

UNHCR and responses to statelessness

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UNHCR and other actors have stepped up efforts to address statelessness. However, the global impact of statelessness is not yet sufficiently understood and far more needs to be done.

In legal terms, being stateless means that no state considers you a national under the operation of its law. The practical implications of this are very serious. For instance, stateless persons generally are not recognised as persons before the law and face difficulties in travelling, marrying and accessing education and health care. In short, statelessness often means that leading a life like others in society is not possible.¹

Since its creation, UNHCR has worked to provide international protection and to seek durable solutions for stateless refugees who are covered by its Statute and by the 1951 Convention. UNHCR also actively participated in the drafting of the two global statelessness instruments – the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In 1974 the UN General Assembly designated UNHCR as the organisation to which persons claiming the benefit of the 1961 Convention may apply for examination of their claims and for assistance in presenting those claims to state authorities.

The massive increase in statelessness due to the break-up of the USSR, Yugoslavia and Czechoslovakia and the emergence of successor states in the early 1990s underlined the need for a more effective international response to statelessness. As a result, the UN General Assembly entrusted UNHCR with a global mandate to work to prevent and reduce statelessness and to protect stateless persons. UNHCR therefore has a mandate with two distinct elements: to address situations of statelessness which occur around the world and to assist in resolving cases which may arise under the 1961 Convention. The efforts of UNHCR thus far have been facilitated

by a number of developments at the international level.

The changing international context

Behind the label ‘statelessness’ we find a broad range of issues, many of them quite complex, including birth registration, nationality legislation, state succession, migration and international law. But while the sovereign discretion of states in the field of nationality has been gradually eroded since the adoption of the Universal Declaration of Human Rights, in the end it is action by states that is required to prevent and reduce statelessness. UNHCR cannot substitute for states. What UNHCR can do, however, is document gaps in legislative and administrative frameworks and provide assistance to address them. Possession of nationality is closely linked to who ‘belongs’ in a society and as a result acquisition of nationality by an ‘outsider’ will depend to a large degree on political will. Where there is the political will to act, seemingly intractable problems can be resolved.

Fortunately, there is now a greater range of actors involved and their collective efforts are no doubt helping to build the political will of states. The Council of Europe has not only adopted conventions on nationality and statelessness but also mandated a committee of experts to put forward recommendations on measures to give effect to children’s right to a nationality. The Asian-African Legal Consultative Organization adopted a resolution on Legal Identity and Statelessness in 2006. Some states, such as Indonesia, Nepal, Bangladesh and Ukraine, have sought to address statelessness in their own countries, leading by example. Others, such as the US, have increasingly placed addressing statelessness on their foreign policy agenda. NGOs such

as Refugees International and the Open Society Justice Initiative undertake considerable research and advocacy in the area.² There is a growing interest in statelessness in academic circles as well.

Related to this is the growing relevance of international legal standards. Global and regional treaty and ‘soft’ law form an increasingly comprehensive web of standards on issues of prevention and reduction of statelessness and protection of the human rights of stateless persons.³ In large part due to a sustained campaign by UNHCR, there has been a significant, if gradual, increase in the number of States Parties to the two UN treaties designed specifically to address statelessness. The number of parties to the 1954 Convention has now risen to 63. While the number of States Parties to the 1961 Conventions is lower, recent years have seen a steady progress; since 2005 it has been acceded to by states as diverse as Romania, Rwanda, Senegal, New Zealand, Brazil and Finland, bringing the total number of States Parties to 35.

There is also a range of other universal and regional treaties which regulate issues relating to nationality and statelessness, including prohibiting discrimination on the grounds of race and sex and obliging states to grant nationality in specific circumstances.

Identification of statelessness

Understanding the scale of statelessness, its causes and consequences will evidently be a necessary step to addressing the problem. Stateless people are in many ways the ultimate ‘forgotten people’ and identification of statelessness remains a major challenge. Frequently, stateless persons live on the margins of society and are, almost by definition, ‘uncounted’. States may be reluctant to gather more detailed data due to political sensitivities. As a result, statistics on statelessness worldwide

An Indian origin plantation worker outside her house at Chrystler's farm estate, Kotagala, Sri Lanka. A law in 2003 enabled Indian origin Tamil plantation workers to obtain citizenship provided their families had been in Sri Lanka since 1964. Many stateless plantation workers were automatically granted citizenship upon a special declaration but not all of them were reached in the citizenship campaigns.



