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STATELESS PERSONS: A DISCUSSION NOTE

I. INTRODUCTION

1. Situations of statelessness for large groups have persisted for decades in a number of countries in different parts of world. While the population of these groups overall is aging, their problems, particularly as regards residence rights, travel documents and beneficial access to essential social services, have not diminished and have necessitated regular interventions by UNHCR. These problems are being inherited by children born to persons without citizenship in these countries.

2. A recent survey of UNHCR field offices has moreover, made clear that the problem of statelessness is more than a legacy of past history and is very much of actual concern. Not only are there still substantial subsisting groups of stateless persons in many parts of the world, but political developments in a number of countries over the recent period have either generated new and complex problems of statelessness, or have the strong potential to do so.

3. The Executive Committee of the High Commissioner's Programme has considered the problems of stateless persons and the inadequate protection arrangements for these people on a number of occasions, and its views on the problem are summarized in following paragraphs.

4. The issue has also now been placed on the intersessional agenda of the Sub-Committee of the Whole on International Protection, at the request of delegations, in recognition of the fact that statelessness is considerable more than a technical problem for isolated individuals, at the periphery of international concerns. To see it in such a limited way is to fail to recognize, as one commentator has put it, that "Denaturalization and statelessness are not, or not exclusively, about the right to enter or return to a State; they are about denials of the broad spectrum of rights that flow from an individual's belonging to a particular territorial community".¹ Such a view was also developed in some detail in the paper submitted by the Office of the High Commissioner for consideration by the Executive Committee's Working Group on Solutions and Protection in 1991. This document (WSGP/12 of 10 April 1991) is annexed to this present note for information and, as appropriate, for future consideration by the Sub-Committee.

¹ Goodwin-Gill Programmes of Stateless Persons and the Need for International Measures of Protection, p.16. (Paper delivered in December 1990 at the World Congress on Human Rights, New Delhi).

5. Against the background of ongoing Executive Committee concern about statelessness and the timeliness of reconsideration both of the problems and of the options to resolve them, this note is submitted to facilitate further discussion and the adoption of concrete conclusions on the matter.

II. EXECUTIVE COMMITTEE CONCERNS

6. The forty-second session of the Executive Committee in 1991, through paragraph (r) of its General Protection Conclusion, reaffirmed its Conclusion No. 50 (1) (XXXIX) and reiterated "its call to States actively to explore and promote measures favourable to stateless persons, including accession to the international instruments pertaining to stateless persons, and in this connection believes it would be useful for United Nations human rights bodies to address statelessness issues, including the problem of arbitrary deprivation of nationality and the content of the right to a nationality".

7. This Conclusion reflected to some extent the concerns expressed by the Working Group on Solutions and Protection in its own report to the Executive Committee ([Doc. EC/SCP/64](#) of 12 August 1991), which might be summarized as follows:

(a) The problems resulting from statelessness do not stem from the absence of an international legal framework, given that the 1951 Convention relating to the Status of Refugees applies to stateless refugees and the largely similar 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness respond to the situation of non-refugee stateless persons.

(b) Rather, problems arise because there is not sufficiently widespread adherence to, or implementation of these instruments. Moreover, there is an institutional void at the international level for monitoring their effective implementation.

(c) There should be broader adherence to, and better implementation of, statelessness instruments as well as enactment of effective national legislation to protect the rights of the stateless, including as regards detention and legal assistance.

(d) States should be actively encouraged to reassess how they might become party to the statelessness conventions, as well as how their laws do or could directly contributed to the reduction of statelessness. Action was also needed at the international level to prevent arbitrary deprivation of nationality.

III. TAKING STOCK OF THE PROBLEMS OF THE STATELESS

8. Recent conflicts, as well as political changes of some magnitude which, inter alia, have resulted in or may entail the emergency of new States and nationalities, have created new problems and brought the prospect of further statelessness situations to the fore. Incidents arousing international concern have included expulsion of large groups of stateless people from their countries of habitual residence, non-readmission by the countries of habitual residence of such groups, and intensified marginalization of resident stateless persons through further restrictions on economic, social and civil rights.

