

## Legal Approaches to Combating Statelessness

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Stateless Persons  
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I am pleased to be addressing this panel discussion. Thank you for inviting me to attend.

The Open Society Justice Initiative promotes rights-based law reform and strengthens legal capacity worldwide. Justice Initiative projects employ a variety of tools. These include hands-on technical assistance, litigation and legal advice, advocacy, and research and knowledge dissemination. We work in several thematically focused areas. One of them is termed Equality and Citizenship. This program was specifically developed to address a concern that racial and ethnic minorities, on the one hand, and non-citizens, on the other, often share many of the same problems, and indeed are often the same people. We are currently working with partners to document and seek legal remedies for discrimination on grounds of citizenship and/or race/ethnicity at the global level, as well as in Mexico, Russia, parts of Africa, Central Asia, and central and western Europe.

In developing our program over the past year, the Justice Initiative has consulted with a wide variety of actors, including governments, inter-governmental bodies, NGOs and representatives of affected populations. We are a small institution. Hence, in deciding where to focus our time and resources, we have to be judicious. Our review of the field has suggested that non-citizens are an extremely vulnerable population. But not all non-citizens are equal. Some groups—refugees and migrants—have received increasing attention, funds and state action. This is all to the good, if still inadequate. But one particular group of non-citizens is still largely overlooked and unaddressed: the stateless.

Whether *de jure* or *de facto*, the impact of statelessness is grave. The precise number of stateless persons worldwide is unknown. States are often unwilling or unable to provide accurate data. Few have mechanisms for registering stateless persons. Indeed, there is no clear requirement for states to report on the numbers of stateless persons, and no international agency is dedicated to collecting statistics on the problem, though UNHCR's recent survey on statelessness marked an important advance.

And yet the trend is clear. While statelessness was first recognized as a global problem during the first half of the 20<sup>th</sup> century, in the past decade and a half growing numbers of persons have again lost their nationality.

In Europe, the primary cause has been the changes in post-1989 borders that followed the collapse of Communism. As multi-ethnic states such as the Soviet Union, Yugoslavia and Czechoslovakia disintegrated, ethnic minority groups left on the wrong side of a new border commonly encountered difficulties in effectively acquiring or establishing citizenship in the newly emergent states.

In Africa during the same period, citizenship became more important and controversial, precisely as democratization in much of the continent gave added significance to membership in the political community and the concomitant questions of who can and cannot vote or hold public office. Increasingly restrictive citizenship laws in some countries served as effective tools for political manipulation by public officials who sought to expel and/or delegitimize particular ethnic groups.

In Asia and the Middle East where nationality is primarily conferred on a *jus sanguinis* rather than a *jus solis* basis (by descent rather than by birth), there has been a growing trend for repressive governments to use the denial or deprivation of nationality as a tool to exclude and marginalize unpopular racial and ethnic minority groups. In many instances this has led to the mass expulsion of particular ethnic groups whose citizenship is not recognized and who cannot exercise their right to return to their own country. Women face particular difficulties in regards to citizenship in many Asian and Middle Eastern states due to discriminatory marriage and nationality laws.

## **I. Examples of Statelessness**

The manifestations of this most recent wave of statelessness have varied and have included: denial of access to citizenship, arbitrary deprivation of citizenship and situations of state succession. In each category, statelessness may be the result of legislation, of administrative practice, or of arbitrary action by state officials. However, one common denominator has been that ethnic and racial minorities are often the principal victims.

### **A. In a number of countries ethnic minorities have been *denied access to citizenship*:**

In Burma, members of the Rohingya Muslim minority, who have been living in the northern state of Ankara since the 12<sup>th</sup> century, are excluded from citizenship by the 1982 citizenship law, which provides for several categories of citizenship, none of which the Rohingya are deemed to satisfy.

In Kuwait, the Bidun—a classification applied by the government to several groups, including descendants from nomadic groups and migrants who have lived in Kuwait for decades—have long been excluded from citizenship by the country's nationality law

In Thailand, the Hill Tribe people number over one million. Despite being born in Thailand, almost half of the Hill Tribe people have been denied access to Thai citizenship as a result of excessively burdensome requirements to prove their nationality.

Dominican authorities routinely claim that Dominicans of Haitian descent are “in transit”—even when they have lived in the country for decades—in order to bar them from claiming lawful citizenship. Some medical personnel have refused to provide undocumented parents of newborns with birth certificates—a prerequisite for obtaining proof of Dominican citizenship.

In the Russian Federation, regional authorities in Krasnodar Krai have arbitrarily denied approximately 13-16,000 Meskhetians, a Turkish-speaking Muslim ethnic minority, all rights of Russian citizenship to which they are entitled as former Soviet citizens. Local officials have repeatedly singled out the Meskhetians through special residency regulations citing their ethnicity as the basis for their disparate treatment. UNHCR has described Meskhetians as *de jure* citizens, *de facto* stateless.