UNHCR/G. Amarasinghe

are incomplete. UNHCR has published country-level data for some 54 countries referring to a total of 3 million people but estimates that there are possibly about 12 million stateless people worldwide.

Because the identification of statelessness goes beyond statistical reporting, UNHCR has undertaken or funded academic and policy-oriented research, studies on specific countries and field-based research, such as a study on statelessness in Canada⁴ and research on the Bihari/Urdu-speaking population in Bangladesh.⁵

Prevention and reduction

States bear the primary responsibility for preventing and reducing statelessness. One focus of UNHCR's work is therefore the promotion of accessions to the 1961 Convention on the Reduction of Statelessness. The Convention is particularly important because statelessness often results from differing approaches by states to nationality issues and a common set of rules is therefore essential. Nonetheless, all states should institute safeguards against statelessness, regardless of whether they are parties to the 1961 Convention or not.

The UN General Assembly has specifically requested UNHCR to "provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation." UNHCR has therefore provided such advice to dozens of governments around the world on both prevention and reduction of statelessness.

In addition, it collaborated with the Inter-Parliamentary Union to publish *Nationality and Statelessness: a Handbook for Parliamentarians* which has now been published in 16 languages.⁶

Even states which are not party to the 1961 Convention can implement safeguards in their national legislation to prevent and reduce statelessness. In providing technical advice, UNHCR draws on the safeguards found in the text of the Convention but also refers to other human rights treaties. It advocates, for example, that states include a safeguard that nationality should be acquired by all children born in the territory who would otherwise be stateless. This safeguard is explicitly contained in several regional treaties and, as a result, over 90 states already have an obligation to grant nationality to children born in such circumstances.

Also in the area of prevention, lack of birth registration can be an insurmountable obstacle to proving nationality acquired by descent (as the person cannot prove who their parents are), or by birth on the territory (as there is no proof of where the person was born). In Serbia UNHCR has therefore worked with the government to modernise birth registries to make it far easier for people to obtain proof of their identity, including nationality.

Citizenship campaigns

Faced with large-scale (and often protracted) statelessness situations, a number of governments have

undertaken citizenship campaigns, including measures such as granting nationality based on residence or birth in the territory, registration of stateless persons and issuing documentation proving nationality. For example, in 2003 UNHCR provided advice and operational support for a citizenship campaign in Sri Lanka. Over 190,000 formerly stateless Tamils who had been brought over to work on the tea plantations ('Estate Tamils') acquired proof of their new Sri Lankan citizenship. In 2007 Nepal issued proof of nationality to 2.6 million people. More recently, Turkmenistan has conducted a registration drive with support from UNHCR in which some 12,000 people of undetermined nationality have applied for naturalisation and are now awaiting decisions.

Nationality procedures are often unknown to people who are stateless or are sufficiently complex that many people do not understand them. Also, the costs of travel and obtaining documents and photographs mean that many people require financial assistance to do such basic things as register the birth of a child or satisfy documentation requirements for naturalisation. Public information about campaigns and procedures and practical assistance are therefore vital.

In Ukraine, UNHCR has worked with the NGO Assistance for many years to disseminate information on nationality procedures and provide legal aid to persons who are stateless or at risk of being stateless. Similar work is being done by the NGO

Praxus and the Humanitarian Centre for Integration and Tolerance in Serbia. A project with the Norwegian Refugee Council has addressed numerous cases relating to late birth registration and documentation in Cote d'Ivoire. These legal aid programmes have resolved tens of thousands of cases. However, many people do not receive the advice and support they desperately need which is why such programmes need to be implemented more systematically.

Very practical measures of assistance can go beyond advice and assistance in filing applications. In the former Yugoslav Republic of Macedonia, UNHCR's partner, the Legal NGO Network, accompanied persons whose application for nationality had been rejected and helped them to file appeals, in some cases up to the Supreme Court.

Holding a citizenship campaign does not mean that all problems are solved. Strict deadlines in citizenship campaigns carry the risk that part of the population, usually particularly vulnerable groups, may be left out despite efforts to include everyone. This occurred in Nepal, where UNHCR is now working with a range of partners to address the gaps.⁷

In Sri Lanka, UNHCR and UNDP are implementing an 'Access to Justice' project where mobile registration clinics allow those Estate Tamils not covered by the citizenship campaign to obtain identity documents.