9. In one country, legislation was recently enacted with retroactive effect rendering long-term residents of a particular ethnic background stateless. This was accompanied by imprisonment, mistreatment and burning of villages to encourage departures. In another country, treatment of the stateless has included internal relocation, often to harsh and inhospitable areas, together with restrictions on property ownership or on registration with public schools. Police

surveillance and limited freedom of movement, together with absence of any civil or political rights, are among the problems for a sizeable and relatively new stateless group in another part of the world. In a yet another country, a number of stateless persons are imprisoned as illegal aliens with release being made conditional on UNHCR assistance to resettle the persons concerned. In fact, in several countries in different regions, Governments have made UNHCR's involvement with stateless persons the condition precedent for tolerating their continued stay.

IV. SUMMARY OF RECOMMENDED RESPONSES

10. The protracted nature of a number of situations of statelessness, together with the emergency of new and complex problems, highlights the inadequacies of the existing international regime in guaranteeing basic rights and reducing statelessness. The following is a synopsis of responses which have variously been recommended² to date to remedy such inadequacies.

(a) There should be an active campaign to promote broader adherence to and/or more effective implementation, through adoption or revision of specific national legislation, of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

(b) States should be required to refrain from acts, such as arbitrary or discriminatory deprivation of nationality, which create situations of statelessness. The lawfulness of deprivation of citizenship should be studied by appropriate human rights bodies, such as the Sub-Committee on Prevention of Discrimination and Protection of Minorities, with a view to ensuring greater protection, perhaps through a UN declaration or other international text.

(c) Similarly, the significance of the absence of an effective nationality, as well as the responsibilities of States to provide for acquisition or reacquisition of nationality, could also be examined by human rights bodies. The content of the right to a nationality should be elaborated.³

(d) Stateless individuals or groups should have access to legal assistance and benefit from concerted international support to overcome their problems and acquire an effective nationality. It should be noted here that there is a close similarity between the problems of refugees and of stateless persons, with lack of national protection the common denominator and deprivation of nationality a major causal factor in new refugee problems. Partly in recognition of this fact, the provisions of the 1951 Refugee Convention and the 1954 Stateless Persons Convention are broadly parallel.

² See, in particular, the annexed UNHCR note, previously mentioned EXCOM conclusions, the Report of the Working Group on Solutions and Protection and the views of various commentators, notably Mr. Goodwin-Gill in the aforementioned article.

³ In this regard, the simplicity of Article 20 of the 1969 American Convention on Human Rights is appealing. It provides:

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or the right to change it.

(e) In this regard, the protection of the rights of stateless persons must be entrusted to an appropriate international agency. UNHCR already has certain formal responsibilities for stateless persons, pursuant to Article 11 of the 1961 Reduction of Statelessness Convention (see annexed paper, pages 12-13).

V. RECOMMENDATION

11. A conclusion of the Executive Committee on stateless persons could make a useful contribution to strengthening the protection of this vulnerable but often forgotten group. It is suggested that the above recommendations might well serve as the basis for such a conclusion.

WORKING GROUP ON SOLUTIONS AND PROTECTION: STATELESS PERSONS

Doc. No. WSGP/12
10 April 1991

(Discussion note submitted by the Office of the United Nations High Commissioner for Refugees as one basis for the deliberations of the Working Group with respect to category seven, Stateless Persons.)

A) INTRODUCTION

1. In one sense all refugees are at least de facto stateless people, if statelessness is understood as the absence of an effective nationality for protection of basic rights. Non-enjoyment of the rights and obligations attaching to the possession of a nationality is, in fact, a central element in the refugee definition as set out in the 1951 Convention relating to the Status of Refugees. Many recognized refugees are, however, also de jure stateless and it is the statelessness element in their situation which gives rise to particularly complex problems, in terms both of their protection and of solutions to their plight.

