



*Australian Refugee Rights Alliance*

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## Responses to Statelessness

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## RESPONSES TO STATELESSNESS<sup>1</sup>

### INTRODUCTION

Despite the assertion in the 1948 Universal Declaration of Human Rights that 'everyone has a right to a nationality'<sup>2</sup> there are stateless people in at least 49 countries. While UNHCR's official global estimate of stateless persons is 5.8 million, the agency believes that the true total is closer to 15 million.<sup>3</sup>

People who are stateless are not recognised as citizens by any country in the world. Lacking access to the rights, services, and legal documentation available to citizens, the world's stateless populations form a discrete group with varying degrees of vulnerability. Stateless populations face unique challenges, rely on specific instruments for their protection, and require specialised responses from the international refugee regime.

This briefing paper paints a picture of statelessness today, outlines the consequences of statelessness, reviews current legislation, highlights current international efforts to address statelessness and concludes with policy recommendations.

### STATELESSNESS TODAY

Stateless populations are not limited to one geographic region. Today, the largest known stateless populations in the world can be found in: south and southeast Asia (more than 4 million); the Baltics (more than 500,000); the Middle East (more than 500,000); and Africa (more than 100,000).<sup>4</sup>

States that may host significant stateless populations for which there are no reliable data include: India, Cambodia, Sri Lanka, Thailand, Malaysia, Ethiopia, the Democratic Republic of Congo, Angola, Zimbabwe, Niger, Côte d'Ivoire, Turkmenistan, and the Dominican Republic.<sup>5</sup>

### Sources of statelessness: unintentional vs. intentional statelessness

Current efforts are underway to naturalise massive stateless populations of tea-pickers in Sri Lanka, the Madhesis in Nepal, the Biharis in Bangladesh, and the *Bidoon* in Kuwait, so numbers, where available, may decrease significantly in the coming years. Generally, these populations derive from 'avoidable forms of statelessness that reflect quirks of history.'<sup>6</sup> These stateless populations live in countries that are relatively willing to recognise the populations of stateless, where 'unintentional' laws or changes in nation-state borders have created accidental stateless populations.

This is in stark contrast to populations where countries actively resist or are reluctant to allow the naturalisation of portions of their population. In these instances, which may be termed 'intentional' statelessness, deliberate policies and desires from the governments in question render the populations without nationality.

Some of the largest known 'intentional' and unresolved stateless situations include:

- the Muslim Rohingyas from Northern Rakhine state in Burma, most of whom (670,000) live in Burma and a fraction of whom (up to 100,000) live as refugees in Bangladesh;
- the 107,000 ethnic Nepali Lhotshampas living as refugees in Nepal and an untold number living in Bhutan;
- millions of Palestinians living in several countries of the Middle East; and
- approximately 100,000 Nubians brought from Sudan to Kenya by the British during the colonial era.<sup>7</sup>

### CONSEQUENCES OF STATELESSNESS

Just as the reasons for which people remain stateless vary, so too do the conditions under which stateless people live. In situations where statelessness results from kinks in a national system, the difficulties of statelessness can be remedied with policies and laws that correct these kinks. But in cases where stateless is a result of broader political issues that prevent the host state from recognising the stateless population, statelessness can produce grave difficulties.

Possible consequences of statelessness touch on all aspects of life, including financial, social, and political effects.

- *Financial*: statelessness often leads to prohibitions on working legally, owning property, receiving a pension, and opening a bank account. Further, stateless people often cannot obtain licenses for certain types of livelihoods (such as fishing) and may be vulnerable to exploitation for cheap labour.
- *Social*: stateless people are often not permitted to attend school or university, are prohibited from getting married, and have no legal recourse in registering family members for births and deaths. They face difficulties in travelling, obtaining driver's license and other forms of identification, and accessing social services such as admittance to hospitals.
- *Political*: stateless people can neither vote nor access the national justice system.

Further, because the children of stateless people are often not recognised as citizens, the consequences listed above are passed on to their children 'as if it were some sort of genetic disease'.<sup>8</sup>

## INTERNATIONAL LAW AND STATELESSNESS

Several international instruments seek to address the issue of statelessness:

- The 1948 Universal Declaration of Human Rights states that everyone has the right to a nationality, but does not provide guidelines as to how stateless persons should obtain a nationality.
- The 1954 Convention relating to the Status of Stateless Persons sets out a legal framework to inform the treatment of stateless persons, but has only been ratified by 62 states.
- The 1961 Convention on the Reduction of Statelessness advises states on the means to reduce statelessness, but has only been ratified by 34 states.

While these few international instruments serve to try to protect the stateless or correct the problem of statelessness, part of the inherent problem of statelessness is that there are fewer mechanisms for protection because the legal umbrella that covers the stateless population is simply smaller than for other populations.

