

Talking Points
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**Panel in the context of Dialogue with Member States on rule
of law at the international level
organized by the Rule of Law Unit**
**Informal forum to promote exchange of information, ideas
and experiences**

“Preventing and Reducing Statelessness”

10:00 – 13:00, Friday 20 May 2011

UN Headquarters, Conference Room 6, North Lawn Building

Introduction

- **The Concept Note calls for reflection on some key questions which will also structure my following comments**

- **Imagine not belonging to a particular state, not having a country that you can call your own and not benefiting from a State’s protection. Without the registration of your birth or the issuance of a birth certificate, you would have no formal recognition of your existence. Unlike other children, as you grow, you might not be able to attend elementary or secondary school. Later, you might not even be able to work, travel, marry or register the birth of your own children. Following this difficult upbringing and adulthood, lacking an identity as well as an education, employment and sufficient resources to survive, you might well even go unrecognized in death in the society where you have lived.**

- **Such is the potential fate of a stateless person – someone who cannot own a passport, who does not have a country to call his or her own and who often enjoys only minimal, if any, access to the basic civil, political, economic and social rights taken for granted by most people around the world. And it is not,**

amazingly in this day and age, a thing of the past. Quite the contrary.

- **The fear of all these consequences of not belonging to any State came out clearly during my mission in November 2010 to Khartoum, Sudan, in conversation with southern Sudanese who had been living for generations in Khartoum and northern Sudan and who were deeply apprehensive about the possibility of being deprived of their Sudanese citizenship without the guarantee of acquiring new citizenship of southern Sudan upon the successful referendum for independence.**
- **Statelessness remains a global problem today. While its full dimensions can only be guessed at, absent a more formal mapping, we estimate that there are up to 12 million stateless persons around the world today. While some regions have larger stateless populations than others, every state and continent is affected by statelessness.**

Effect of Statelessness on the Rule of Law in General

- **Stateless persons are among the most vulnerable in the world. They are, in effect, persons denied the right to enjoy their rights.**
- **In principle, individuals are entitled to most human rights protections regardless of their citizenship status. In practice, however, statelessness quite usually results in the denial of fundamental rights, provoking social and economic hardship, and acute vulnerabilities for stateless women and children.**
- **Among the deprivations stateless people are often exposed to, the following are prevalent:**
 - **Lack of Recognition flowing from:**
 - **Lack of birth registration and the issuance of birth certificates**
 - **Lack of other identification documentation (and, as a consequence, difficulties in undertaking civil acts, such as marriage)**

- **Non-recognition of the right to reside in one's own country with the consequential risk of expulsion**
- **Difficulties to enter into contracts, obtain business licences, or open bank accounts**
- **Social, civic and economic hardships flowing from:**
 - **Limited or no access to education and health care**
 - **Inability to access the labour market**
 - **Restrictions on freedom of movement, including on travelling abroad or returning from abroad**
 - **Limits on property ownership**
 - **Detention, particularly in the migration context and where the country of origin refuses to allow return**
 - **Inability to exercise political rights, including the right to vote and discriminatory treatment, which in itself can lead to abuse by authorities, social marginalization and heightened risk of trafficking and sexual and gender-based violence**
- **All these issues, apart from engendering serious personal hardship, are emblematic of deep rule of law gaps.**
- **Reducing statelessness and identifying and regularizing the status of stateless persons contribute not only to economic and social development, but also to the broader respect for the rule of law in all societies.**

<h3>UNHCR's Statelessness Mandate</h3>

- **This panel is focused on the response of the UN system to statelessness globally. A UN-wide response is called for, built upon the primary responsibilities of UNHCR, which has a specific mandate confirmed by its Executive Committee and the General Assembly.**
- **United Nations General Assembly resolutions have entrusted UNHCR with the global mandate to support states in identification, prevention and reduction of statelessness and protection of stateless persons. UNHCR has been given a responsibility to work with States to ensure that persons who**

become stateless receive adequate protection in the states where they reside and that the number of stateless persons is reduced through their acquisition of an effective citizenship.

