and non persons.

Further information can be obtained from UNHCR's Division of International Protection in Geneva and via the organization's global web site www.unhcr.org/statelessness