

6 THE CAUSES OF STATELESSNESS

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Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality – as set forth under the Universal Declaration of Human Rights, a document considered to be a milestone step in the evolution of human rights. This breakthrough document¹ was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 including was the first common list and standard of rights for all people in all nations. According to Article 15 of the Universal Declaration of Human Rights a person has the right to be a national of a state, while states have the obligation to avoid the legal anomaly called statelessness. This obligation prompted the international community to take a further step in addressing the rights of stateless persons. From this aspect, harmonizing states' national laws governing nationality proved to be crucial, therefore, the international community decided to create a convention relating to the rights of stateless persons in 1954.

The elements of a state as a legal entity are territory, population, government and sovereignty. Population includes not only citizens of the state concerned, but third country nationals legally residing in its territory, that is, refugees and stateless persons as well. The legal bond between an individual and a state is nationality. This legal bond is the basis for the state to exercise jurisdiction. Therefore, on the one hand this legal bond creates obligations, while on the other hand it creates rights in respect of both parties in this relationship. These rights and obligations derive from the principles of *jus sanguinis* and *jus soli*. States whose nationality law adheres to the principle of *jus sanguinis* allow their nationals to automatically pass their nationality on to their children, *ex lege*, so that children will be nationals regardless of the place of birth. According to the *jus soli* principle, the state where a person was born will have jurisdiction over the person and citizenship is determined by the state of birth. In certain cases, both principles may be applied by a state that applies the principle of *jus sanguinis* with the aim of preventing childhood statelessness.

Statelessness is a form of human rights' violation, a violation of the right to nationality, the notion of equality and non-discrimination. A stateless person is stripped of the basic rights that every national enjoys. A stateless person is barred from crossing an international border, thus, such persons do not have the right to travel abroad, to establish a legal residence, access to basic health services, legal work or the right to own or

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1 GA Res. 217 A, 10 December 1948.

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purchase property, while they are also excluded from voting. Stateless persons are unable to prove their identity since they do not have any documents issued by the authorities.

There are two types of statelessness: *de jure* and *de facto* statelessness. According to the 1954 UN Convention relating to the Status of Stateless Persons, a stateless person is a person, who is not considered as a national by any state by operation of its law.² This case of statelessness is called *de jure* statelessness since it is a purely legal description. Nevertheless, it is also a narrow definition, since the criterion for not being considered as a national by any state by operation of its law does not include persons who may technically have a nationality but for some reason they are unable to enjoy their rights connected to nationality or who are not able to prove their nationality.³ *De facto* stateless persons, whose status is much more difficult to precisely define, are persons outside the country of their nationality who are unable or, for legitimate reasons, are unwilling to avail themselves of the protection of that country.⁴ *De facto* statelessness arises where a state withdraws benefits connected to nationality or where people cannot enjoy their rights connected to nationality due to the inaction of a state. That is, *de facto* stateless persons have the right to enjoy the benefits ensuing from a given nationality, but for some reasons they are unable to enjoy those rights.⁵

Statelessness is the legal consequence of unequal and discriminatory acts which lead to the exclusion and marginalization of the persons concerned. Even where the legal status of such marginalized people is resolved by the government, because they have no legal existence in the past, they continue to face serious obstacles and bureaucratic problems.

This study focuses on the causes of both *de jure* and *de facto* statelessness where discrimination, arbitrary deprivation and denial of nationality, loss and withdrawal of nationality, state succession and state restoration, decolonization, legal gaps in citizenship laws, lack of documentation and in particular the lack of birth and marriage registration will be described, illustrated by relevant examples.

6.1 DISCRIMINATION

6.1.1 *Discrimination against Particular Groups*

Statelessness may arise as a result of discrimination against specific groups where the state denies granting nationality or withdraws citizenship for reasons of race, national

2 1954 Convention relating to the Status of stateless Persons, Art. 1.