- Building on this, UNHCR's Executive Committee has requested UNHCR to provide technical advice to states on adoption and implementation of safeguards against statelessness, consistent with fundamental principles of international law, including preventing statelessness resulting from arbitrary deprivation of nationality, as well as statelessness which might result from the break-up of States, emergence of new States and the transfer of territory between States.
- UNHCR's mandate includes also promotion of accessions to the 1954 Convention relating to the Status of Stateless Persons (65 states parties) and the 1961 Convention on the Reduction of Statelessness (37 states parties), which are the two international instruments providing the most detailed guidance on how statelessness can be avoided and what minimum treatment stateless persons should be able to enjoy.

<p>What should be the key guiding principles for the UN's approach to statelessness?</p>
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- First Principle of UN engagement: Reinforce the central role of States
 - Determining who is a citizen of which State is quintessentially a State sovereignty prerogative. So too is exercising this responsibility.
 - States generally provide for automatic acquisition of nationality at birth based on *jus sanguinis* (birth to a national) or *jus soli* (birth on the territory), a combination of these two principles, or later in life on the basis of other links to the State such as residence. Statelessness is often the inadvertent result of these principles operating in isolation of each other.

- States can prevent statelessness through legislative and other measures which avoid this and which ensure that all children must acquire a nationality at birth and that individuals do not become stateless in adulthood. Facilitated naturalization for stateless persons is another means of reducing statelessness.
- **Second Principle of UN engagement:** Encourage and structure action on international norms and standards related to nationality and statelessness
 - There are two international conventions dedicated to statelessness:
 - The 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) which provides the universally accepted legal definition of a stateless person and establishes an internationally-recognized status for stateless persons, extending to them specific rights, for instance, relating to administrative assistance and issuance of identity and travel documents.
 - For its part, the 1961 Convention on the Reduction of Statelessness (“1961 Convention”) sets forth practical obligations that States parties must undertake to prevent and reduce statelessness.
 - One reason that efforts to address statelessness have been hampered is the relatively low number of States parties to the two UN Statelessness Conventions. To date, the 1954 Convention has 65 States parties. The 1961 Convention has 37. UNHCR is working to change this, something I will come to in a moment.
 - The prerogative of States to determine the rules for acquisition, change and loss of nationality is circumscribed by international law, in particular human rights law.
 - The Universal Declaration of Human Rights (article 15) establishes the universal right of every individual to a nationality. As a corollary to this right, States must make every effort to avoid statelessness through legislative, administrative and other measures.

- **Other relevant international human rights norms include:**
 - **the universal prohibition against discrimination on account of race, colour, or national or ethnic origin as enunciated in the Convention on the Elimination of All Forms of Racial Discrimination (article 5), prohibits States from discriminating in nationality matters;**
 - **the Convention on the Elimination of All Forms of Discrimination against Women (article 9) guarantees that States parties must grant women equal rights as men with respect to nationality rights;**
 - **the International Covenant on Civil and Political Rights (article 24) and the Convention on the Rights of the Child (article 7) require that States parties ensure that children are registered immediately after birth and acquire a nationality.**

- **These international norms are also enshrined in regional human rights treaties, such as:**
 - **the 1969 American Convention on Human Rights;**
 - **the 1990 African Charter on the Rights and Welfare of the Child;**
 - **the 1997 European Convention on Nationality;**
 - **the 2004 Arab Charter on Human Rights;**
 - **and the 2005 Covenant on the Rights of the Child in Islam.**

- **So there is no dearth of legal pronouncements. No need for new standard setting – rather more resolute implementation.**

- **Third Principle for UN Engagement: Front end the prevention of statelessness and the acquisition of nationality, these being the primary solutions to the statelessness problem.**
 - **Identifying potential causes and targeted, timely action can prevent statelessness. Once statelessness occurs it is generally more difficult to resolve and raises additional protection needs.**

- **Take, for example, State break-ups and State succession. Experience over the last two decades demonstrates that when no proper provision is made to resolve resulting citizenship issues right from the beginning, leading to certain groups being excluded from citizenship, the costs are high for everyone: for stateless people obviously, but also for governments which sooner or later will need to take action to integrate stateless people or face the consequences of social marginalization, divided societies, radicalization of groups and the seeds planted for renewed or new conflicts.**

