

Statelessness

Meeting with Mahanirban Calcutta Research Group
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Presentation Outline

1. Definition and Key Concepts
2. The International Legal Framework
3. UNHCR's Mandate

Definition and Key Concepts

Definition: Stateless Person

“A person who is not considered as a national by any state under the operation of its law”

- Article 1(1) of the 1954 Convention Internationally recognized status for stateless persons
- Customary international law
- Non-refugee stateless persons
- 79 States Parties (dramatic increase in the last few years)
- UNHCR Guidelines on the definition of a “Stateless Person” (2012) (Refworld)

De Facto Statelessness

De Facto Statelessness

Not defined in any international law treaty.

Traditional approach - a *de facto* stateless person:

- Possesses a nationality
- Is outside his or her country of nationality
- Is denied protection of the State of nationality, in particular, diplomatic protection and assistance, or the right to return.

Care must be taken to ensure that those who qualify as “stateless persons” under Article 1(1) are not mistakenly referred to as *de facto* stateless persons.

Further detail in UNHCR’s Guidelines (para 8)

Undetermined Nationality

Unknown if person possesses a nationality or is stateless – preliminary review

Person must:

- Lack proof of possession of any nationality
 - Have links to more than one State (birth, death, marriage, habitual residence)
 - Be perceived and treated by authorities in the State of residence as possessing links which give rise to nationality of another State on the basis of historic ties, race, ethnicity, language or religion
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- Wide range of contexts
 - Resolution through confirmation of nationality/ identity documentation
 - Excludes those who are not cooperating with efforts to establish their identity or nationality

Stateless refugee

A person who is not considered as a national by any state under the operation of its law *and* meets the definition of a refugee in Article 1 of the 1951 Refugee Convention.

- Falls under **UNHCR's refugee mandate**
- Enjoys protection of the 1951 Refugee Convention
- When ceasing to be a refugee, may still be stateless and need assistance to acquire a nationality

The International Legal Framework

Addressing Statelessness

1. How can stateless people be protected?

- Understand the link between nationality & rights
- Analyse challenges experienced by the stateless
- Apply international standards

2. How can statelessness be avoided?

- Understand the causes of statelessness
- Analyse nationality law and practice
- Apply international standards

What is nationality?

- **Nationality:** the legal bond between a person and a State
- **Nationality is a form of membership that results in rights and duties, e.g.:**
 - Right to enter and reside in the state; political rights
 - Duty to perform military service
 - The ‘right to have rights’?
- **Nationality vs. citizenship**

Protection Challenges

What challenges do stateless people face?

- Limited access to social and economic rights - work, education, housing, healthcare
- No travel or identity documents
- Long-term or indefinite detention; expulsion
- Inability to contract marriage or register births
- Exclusion from political processes

International Standards

Is nationality the foundation for rights?

- No, international law extends many rights to everyone, regardless of nationality or statelessness

What rights do stateless people enjoy?

- Human rights law
- General principles
- 1954 Statelessness Convention

International Standards

Human rights law

- States must protect human rights of everyone under their jurisdiction, including non-nationals!
- ICCPR, ICESCR, CRC, CEDAW, CERD, etc. are all relevant to the treatment of stateless people
- Some rights may be reserved for citizens (e.g. political)

General principles

- Non-discrimination and equality before the law

1954 Statelessness Convention

- **1954 Convention relating to the Status of Stateless Persons**
 - Protects *non-refugee* stateless people
 - International legal definition
 - Minimum level of treatment to be enjoyed
 - Rights similar to the 1951 Refugee Convention
 - No risk of persecution, no protection against refoulement
 - States Party = 79 (massive increase in accessions in past few years)

How can Statelessness be Avoided?

Causes of Statelessness

What causes statelessness?

- Gaps in / conflicts of nationality laws
- Arbitrary deprivation of nationality
- Processes relating to state succession
- **Common underlying factor:** discrimination
- **Common contributing factors:** migration, lack of birth registration, administrative obstacles

How can Statelessness be Avoided?

Nationality Law Analysis

How is nationality acquired?

- Family links: parents, spouse
- Territorial links: place of birth, residence

What gaps might there be in the law?

- No safeguards to prevent statelessness at birth
- Loss/renunciation of only nationality permitted
- Gender or racial discrimination

How can Statelessness be Avoided?

International Standards

Are states free to regulate nationality?

- No, international law now sets some limits on the freedom of states to regulate access to nationality

What limits are set by international law?

- Human rights law
- General principles
- 1961 Statelessness Convention

How can Statelessness be Avoided?

International Standards

Human rights law...

- Everyone has the right to a nationality!
- Article 15 UDHR
- Article 5 CERD
- Article 7 CRC
- Article 9 CEDAW

General principles...

- Non-discrimination and equality before the law

The Statelessness Conventions

- **1961 Convention on the Reduction of Statelessness**
 - Avoiding statelessness
 - Concrete safeguards for States to include in their nationality law, where a person would otherwise be stateless
 - Not an international law on nationality, but a common framework for avoiding statelessness
 - States Party = 55 (massive increase in accessions in past few years)

UNHCR's Mandate

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4 Areas (Ex Com Conclusion 2006):

- **Identify** Stateless Persons
- **Prevent** Statelessness
- **Reduce** Statelessness
- **Protect** Stateless Persons
 - GA Resolutions A/RES/50/152, 1995; A/RES/61/137, 2006
 - Ex Com Conclusion 106
 - Mandate is universal, not covering only countries party to the statelessness conventions