The Nubian community of Kenya is composed of more than 100,000 descendants of persons originally from the territory of Sudan, many of whom were resettled by the British colonial government in various regions of modern-day Kenya over 100 years ago. “Although the Nubians should be considered as Kenyan citizens under the prevailing laws, the overwhelming majority of them live as *de facto* stateless persons without adequate legal protection. They are systematically denied their right to Kenyan citizenship and to own land....”

Palestinians in a number of Arab states, including Lebanon and Syria, have been barred from acquiring citizenship by legal requirements.

Authorities in Syria have denied identity documents and citizenship to ethnic Kurds, including those who have lived in Syria for generations.

These are all examples of statelessness resulting from problems in accessing citizenship.

B. There are also situations where law or discriminatory administrative practices have *arbitrarily deprived or stripped persons of citizenship*.

In Bhutan, the overly burdensome requirements of successive citizenship acts have deprived of their nationality over 100,000 Bhutanese refugees of ethnic Nepali origin; many have been forcibly expelled from Bhutan

In the Democratic Republic of Congo, a 1981 citizenship law effectively stripped of citizenship members of the Banyamulenge, a Kinyarwanda-speaking ethnic group many of whom have resided in the northeastern corner of the DRC since before the creation of colonial boundaries more than a century ago.

Tens of thousands of black Mauritians were stripped of citizenship documents and forcibly expelled from their country in 1989 and have lived as *de facto* stateless in Senegal ever since. In 2000, the African Commission on Human and Peoples' Rights ruled that the expulsions and associated violence breached numerous articles of the African Charter on Human and Peoples' Rights and ordered that the refugees be re-admitted to Mauritania and that their citizenship documents be returned to them. To date no action has been taken by the Mauritanian government.

In Zimbabwe, a Citizenship Act adopted shortly before the presidential election of 2002 obliged anyone presumed to have any other citizenship to renounce this claim or lose Zimbabwean citizenship. The Act was applied specifically against particular ethnic groups with surnames considered "non-Zimbabwean." Some of these individuals have been stripped of Zimbabwean citizenship and rendered stateless.

C. Finally, members of numerous ethnic minority groups have been deprived of citizenship as a result of situations of *state succession*.

Examples include:

- The retroactive deprivation of citizenship of Eritreans living in Ethiopia and of Ethiopians living in Eritrea following the succession of Eritrea from Ethiopia in 1993
- The enactment of discriminatory nationality laws in Estonia and Latvia following state succession from the USSR, resulting in the loss of nationality for large Russian minorities in each country
- The loss of citizenship by many Roma following the 1993 split of Czechoslovakia and by the enactment of new citizenship legislation in the countries to emerge from the former Yugoslavia
- The loss of citizenship by ethnic Serbs long resident in Croatia following that country's independence
- Over 200,000 stateless Biharis first granted citizenship at the time of Bangladeshi independence later denied citizenship by the Bangladeshi government, today live in camps in Bangladesh, deprived of citizenship by both Bangladesh and Pakistan.

## **II. Addressing Statelessness—Concrete Possibilities**

The problem of statelessness, like the victims themselves, knows no boundaries. What can be done? In general, I would suggest three underlying priorities:

- Better document the problem
- Take maximum advantage of those legal protections that exist
- Reinforce and expand additional legal protection for the stateless.

Building on these priorities, the Justice Initiative is taking some modest steps to address the problem of statelessness in the following ways:

First, we are preparing a substantial report on the problem of statelessness and its relation to racial and ethnic discrimination. We hope that this report—to be issued within the next year—highlights some of the problems and circumstances I have noted above, and identifies practical legal solutions that can be pursued.

Second, we are focusing on the problem of statelessness in a part of the world where it is rampant but has to date been under-addressed: Africa. Thus, we have commenced an effort to carry out an audit of laws and policies in more than a dozen African countries that restrict access to citizenship, engender statelessness, and discriminate on grounds of race or ethnicity. We will produce a series of reports that analyze existing citizenship laws, and propose necessary reforms specific to each national context. This will provide the basis for intensive on-the-ground advocacy to seek practical solutions for problems of statelessness and disputed nationality. It may also serve as a foundation for necessary training and capacity building for local NGOs and judicial institutions on these issues. We are working with partners at national level and have embarked on research in several countries, with more to follow. Countries to be surveyed include Angola, Botswana, Cote D'Ivoire, Democratic Republic of Congo, Egypt, Ethiopia, Mauritania, Morocco, Nigeria, Rwanda, Sierra Leone, Sudan, Tanzania, Zambia and Zimbabwe.

Third, the problem of statelessness has to date received inadequate attention by courts; greater efforts are needed to secure legal remedies for those deprived of nationality. Part of this is due to the fact that stateless persons have little or no access to legal advice and assistance. We will be seeking to identify paradigmatic cases that may be brought before constitutional and regional tribunals or UN treaty bodies to highlight the problem of statelessness and to secure concrete legal remedies for stateless persons.