3 D. Weissbrodt, C. Collins, 'The Human Rights of stateless Persons', *Human Rights Quarterly*, Vol. 28, 2006, p. 251.

4 H. Massey, 'UNHCR and De Facto statelessness', 2010, *Legal and Protection Policy Research Series*, p. 61.

5 D. Weissbrodt, C. Collins, 2006, p. 252.

descent, religion or ethnicity of those particular groups, or due to other xenophobic considerations. The situation of the Rohingya minority in Myanmar is a contemporary example of discrimination against a specific group, giving rise to the statelessness of those affected. The violation of the human rights of the Rohingya people has historical roots. It has its origins in religious conflicts, since the Rakhine state is home to the Muslim Rohingya community living in a Buddhist country. The tension between these two groups reached a critical level in 1982 when the national government adopted the Citizenship Law⁶ that revoked the right to citizenship from Rohingya people. The consequences of the 1982 Citizenship Law amounted to a violation of the right to nationality. Rohingya's cannot exercise their fundamental human rights, they cannot get married without permission, they are prohibited from working outside their villages, they have no political representation, they have no birth registration and due to the restrictions they are subject to, they lack the most basic services.

6.1.2 *Gender-Based Discrimination*

National laws failing to ensure women equal rights in conferring nationality to their children are one of the main causes of statelessness. Despite the adoption of the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) there are still 26 countries which do not grant mothers the same rights as men in conferring their citizenship to their children.⁷

Gender inequality in nationality laws as the cause of statelessness occurs where the nationality of the father cannot be conferred to the children. There are 5 different circumstances where inequality in nationality law may lead to statelessness: where the father is stateless, where the father is unknown or not married to the mother of the child at the time of birth, where the nationality law of the father does not allow him to confer his citizenship to the child for example when the child is born abroad, where the father is unable to take administrative steps to confer his nationality to the child for example, if the father is dead or unwilling to make any administrative to confer his nationality to the child for example where the father has abandoned the family.

Seven countries, namely Qatar, Kuwait,⁸ Lebanon, Iran, Brunei Darussalam, Somalia and Swaziland, of the twenty five countries that do not grant women equality in conferring their nationality, do not allow women to confer their nationality to their children without exception or do so under very limited circumstances leading to a great risk of statelessness. According to the latest issue of the Background Note on Gender Equality,

6 Burma Citizenship Law, 15 October 1982.

7 Background Note on Gender Equality, Nationality Laws and Statelessness, UNHCR, 2017.

8 B. L. Fisher 'Statelessness in the GCC: Gender Discrimination beyond Nationality Law', 2015/01, *The Institute on statelessness and Inclusion statelessness Working Paper Series*.

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Nationality Laws and statelessness by the UNHCR⁹ Mauritania continues to restrict the conferral of nationality by women to their children, but at the same time provides certain safeguards to the effect that statelessness occurs in only very few cases. The Bahamas, Bahrain, Barbados, Burundi, Iraq, Jordan, Kiribati, Liberia, Libya, Malaysia, Nepal, Oman, Saudi Arabia, Sudan, Syria, Togo and the United Arab Emirates provide some safeguards to prevent statelessness. For example Jordan, Libya, Saudi Arabia and the United Arab Emirates allow women to confer their nationality to their children in exceptional circumstances, for example where the father of the child is unknown, stateless or his nationality is unknown.

6.2 ARBITRARY DEPRIVATION AND DENIAL OF NATIONALITY¹⁰

In cases of arbitrary denial or deprivation of nationality the state introduces a specific discriminatory action against a particular group. Deprivation of nationality leads to statelessness where the person who has been deprived of his nationality is not eligible to acquire another nationality or does not possess another nationality.¹¹ According to the report of the Secretary-General on the arbitrary deprivation of nationality, in case deprivation of nationality leads to statelessness it will be generally considered to be arbitrary unless it has a legitimate aim and is proportionate.¹² Article 8 of the Convention on the Reduction of Statelessness of 1961 enumerates special circumstances where a person may be deprived of his nationality, such as when a naturalized person loses his nationality on account of residing abroad for a period not less than seven consecutive years, specified by the law of the Contracting State concerned; if he fails to declare to the appropriate authority his intention to retain his nationality; in the case of a national of a Contracting State born outside its territory, the law of the state may make the retention of nationality following the expiry of one year from attainment conditional upon residence in the territory of the state or registration with the appropriate authority; and where the nationality was obtained by misrepresentation or fraud.¹³

9 UNHCR Background Note on Gender Equality, Nationality and statelessness 2017.

10 B. K. Blitz 'Statelessness, protection and equality', 2009, *Forced migration policy briefing 3* Refugee Studies Centre p. 9.