Although legally these people already have Sri Lankan nationality, they face difficulties obtaining a National Identity Card. In Ukraine, several years after major naturalisation initiatives, the NGO Assistance continues to help a remaining population of some 3,500 persons who had returned after deportation during the Soviet period.

Acquiring a nationality and obtaining documentation often do not fully remedy the discrimination which in many cases is both a cause and at the same time a major consequence of statelessness. Formerly stateless persons often need assistance to ensure full integration into society and the enjoyment of their rights on an equal footing with other nationals, that is, to make their nationality fully effective. As a general rule, this requires 'mainstreaming' formerly stateless persons in existing programmes. In Bangladesh, UNHCR has advocated for the full inclusion of the Urdu-speaking populations (often referred to as Biharis), who were long treated as stateless, in poverty reduction programmes.⁸

Protection

Despite efforts to prevent and reduce statelessness, the reality is that statelessness continues to occur and progress to resolve existing situations is often very slow. Until they are able to acquire an effective nationality, stateless persons need the dignity, stability and protection that come with recognition of their

status and enjoyment of their human rights. The 1954 Convention sets out a minimum set of rights which is complemented by standards set out in UN and regional human rights treaties. Protection, however, can only be temporary while exploring avenues towards the acquisition of a nationality.

UNHCR's activities in the area of protection focus mainly on the promotion of accession to the 1954 Convention and on advocacy and technical advice based on that Convention and relevant human rights standards. It has provided advice to a range of states on compatibility of national legislation with the 1954 Convention and on establishment of procedures to determine whether individuals are stateless.

Interventions by UNHCR relating to protection of stateless persons have tended to focus on broad questions of law and policy but it has also intervened in individual cases, mainly through legal aid programmes run in conjunction with NGOs.

Conclusion

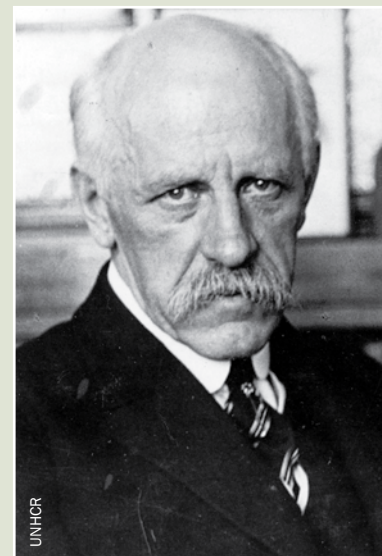
UNHCR has undertaken a wide range of activities to address statelessness but clearly more needs to be done. In acknowledgement of this, addressing statelessness more effectively is now one of UNHCR's Global Strategic Objectives. Notably, statelessness is one of four 'pillars' in the new budget structure which

Fridtjof Nansen

In the entrance hall of the UNHCR headquarters in Geneva stands a bust of Fridtjof Nansen. Nansen was a scientist and an explorer, as well as a diplomat, politician and great humanitarian on behalf of refugees and stateless people. He was the first High Commissioner for Refugees, appointed in 1921 by the League of Nations. His mandate initially covered people in flight from or expelled by the new Soviet Union. A decree of 1921 had deprived most of them of their nationality and they were thus stateless. Nansen's solution was to invent what became known as 'the Nansen Passport' which, while not a

passport as such, allowed the holder to travel and have a legal identity. The Nansen Passport was honoured by the governments of 52 countries and helped millions of stateless Russians and others to have rights.

After Nansen's premature death in 1930, often attributed to his overwork on behalf of refugees and stateless people, the Nansen International Office for Refugees took over the work of the High Commission and received the Nobel Peace Prize in 1938. UNHCR was set up in 1951. It gives the Nansen Refugee Award every year for outstanding work on behalf of refugees.



Fridtjof Nansen in New York in 1929

becomes fully operational in 2010. Training and policy guidance to staff and partners are being stepped up.

As UNHCR continues to move to implement its mandate more systematically, it will seek to work with a broader range of states, national and international NGOs and other international agencies. Other organisations need to look at how statelessness intersects with their own work. NGOs working with women, for example, can consider how gender discrimination in nationality legislation leads to statelessness, while those working with minority populations can seek to address the impact of statelessness on minorities. Universities should look to include statelessness in their courses and research priorities.

The existing international legal framework, lessons learned from responses in recent years and the

growing number of actors involved are all positive. However, given the magnitude of the problem, the often complex issues which cause and perpetuate statelessness and the sometimes deeply rooted political opposition to solutions, a far greater international effort is needed.