2. Not all stateless people are, however, refugees. There are individuals or groups of persons the world over whose circumstances neither involve persecution nor necessitate flight, but which nevertheless are complex and often precarious, due to the inability of these persons to identify themselves legally with any one State. These stateless persons constitute a largely unprotected, vulnerable group of people to whose real difficulties the international community generally gives insufficient attention.

3. In view of the Working Group's analysis of 1951 Convention refugees as a separate category, the main focus of this note is the non-refugee stateless person. Nevertheless, where statelessness is a main factor giving rise to difficulties for recognized refugees, this will be brought out to draw attention to the range of statelessness problems and the need for a comprehensive approach.

B) CAUSES

4. Within broad limits permissible under international law, it is for each State to determine under its own law who are its nationals. Problems of statelessness usually arise either as an incidental consequence of conflicting municipal laws, or as a result of specifically targeted discriminatory legislation under which individuals, or groups, cannot meet the criteria for nationality in their country of residence. They consequently are, or become, stateless.

5. As to the first category of causes, national legislation on acquisition of citizenship through birth is usually based either on the principle of jus soli (nationality deriving from having been born in the State of nationality) or of jus sanguinis (nationality deriving from descent). Statelessness may result, for example, where a child is born in a State applying the jus sanguinis principle to parents who are nationals of a State applying the jus soli principle.

6. Statelessness comes about not only at birth but also, and perhaps more significantly from the point of view of Working Group discussions, as a result of loss or deprivation of nationality. Particular difficulties have arisen where changes are introduced by a government to the basic principles determining nationality and which thereby render former citizens retroactively stateless.

Loss has also often occurred due to territorial changes. This has been the case, for example with the inhabitants of territories which are the object of an inter-State transfer, without appropriate legislative guarantees of subsequent nationality being put in place, or where territories cease to exist or are absorbed by a majority population with consequent external displacement and loss of nationality of the minority population. Deprivation of nationality has also often accompanied expulsion of individuals or groups. Finally, legislation on citizenship which discriminates between groups on religious, ethnic, racial or sexual, including marital, grounds is also a regular cause of loss or deprivation of nationality.

7. De facto as well as de jure statelessness can be the intended result of a policy of discrimination. The ethnic origin or religious persuasion of groups of persons has been the reason for actual, though not specific legislative, denial of assistance and protection by States to certain of its nationals. Passports have not been extended, for example, or embassies of that State in other countries have refused any association with the individuals or groups being discriminated against.

C) PROTECTION

8. The pioneering [study on statelessness](#) (doc. HCR/IP/17) prepared by the UN Secretary-General in 1949 clearly identifies the problems posed by statelessness for reception countries, for countries of origin and, most important, for the stateless persons themselves:

"Normally every individual belongs to a national community and feels himself part of it. He enjoys the protection and assistance of the national authorities. When he is abroad, his own national authorities look after him and provide him with certain advantages. The organization of the entire legal and economic life of the individual residing in a foreign country depends upon his possession of a nationality. The fact that the stateless person has no nationality places him in an abnormal and inferior position which reduces his social value and destroys his own self confidence."

9. The stateless person, the study points out, is "an anomaly" with no definite legal status, no clearly defined rights and is at the mercy of the administrative authorities, "a state of affairs incompatible with a healthy conception of the law".

10. It is UNHCR's experience that in most countries the caseload of non-refugee stateless persons, or indeed of refugees whose problems are predominantly a result of their statelessness, is comparatively speaking numerically small. Nevertheless, problems of statelessness, where they arise, are complex, too often intractable because of rigid State positions and can have tragic consequences for individuals and family groups. Moreover, in a few countries there are groups of stateless persons of some magnitude whose difficulties, from a humanitarian point of view, are acute.

11. The problems of the stateless (refugees or otherwise) often come to light during periods of national difficulty, when the security and economic situation in a country deteriorates. It is then that stateless persons, who may have lived in that country for some considerable time already, experience difficulties stemming directly from their irregular situation. They will most typically have problems of access to basic social services, to educational facilities and to medical care and employment opportunities. Freedom of movement may be restricted and travel outside the country extremely difficult. Grievances are daily, focussing on concrete requirements such as work permits, stable jobs, schooling for children or travel documents.