11 T. Molnár: The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law, in: Petra Lea Láncoš, Réka Varga, Tamás Molnár, Marcel Szabó (Eds), *Hungarian Yearbook of International Law and European Law*, The Hague, Eleven International Publishing, 2015, p. 80.

12 *Arbitrary deprivation of nationality: report of the Secretary-General*. A/HRC/10/34, 26 January 2009, para. 51.

13 1961 Convention on the Reduction of statelessness, Art. 8.

6.3 LOSS AND WITHDRAWAL OF NATIONALITY

Loss and withdrawal of nationality are specific acts of state taken during political restructuring and also typical products of xenophobic campaigns, movements as well as racist laws. An example would be the Nuremberg Laws¹⁴ where Jews were deprived of their citizenship in Germany and Austria. In Cote d'Ivoire, in the framework of xenophobic policies, persons eligible for the Ivorian citizenship who had migrated to Cote d'Ivoire had their right to citizenship revoked as a part of the Government's campaign to achieve ethnic purity. The Ivorian Government justified this with permanent and violent ethnic conflicts in the area. Although the Nationality Law introduced in 1961 offered the possibility of naturalisation, the racial interpretation of the law greatly reduced chances of descendants of former migrants otherwise eligible for naturalization.¹⁵

6.4 STATE SUCCESSION

State succession is a replacement of one state by another in the responsibility for international relations of the territory to which succession relates. According to Article 5 of the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession,¹⁶ a successor state shall grant its nationality to persons who, at the time of the state succession, had the nationality of the predecessor state, and who have or would become stateless as a result of the state succession if at that time they were habitually resident in the territory which has become territory of the successor state, or they were not habitually resident in any state concerned but had an appropriate connection with the successor state, where the appropriate connection includes *inter alia* a legal bond to a territorial unit of predecessor state which has become territory of the successor state, birth on the territory which has become territory of the successor state, last habitual residence on the territory of the predecessor state which has become territory of the successor state. Notwithstanding the aforementioned Article of the Convention on the Avoidance of Statelessness in relation to State Succession, state succession may lead to increased migration and statelessness in case people living in the same territory find themselves to be under a different jurisdiction, often a consequence of armed conflicts or other legal measures introduced. These people are not considered as migrants, even though discriminatory laws may be introduced against them for historical reasons or for

14 The 1935 Nuremberg Law withdrew Jews' citizenship, and it left them under the scope of the citizenship law as German subjects. In 1938 the state Secretary announced that the children born to Jews in future would be stateless. By E. Fripp, '*Nationality and statelessness in the International Law of Refugee Status*', Hart Publishing, Oxford and Portland, Oregon, 2016, para. 1.60.

15 Blitz 2009 p. 11.

16 2006, *Council of Europe Convention on the avoidance of statelessness in relation to state succession*, Council of Europe Treaty Series – No. 200.

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belonging to an ethnic group that has become a minority in the newly established country. The aftermath of Soviet Union's collapse may be recalled as an example of giving rise to statelessness by state succession. The break-up of the Soviet Union had left a great number of people in precarious situations as regards their citizenship, as a minority group in a newly formed country and political context where their legal status had not been clarified. In the Central Asian region, the break-up of the Soviet Union is the main cause of statelessness, notwithstanding the fact that the persons concerned otherwise have links of birth, habitual residence or descent with the given state.¹⁷