Let me conclude with some thoughts for what governments, the United Nations and others can do

### 1. Governments

National governments can do a few things:

- First, enforce existing legislation to the maximum extent. Since many stateless persons have been denied or deprived of nationality because of their ethnic origin, legal prohibitions against racial and ethnic discrimination are often relevant and should not be overlooked in addressing the situation of the stateless. Most countries prohibit racial and ethnic discrimination. Indeed, the prohibition of racial discrimination, recognized in the United Nations Charter and all major international and regional human rights instruments, is a *jus cogens* norm, more clearly developed and widely accepted than principles governing the protection of non-citizens as such. Just this past August, the UN Committee on the Elimination of Racial Discrimination reaffirmed that racial discrimination in access to nationality is unlawful and that stateless persons and other non-citizens enjoy the full

protection afforded by non-discrimination law. Governments thus have a responsibility and capacity to act to enforce anti-discrimination laws, regardless of whether they have adopted specific legislation concerning the stateless or have ratified the conventions against statelessness.

- Second, expand and clarify specific legal protection for the stateless.

International law affords states broad discretion to define the contours of, and delimit access to, citizenship. Nevertheless, there are some limits, and these need to be clarified. Among other things,

- a) It is clear that “everyone has the right to a nationality,” and this principle carries particular weight as regards to children.
- b) The right to a nationality implies that nationality should be granted where the alternative is statelessness.
- c) While states retain broad control over access to citizenship, the power to withdraw citizenship once granted is more limited.
- d) In particular, states may not deprive persons of citizenship arbitrarily or in such a way as to engender statelessness.

Governments should review citizenship laws to ensure compliance with these principles. This may require amending legislation to correct instances in which persons have been denied access to nationality despite longstanding residence in the country. In addition, it may require intensive training of public officials and affirmative efforts to provide documentation to persons who have had difficulty proving their nationality.

- Third, reduce statelessness in particular among children by allowing both parents to transmit their citizenship to their children.
- Fourth, ratify the 1954 and 1961 Statelessness Conventions
- Fifth, where appropriate, regularize the status of former citizens of predecessor States.
- Finally, in some cases, it may be advisable to adopt citizenship rules on the principle of *jus solis*.

## 2. United Nations

Given the global nature of the problem of statelessness, United Nations bodies also have a role to play.

a) The United Nations High Commissioner for Refugees is to be commended for convening this discussion. UNHCR should:

- Re-examine its mandate and capacity to deal with problems of statelessness
- Pursue its existing mandate more vigorously outside Europe—in particular, by expanding its activities in Asia, the Middle East and Africa, including through training for government staff and local officials, technical advice on nationality legislation, and interventions to resolve situations of statelessness and disputed nationality

- Include citizenship in all voluntary repatriation agreements and efforts to seek comprehensive durable solutions for refugees
- Increase collection of data on statelessness.

b) The United Nations Children's Fund (UNICEF):

- Expand its birth registration programmes and monitoring of Article 7 of the CRC, and increase its activities on behalf of stateless children.

c) The United Nations Development Fund for Women (UNIFEM):

- Increase its activities on behalf of stateless women and monitoring of Article 9 of CEDAW.

d) The Office of the High Commissioner for Human Rights (OHCHR):

- Establish a position to deal specifically with issues of nationality and statelessness
- Include nationality and statelessness in all monitoring, reporting, training and protection activities.

e) UN Commission on Human Rights:

- Create a Special Rapporteur for the Rights of Non-citizens that includes statelessness and access to citizenship in its mandate
- Even absent creation of a Special Rapporteur, the Commission or Sub-commission should conduct a global survey and produce a report that focuses on the problem of nationality and statelessness
- Call on all states that have yet to do so to ratify the 1954 and 1961 Statelessness Conventions
- Consider the creation of a specific supervisory mechanism on statelessness

f) The UN Treaty Bodies:

- The Committees on the Elimination of Racial Discrimination (CERD), on the Rights of the Child (CRC), and on the Elimination of Discrimination Against Women (CEDAW) should all monitor issues of access to nationality and statelessness both in country reports and, where appropriate, individual complaints
- CRC should consider issuing a General Comment on Article 7 on child's right to a nationality
- CEDAW should investigate racial discrimination against women in access to or deprivation of citizenship.
- CEDAW should consider issuing a General Comment on Article 9 on women's right to nationality and citizenship.

### 3. Regional Bodies

Regional human rights bodies, including those of the Organization of American States and the African Union:

- Adopt regional nationality legislation (such as, but not necessarily modeled on, the European Convention on Nationality)

- Consider the creation of supervisory mechanisms/ monitoring bodies for regional conventions.