12. In one country, the aftermath of the breakup of a colonial empire left hundreds of thousands stateless, with some 500,000 in one city alone known to UNHCR. These people still hold no documents and are without a verifiable or recognized claim to nationality. There are an

indeterminate number (in the hundreds) still in detention - some after 20 years or so - simply because of their lack of a nationality, or the refusal of their presumed country of origin to accept responsibility for them.

13. UNHCR's attention is periodically brought to persons in detention in a number of countries whose release is virtually precluded by having been made conditional on identification of a country which will accept responsibility for the individual in question. This has proved an impossible task for these persons without international assistance, which has by no means regularly been available.

14. As regards stateless refugees, regularization of their situation in countries of durable asylum can be an important and time-consuming aspect of UNHCR's protection work. This is particularly the case where laws concerning acquisition of nationality envisage long time frames, or where acquisition of nationality is made subject to fulfilment of a number of criteria including, for example, re-evaluation of status after lapse of specified time limits. In one country, UNHCR assists a group of refugees who have been living there now for decade on the basis of residence permits renewable every 6 months.

15. Complex problems have arisen for groups of refugees who have returned in a refugee influx to countries which they had left for varying periods, but in relation to which they claim citizenship. Lack of identity documents is often a barrier to reclaiming nationality. The administrative verification procedure can be a complex one, involving both subjective and objective criteria and requiring substantial legal assistance for its completion. The numbers of such groups have been and/or continue to be quite substantial in certain countries of origin.

16. Refugee children both in asylum and in transit countries may be in a particularly vulnerable position as regards statelessness because of the absence of national procedures for registration of their births. The problem normally arises where it is not possible, for administrative or policy reasons, to register the births of refugee children through the same procedure applicable to national while, at the same time, there is no parallel and comparable procedure for such births. In such cases UNHCR itself is required to devise and administer a birth registration procedure and negotiate the local and international legal validity of its attestation certificates.

D) RESPONSES

17. Stateless refugees benefit from the provisions of the 1951 Refugee Convention, in which they are included by virtue of Article 1 (A) (2), the definition provision. With 107 State parties to this Convention and/or its 1967 Protocol, a basic protection regime for the stateless refugee is in place. These instruments do not, however, specifically address problems for refugees arising directly out of their statelessness, except through a generally worded Article 34, which requires Contracting States to "as far as possible, facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings".

18. A more comprehensive legal approach to the problem of statelessness generally is set out in the two international conventions specifically on the subject:

- the 1954 Convention relating to the Status of Stateless Persons, which lays down basic rights, obligations and standards of treatment, for the non-refugee stateless persons; and
- the 1961 Convention on the Reduction of Statelessness, which sets out measures to ensure that persons do not become stateless, or are enabled to regain an effective nationality.

Unfortunately, State adherence to these instruments is by no means satisfactory. There were 36 State parties to the 1954 Convention and only 14 State parties to the 1961 Convention as at 1 March 1990.

19. In terms of organizational responses, refugees who are stateless have traditionally benefitted from the full range of UNHCR's functions, including protection and the facilitation of the durable solutions of voluntary repatriation, local integration or resettlement. The High Commissioner's responsibilities for this group are assumed pursuant to paragraph 6 (A) (II) of his Statute and Article I (A) (2) of the 1951 convention, both of which specifically refer to stateless persons who meet the refugee criteria.

20. As to non-refugee stateless persons, there is no one body empowered to safeguard their welfare and rights. UNHCR has been designated by the General Assembly (Resolution 3274 (XXIX) and 31/36 (XXXI)), pursuant to Article 11 of the 1961 Convention on the Reduction of Statelessness, as the body:

"to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authorities."

Given, however, the limited number of States Parties to the 1961 Convention, the number of persons who may claim its benefit is extremely restricted.