6.4.1 State Restoration

State restoration also yields the threat of creating a large stateless population as a consequence of a new, sometimes unclear political context. The Baltic countries serve as examples of state restoration following the break-up of the Soviet Union with Estonia, Latvia and Lithuania regaining their sovereignty in 1991. In the period of Soviet occupation large numbers of ethnic Russians moved to the Baltic States and when these countries regained their sovereignty, ethnic Russians were left without nationality. Estonia, which is not a signatory state of either the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness, had re-established its independence in 1991 after the collapse of the Soviet Union where Estonia was faced with the challenge of dealing with the legal status of thousands of ethnic Russians. In 1991 the new Estonian citizenship law entered into force, which, in continuity with the 1940 citizenship law, granted citizenship only to those persons and their descendants who had possessed Estonian citizenship between 1918 and 1940 in the period of the first Estonian Republic. Then Estonia encouraged the non-Estonians to get registered and apply for a citizenship in the Russian Federation or elsewhere, however, around one-third of the population in Estonia did not have their citizenship determined by 1992 and became stateless.¹⁸

6.5 DECOLONIZATION

Decolonization strongly influenced many people's nationality and is responsible for statelessness or leaving persons with a disputed claim to citizenship in various parts of the world. States gaining independence or newly formed and formerly ruled by colonial governments between arbitrarily drawn borders without any awareness of the situation of

¹⁷ M. Farquharson 'Statelessness in Central Asia' 2011 UNHCR p. 4.

¹⁸ 'Mapping statelessness in Estonia' UNHCR Regional Representation for Northern Europe, Stockholm, 2016 pp. 14-16.

ethnic minorities, supported only certain minorities or privileged some more than others depending on religious, ethnical or historical considerations.

In 1947 as a consequence of the decolonization process, both India and Pakistan/Bangladesh were faced with the problem of more than 200 enclaves – i.e. fragmented territories within a sovereign country controlled by another sovereign power. On 1 August 2015 India and Bangladesh exchanged the enclaves and with it, the legal status of persons living in those enclaves are in the process of being solved and clarified.¹⁹ The extraterritorial nature of the enclaves created states with two nations, with people living in the enclaves barred from leaving the same, notwithstanding the fact that they had no other chance, since they had to enter the host country for work, education, health care purposes every day. As a result, these residents faced the threat of imprisonment in the host country for illegal entry and became *de facto* stateless persons.

6.6 LEGAL GAPS IN CITIZENSHIP LAWS

Conflict of nationality laws may be the reason for statelessness even if both or more states' nationality laws contain safeguards to avoid statelessness, but legal gaps arise in the parallel implementation of these laws.²⁰ This is simply because the given states' nationality laws are incompatible. For example, a child born to parents who are nationals of a state that grants nationality on the basis of *jus soli*, on the territory of a state that grants nationality on the basis on *jus sanguinis*, cannot acquire any nationality at birth.²¹ To tackle the legal gaps arising between the states concerned to prevent statelessness, the 1961 Convention on the Reduction of Statelessness provides an appropriate balance between the interests of *jus sanguinis* and *jus soli* states. According to Article 1 of the 1961 Convention on Reduction of Statelessness, a contracting state shall grant its nationality to a person born on its territory who would otherwise be stateless, and according to Article 4, a contracting state shall grant nationality to a person, not born in the territory of a Contracting state, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that state.²² The above mentioned compromise was indispensable for reducing statelessness: where a country regulates its nationality law on the basis of *jus sanguinis*, if the child otherwise would be stateless, nationality should be provided on the basis of *jus soli* and the states which attribute nationality *jus soli* have the obligation to extend their rules allowing the application of *jus sanguinis* in case the child born on their territory would otherwise be stateless. Apply-

19 H. J. Shewly 'Life in de facto statelessness in enclaves in India and Bangladesh', *Singapore Journal of Tropical Geography*, 2017 (January) pp. 108-109.

20 UNHCR and IPU, 'Nationality and statelessness. A handbook for parliamentarians', 2005, p. 27.

21 L. van Waas 'Nationality Matters, statelessness under International Law', *School of Human Rights Research Series*, Vol. 29 pp. 49-56.