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Most of the documents referred to in this article and other documents related to statelessness and to UNHCR's policies and activities can be found at <http://www.unhcr.org/statelessness/> or <http://www.unhcr.org/refworld/statelessness.html>

1. See the issue of *Refugees* magazine which highlights many of these experiences <http://www.unhcr.org/publ/PUBL/46dbc0042.html>

2. See article p25.

3. see Box below.

4. <http://www.unhcr.org/home/PROTECTION/40629fc7.pdf>

5. Eric Paulsen, 'The Citizenship Status of the Urdu-speakers/ Biharis in Bangladesh', *Refugee Survey Quarterly* vol 25, Issue 3, 2006.

6. Arabic, Bulgarian, English, French and German versions of the Handbook available at <http://www.unhcr.org/refworld/docid/436608b24.html>,

7. See article p28.

8. See article p30.

Statelessness: An Analytical Framework for Prevention, Reduction and Protection

This new 94-page UNHCR publication aims to help states, UNHCR and partners to better understand the causes of statelessness, the consequences and the protection needs of the affected persons; to minimise the risks in specific contexts; and to develop strategies to reduce the causes of statelessness and meet the needs and protect the rights of the stateless. Online at <http://www.unhcr.org/protect/PROTECTION/49a271752.pdf> For hard copies please email HQP04@unhcr.org.

Statelessness and nationality: legal instruments

The right to nationality is covered not only by those international instruments specific to statelessness – the 1954 Convention relating to the Status of Stateless Persons (http://www.unhcr.ch/html/menu3/b/o_c_sp.htm) and the 1961 Convention on the Reduction of Statelessness (http://www.unhcr.ch/html/menu3/b/o_reduce.htm) – but also by a large number of other instruments. The limited number of States Parties to the 1954 and 1961 Conventions underlines the importance of general human rights obligations relating to the right to a nationality. These include:

- Hague Convention on Nationality (1930) <http://tiny.cc/HagueNationality1930>
- OAS Convention on the Nationality of Women (1933) <http://tiny.cc/OASNationalityWomen1933>
- Convention on the Nationality of Married Women (1957) <http://tiny.cc/NationalityMarriedWomen1957>
- Declaration of the Rights of the Child (1959) <http://tiny.cc/RightsofChild1959>
- Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1963) <http://tiny.cc/MultipleNationality1963>
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965), which directs States Parties to guarantee racial equality in the enjoyment of the right to nationality. <http://tiny.cc/CERD1965>
- International Covenant on Economic, Social and Cultural Rights (1966) <http://tiny.cc/EconomicSocialCultural1966>
- International Covenant on Civil and Political Rights (1966), which recognises the right of “every child ... to acquire a nationality” <http://tiny.cc/CivilPolitical1966>
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), which requires States

Parties to “grant women equal rights with men to acquire, change or retain their nationality.” Crucially, CEDAW also states that States Parties must ensure equality between men and women in terms of conveying nationality to one’s children. <http://tiny.cc/CEDAW1979>

- Declaration on the Human Rights of Individuals Who are not Nationals of the Country In which They Live (1985) <http://www.un.org/documents/ga/res/40/a40r144.htm>
- Convention on the Rights of the Child (1989), which guarantees children’s right to acquire a nationality and includes an obligation on states to utilise their laws in order to avoid statelessness among children. <http://tiny.cc/RightsofChild1989>
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) which states that “each child of a migrant worker shall have the right to ... a nationality.” <http://tiny.cc/MigrantWorkers1990>
- Convention on the Rights of Persons with Disabilities (2006), which emphasises the right of a person with disabilities to acquire a nationality, not to be arbitrarily deprived of their nationality on the basis of disability and to obtain, possess and utilise documentation of their nationality; it also reiterates the specific right of children with disabilities to acquire a nationality after birth. <http://tiny.cc/Disabilities2007>

In addition, regional instruments like the European Convention on Nationality (<http://tiny.cc/EuropeanNationality1997>) also contribute to protecting the rights of stateless people. In April 2008, the Permanent Council of the Organisation of American States approved the Inter-American Program for a Universal Civil Registry and “the Right of Identity” (<http://tiny.cc/InterAmericanCivilRegistry2007>).

Although the record of ratification of relevant international instruments varies, the great majority of states are parties to one or several treaties that guarantee the right to citizenship.