One example of how statelessness denies protection afforded to others is the aforementioned Rohingya population in Burma and Bangladesh. It has been noted that in Bangladesh, the Rohingyas live a 'protection vacuum', subject to bribery, harassment, and arbitrary detention.<sup>9</sup> In Burma, they have had their properties and land confiscated and been prohibited from military service and participation in the civil service as part of the withholding of their citizenship.<sup>10</sup> In both countries, statelessness means that Rohingyas cannot rely on the international community to afford them the same protection as other groups. The 'Responsibility to Protect' (R2P) doctrine was promulgated by the UN Security Council to protect populations who suffer from extreme human rights abuses and lack of protection from their own governments.<sup>11</sup> R2P asserts that it is the responsibility of the international community not only to react, but to prevent conflict and rebuild an afflicted region when a state cannot protect its citizens.<sup>12</sup> It must be noted however, that the threshold for engagement for R2P is that a state is 'unwilling or unable' to protect its *citizens* from crimes against humanity. Because the Burmese government denies that Rohingyas are citizens of Burma, they are not covered under R2P doctrine.<sup>13</sup>

## CURRENT POLICY RESPONSES TO STATELESSNESS

Although UNHCR has had a mandate to address statelessness since 1974,<sup>14</sup> in more recent years it has taken concrete steps to identify, prevent, and reduce statelessness and protect those who remain stateless.<sup>15</sup>

First, the agency has encouraged cooperation between states and UN agencies to **identify** stateless populations by sharing research and technical advice. These efforts have borne fruit as some populations, such as some of the hill tribes in Thailand and the Biharis in Bangladesh, have been recognised as stateless.

Second, UNHCR has recommended that states **prevent** statelessness by streamlining cumbersome registration processes and developing more comprehensive nationality laws. Ironically, *the very effort to develop standard practices to define nationality for some people has caused the exclusion of others*. For example, following the independence of Kuwait, Bahrain and Qatar in the 1960s and 1970s, the

registration of people in these Gulf states created the rights of citizenship for most of the population. The *Bidoon*, however, a nomadic group, were excluded from the registration and remain stateless today. In Kuwait, they continue to be considered illegal residents and suffer detention, police harassment, lack of travel documentation, and cumbersome processes in order to marry.<sup>16</sup> Noting this phenomenon, it is important to keep in mind that even as states correct the poorly designed or malfunctioning laws that can lead to statelessness, new policies and regulations have the potential to exclude others.

Third, UNHCR has encouraged states to **reduce** statelessness by acceding to the 1961 Convention and integrating individuals in protracted statelessness situations. But because states are the barrier to opening their doors to citizenship, this recommendation is very often difficult to implement. For example, Nepal has two stateless populations: the Madhesis, who are stateless because of a lack of documentation, and the Lhotshampas who fled Bhutan because their citizenship was called into question there. The first population, an example of 'unintentional' statelessness, recently began to obtain citizenship in large numbers. The second, an example of 'intentional' statelessness, remain stateless today.

Finally, UNHCR's recommendations to **protect** stateless populations have promoted improved UN training, greater state awareness of the issue, and a push for accession to the 1954 Convention. Thus far, the record has shown that the results of this effort are mixed. Only one more country has acceded to the 1954 Convention since these recommendations were developed and there has been a greater awareness of the plight of stateless populations by states and the international community. There is a continuing protection gap, however, particularly where stateless populations are 'intentional'.

## POLICY RECOMMENDATIONS

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UNHCR has taken important steps to address statelessness, as reflected in the efforts described above. The following recommendations are intended to supplement an already important body of policy work.

- Continue to improve birth registrations globally so that there are fewer stateless people in the next generation.
- Bear in mind that the establishment of citizenship for some may cut off the services and rights of others, and heed warnings for such occurrences in order to develop appropriate responses.
- Monitor future possibilities for statelessness, such as the formation of new states, or, as will be increasingly evident, those who may become stateless because of environmental damage. Fights over natural resources and services to be delivered because of natural disasters may lead to a manipulation of citizenship.
- Pay particular attention to protecting 'intentional' stateless populations, as these people are likely to be in the poorest conditions.
- Continue to focus on populations where no accurate data exist.
- As much as possible, bridge the protection gap that exists in situations where there is disagreement among states and UNHCR regarding the status of particular groups.

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<sup>1</sup> This paper draws on a 2007 ARRA paper, 'Statelessness: Facts and Recommendations' by Graham Thom, Chris Dooley, Corey Donahue, Sophie Peer, and Jane McAdam.

<sup>2</sup> UDHR 1948, Article 15.

<sup>3</sup> UNHCR, 'The World's Stateless People', *Refugees* 147:3 (2007), pp. 8-9.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> 'It's tough to live in limbo', *Economist*, 29 November 2007.

<sup>7</sup> UNHCR 2006 Statistical Annex, table 14.

<sup>8</sup> UNHCR, 'The World's Stateless People', *Refugees* 147:3 (2007), p. 6.

<sup>9</sup> Eileen Pittaway, 'The Rohingya Refugees in Bangladesh: A Failure of the International Protection Regime', in Howard Adelman, ed. *Protracted Displacement in Asia: No Place to Call Home*. 2008, forthcoming.

<sup>10</sup> *Ibid.*

<sup>11</sup> UNSC (2006), Resolution 1674, at . Accessed 24 May 2008.

<sup>12</sup> 'The Responsibility to Protect', International Commission on Intervention and State Sovereignty', December 2001.

<sup>13</sup> Eileen Pittaway, 'The Rohingya Refugees in Bangladesh: A Failure of the International Protection Regime', in Howard Adelman, ed. *Protracted Displacement in Asia: No Place to Call Home*. 2008, forthcoming.

<sup>14</sup> UNHCR's mandate to address statelessness originates in two UN General Assembly resolutions: resolution 3274 (XXIX) of 10 December 1974 and resolution 31/36 of 30 November 1976.

<sup>15</sup> See recommendations in UNHCR ExCom 2006 Conclusion No 106 (LVII) on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons.

<sup>16</sup> Refugees International, 'About Being Without: Stories of Stateless in Kuwait,' October 2007.