21. UNHCR's assistance to persons whose statelessness is the main cause of their difficulties, or lack of protection, has included aid and advice in relation to naturalisation and registration of children's births, assistance to obtain travel documents and generally to claim the rights normally accompanying permanent residence. UNHCR has also understood its responsibilities to include promotion with States of measures beneficial to stateless persons, including accession to the 1954 and 1961 Conventions and adoption of appropriate implementing legislation.

22. UNHCR performs these functions in fulfilment of its humanitarian responsibilities and within the framework of its mandate. Clearly, however, UNHCR's role is limited, particularly given the narrow applicability of the 1961 Convention, and cannot respond to the requirements of all non-refugee stateless groups, who have, however, no other international authority to turn to, in spite of their pressing humanitarian need.

23. In the first instance, what is required is a more effective response from States, including broader adherence to and compliance with the existing instruments on behalf of stateless persons. This need has been explicitly recognized by the Executive Committee which, at its 39th Session in 1988, adopted the following general conclusion on protection:

"(L) Noted the close connection between the problems of refugees and of stateless persons and invited States actively to explore and promote measures favourable to stateless persons including accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as the adoption of legislation to protect the basic rights of stateless persons and to eliminate sources of statelessness." (See Doc A/AC 96/721, Report of the Thirty-Ninth Session.)

24. Certain States which have acceded to the 1954 Stateless Persons Convention and/or the 1961 Convention on the Reduction of Statelessness have not introduced corresponding municipal legislation or administrative measures for the implementation of these instruments within their territories. Problems of statelessness and situations involving stateless persons are consequently dealt with on a largely ad hoc basis. In responding to problems of statelessness, some States

make a clear distinction between refugee stateless persons and non-refugee stateless persons; the former benefit, in general, from a specific infrastructure guaranteeing protection and assistance, while the situation of the latter remains vulnerable in that no specific provisions have been made for protection or assistance for this group. States which have not acceded to the international instruments generally tend to consider and to treat non-refugee stateless persons as illegal aliens.

E) SOLUTIONS

25. The right of every individual to a nationality is a fundamental human right. Article 15 of the Universal Declaration of Human Rights states this explicitly and, in addition, stipulates that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". The right to a nationality is the more important in that it interrelates with other fundamental rights stemming from the fact of belonging and the need for social attachment to a country. These include the right to return to one's country, the prohibition against exile and the right not to be subject to cruel, inhuman or degrading treatment. Lack of a nationality, or statelessness, can lead both to extremely difficult circumstances for individuals and complex problems for States. Not least in this regard is the fact that statelessness particularly as a result of deprivation nationality, is closely related to the emergence of new refugee situations.

26. There is a need for further reflection on how to tackle individual problems of statelessness which continue to arise, as well as those which for some groups are almost institutionalized. Because of the close relationship between the problems of refugees and those of stateless persons, the reduction of statelessness would have a beneficial effect on reducing the number of persons who may become refugees.

27. In the light of the foregoing, the Working Group on Solutions and Protection might wish to examine among others, the following propositions and questions:

- Essential to any resolution of problems of statelessness is much broader adherence to and compliance with existing instruments on behalf of stateless persons, together with agreement on a better monitoring mechanism to oversee the implementation of both instruments together. How might broader adherence be achieved and what might be the monitoring mechanism to ensure greater compliance?
- Consistent with international calls to do so, States should adopt legislation to protect the rights of stateless persons and to eliminate sources of statelessness. Statelessness alone should never be a basis or reason for long term detention. Legal assistance should always be available to enable individuals to overcome problems of statelessness. States with long-standing communities of stateless persons should take measures to regularize their status. What further action should be take at the international and regional levels to encourage progress in this regard at the national level?
- States should refrain from acts, such as arbitrary or discriminatory deprivation of nationality, which create situations of statelessness. How might this be better guaranteed internationally?
- The significance of the absence of an effective nationality, as well as the responsibilities of States to reduce statelessness and to provide for the possibility of acquisition or reacquisition of nationality, are human rights issues deserving of more attention by the international community, inter alia as they go directly to the appropriateness of solutions to refugee problems. Should and, if so, how might the content of the right to a nationality be elaborated in more detail at the international level?