- **We have come a long way since the major situations of State succession occasioned by the break up of the USSR or Yugoslavia. First, we now have far more expertise than we did then. We can draw on the lessons of past cases of state successions and avoid making the same mistakes which left hundreds of thousands of people stateless. Second, we now have more detailed agreed standards on which we can draw, in particular those developed by the International Law Commission (The 1999 Draft Articles on the Nationality of Natural Persons in Relation to Succession of States, adopted by the ILC but still pending before the UNGA). Both are an important resource when it comes to prevention strategies.**

- **Aside from preventing its occurrence in the first place, acquisition of a nationality is the only solution to statelessness. Recognition that stateless people have rights, but as stateless people is a half way house only. Statelessness should not become only a situation to manage better. It should be resolved.**

- **A significant focus of UNHCR's statelessness activities is on reduction of the magnitude of statelessness worldwide. We have set an ambitious reduction target: at least 500,000 stateless people should have had nationality granted or confirmed during 2010 and 2011. During 2010 over 100,000 stateless persons acquired nationality, in some half a dozen countries, including Iraq, Russian Federation and Kyrgyzstan. We welcomed the adoption of Decree 49 on 7 April through which Syrian citizenship**

is to be granted to between 100,000 and 150,000 persons of Kurdish ethnic origin registered as foreigners in the Governorate of Hassane. This is an opportunity to bring one long standing statelessness situation shortly to an end

- Reaching our target will require such breakthroughs in quite a number of countries. Without political will, solutions in such situations will remain elusive.
- **Fourth Principle of UN Engagement:** Promote respect for the human rights of stateless persons and work to provide for their specific protection needs, for as long as solutions are unavailable
 - Universal human rights standards apply irrespective of possession of a nationality, with only a limited set of rights reserved specifically for citizens. Being a non-citizen cannot be the rationalization for denying basic rights.
 - Stateless persons in addition have distinct protection needs. They require support in areas where a State of nationality would generally take action, for instance in relation to the issuance of identity and travel documents. Stateless persons who do not enjoy the right to return to and reside in another State need to be able to rely on residency and concomitant civil, political, social, and economic somewhere, with a realistic prospect of acquiring the State's nationality in the future.
 - A prerequisite for the protection of stateless persons is ensuring that the State can identify who is stateless and who is not. States are encouraged to establish formalized statelessness determination procedures with due process safeguards for individuals to claim protection as a result of their statelessness status.
- **In taking a rights based approach** to the protection of stateless persons, it is important to recognize and redress discrimination as a common cause and consequence of statelessness
 - Discrimination on racial or ethnic grounds is a key cause of statelessness. Already in 1948, the drafters of the

Universal Declaration of Human Rights were concerned by arbitrary deprivation of nationality and included a specific prohibition in article 15 of the Declaration. It is shocking that even today ethnic, religious and linguistic minorities are often deliberately denied or deprived of citizenship. In many cases this amounts to persecution, driving refugee flows, with the result that many refugees are also stateless persons.

- **A glaring example, hopefully now being resolved, is that of the Faili Kurds, a largely Shi-a community living in Iraq, who were stripped of their Iraqi citizenship from one day to the next by Decree No. 666 adopted by Saddam Hussein's regime.**
- **Our panellists will certainly elaborate on this issue in their own country contexts in this regard.**
- **A rights based approach also supports gender equality in nationality laws and their implementation.**
 - **Another common cause of statelessness is inequality between men and women when it comes to transmission of nationality to children. More than 30 states retain laws which discriminate between men and women in their right to acquire, retain or change their nationality and to confer nationality on children.**
 - **Gender equality in citizenship laws still needs active promotion in many regions. Incremental change is, though, slowly coming about, through for example legal reforms undertaken in Egypt (2004), Algeria (2005), Iraq (2006), Indonesia (2006), Morocco (2007), Bangladesh (2009), and Kenya (2010) which have secured the right of women to pass their citizenship onto their children, and in the case of Algeria also the right to extend citizenship rights to foreign spouses. In 2010 Tunisia closed a significant gap in its legislation, with the effect that women can confer nationality onto children born both in and outside of Tunisian territory. As the profile of this issue raises as we hope other states will follow suite.**

- Here UN agencies, NGOs, and other actors engaged in promoting women's rights are encouraged to incorporate advocacy on equality for citizenship rights as a fundamental component of their Rule of Law activities.
- The background concept note raised some questions for specific review. Let me now turn brief attention to them.