22 1961 Convention on the Reduction statelessness.

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ing the law based on *jus sanguinis* strictly, without any caveats is responsible for the inheritance of statelessness, since *jus sanguinis* confers upon children the status of their parents. This way, statelessness is inherited, passed from generation to generation regardless of the place of birth, habitual residence or other factors reflecting the genuine and effective link to the country of residence.²³ Thus, inheritance of statelessness is caused by the inaction of the state concerned, which fails to take any measures to stop statelessness from being conferred from parent to child or fails to implement existing measures to prevent the spread of statelessness.

6.7 LACK OF DOCUMENTATION - BIRTH AND MARRIAGE REGISTRATION

6.7.1 Birth Registration

According to Article 7 of the UN Convention on the Rights of Child, the child shall be registered immediately after birth and shall have the right to acquire a nationality. Birth registration is the process by which a child's birth is recorded in the civil register by the relevant government authority. It is the first form of legal recognition of the child and is generally required for the child to obtain a birth certificate. While generally the birth certificate is issued to the child at the same time as registration takes place, in other cases a separate application must be made. It is important that the registered child receives a birth certificate, since it is this document that provides permanent, official and visible evidence of a state's legal recognition of his or her existence as a member of society.²⁴ The absence of birth registration increases the chance that the new born child remains unclaimed by any state, becoming itself a source of statelessness caused by the action or inaction of the government or the inaction of the parents. The combination of both actors' inaction creates a large problem, underestimating the importance of birth registration. Denying the access to register the birth of the child is a discriminatory act of the state and a source of statelessness. An example would be the situation of persons with Haitian background in the Dominican Republic, who were unable to register their children. Even though in the *jus soli* Dominican Republic birth is the legal bond between the state and the person in order to acquire the nationality, people who were migrants' descendants were excluded from birth registration.²⁵

23 Note on UNHCR and stateless persons, Executive Committee of the High Commissioner's Programme, Sub-Committee of the Whole on International Protection, 2 June 1995, para. 13.

24 Plan International Universal Birth Registration – A Universal Responsibility, 2005, *Working*, p. 11.

25 'Left Behind, How statelessness in the Dominican Republic Limits Children's Access to Education', 2014, *Georgetown Law Human Rights Institute Fact Finding Project*, p. 21.

6.7.2 Marriage Registration

The lack of marriage registration may also lead to statelessness just as the lack of birth registration, since it may interfere with rights acquired through marriage, such as nationality and civil status, the legal status of children born during the period of the marriage. This means ensuring that all marriages are registered and giving a marriage certificate where both the husbands' and wives' names are entered, helps to prevent statelessness.²⁶ Without having the proof of a marriage certificate the legal status of the child of the couple will be questionable, since in case the child is illegitimate, acquiring nationality may be extremely difficult. An unregistered marriage is likely to result in an unregistered birth. In countries upholding discriminatory nationality laws against women and where women are barred from conferring their nationality to the child, the lack of a marriage certificate will mean that the child may become stateless.

6.8 CONCLUDING REMARKS

After introducing the basic legal terms regarding statelessness and the causes of statelessness, we may conclude that statelessness is a legal anomaly, a form of violation of human rights. According to the UNHCR Special Report: Ending Statelessness within 10 Years, statelessness affects approximately 10 million people – both *de jure* stateless and *de facto* stateless persons – in the world, whose rights must be protected. This brief overview of the causes of statelessness showed that at the root of all causes mentioned above are inequality and discrimination. The present article demonstrated that the fact that statelessness arises can be traced back to states inaction to reduce or end statelessness, or even the states' wilfully discriminatory acts against particular groups, such as arbitrary deprivation or denial or withdrawal of nationality. If states continue to remain outside the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the number of stateless persons is going to rise which will result in passing on statelessness from generation to generation. This way, the legal invisibility of the persons concerned will be perpetuated without an adequate solution to stabilizing stateless persons' legal statuses or protecting their rights.

²⁶ UNHCR Handbook for the Protection of Women and Girls, 2006 pp. 45-46.