How is addressing statelessness critical to economic and social development and conflict prevention?

- It flows from what I have been saying that citizenship provides people with a sense of identity and is fundamental to full participation in society. Because they are not citizens of any State, stateless persons often comprise the most disenfranchised segments of society.
- Several large stateless situations occur in border regions between States, in recently independent States or in countries that have experienced significant migration flows. In the absence of adherence to clear rules which settle contested citizenship, disputes to occur between States over whether specific individuals or populations are nationals. Destitute stateless populations have no recourse to guaranteed state protection, are vulnerable in conflict situations to forced displacement, either within the borders of the countries of their long-term residence or across international borders, and fuel refugee crises.
- The recent conflict in Côte d'Ivoire provides an example of how conflicting claims over identity and citizenship can lead to conflict, violence, and regional instability.

Another question - What are good practices that have led to the resolution of statelessness situations and contributed to the improved implementation of the statelessness conventions?

- Most major statelessness situations around the world have gone on for decades. Strategies to resolve protracted situations often require sustained advocacy efforts coordinated with other actors. UNHCR frequently provides advice on how resolution of such

situations can be brought about through changes to legislation or government policy to enable all persons resident in the territory to be considered nationals against simple and transparent criteria of the sort we have been promoting in Sudan. I believe the experience of Bangladesh, to be presented by Dr. Abrar, will provide an interesting example of how this occurs in practice.

- Such changes in law and policy are most likely to be successful when accompanied by supportive operational responses, which address capacity gaps in administrative procedures (e.g. relating to processing of cases or issuance of documentation).
- There are also a number of “good practice” examples of how public information campaigns, and legal counseling to stateless persons on how to access procedures, and support for mobile teams to ensure all sectors of the population understand and have access to procedures, have led to successful resolution of statelessness situations.

Finally, how can public awareness of statelessness be enhanced and the expertise of diverse fields marshaled to improve efforts to address statelessness?

- This allows me to end on this year’s important anniversary.
- Statelessness is often viewed as a legal problem. First and foremost, though, it is a political problem the solutions to which demands resolute action by governments. This requires of UNHCR, its UN partners and NGOs a multi-faceted advocacy campaign to generate the will to act by raising awareness of the problem, including why statelessness is damaging to individuals and communities.
- The commemoration of the anniversaries of the 1951 Refugee Convention and the 1961 Convention on the Reduction of Statelessness provide a capital opportunity to raise awareness of statelessness globally, to involve more actors in our common efforts, and to strengthen international commitment to address this phenomenon.

- **The main event commemorating the 50th anniversary of the 1961 Stateless Convention, alongside the 60th anniversary of the Convention relating to the Status of Refugees, will be a ministerial-level meeting to be held in Geneva on 7 and 8 December 2011 to review protection gaps and measures to address them.**
- **The December ministerial-level meeting will provide States with the opportunity to announce pledges. State pledges are statements of voluntary commitments by States to undertake concrete measures to uphold international protection standards, in this case for stateless people.**
- **UNHCR is encouraging States to:**
 - **accede to the statelessness conventions**
 - **reform their nationality laws**
 - **take steps to resolve protracted statelessness situations or**
 - **make any other statelessness linked pledges which will materially improve the situations of stateless people globally, and in their respective countries, as well as contributing to a reduction of statelessness.**
- **I whatever we do, or States choose to pledge, it is fundamental that the human dimension of the problem remains to the fore, a problem which considerably lessens the quality of life of millions around the world without deference to gender or age. I would like to end by showing a multimedia presentation which focuses specifically on statelessness among children.**

Solution – doesn't stop with gaining citizenship. After years of deprivation – need support to become effective citizens – sometimes vulnerability increased, as as citizens, expected to go out into community – but without support (Biharis).