

LEGAL PERSPECTIVES ON STATELESSNESS AND REFUGEE RIGHTS

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Abstract

Statelessness poses significant challenges to the protection of refugees within the international human rights framework. Stateless persons, often marginalized and vulnerable, face numerous obstacles in accessing basic rights and protections. This paper explores the intersection of statelessness and refugee protection, focusing on the rights and experiences of stateless individuals in forced migration contexts. Drawing on legal frameworks, case studies, and empirical research, the paper examines the multifaceted nature of statelessness and its implications for refugee rights. It analyses the barriers stateless refugees encounter in accessing asylum, protection, and durable solutions, including challenges related to documentation, legal recognition, and nationality. Moreover, the paper discusses the impact of statelessness on vulnerable groups such as children, women, and minorities, highlighting intersecting forms of discrimination and exclusion. Through a human rights lens, the paper evaluates existing international and regional mechanisms for addressing statelessness and protecting the rights of stateless refugees. It identifies gaps and shortcomings in current legal frameworks and proposes recommendations to strengthen the protection of stateless persons within the refugee regime. By shedding light on this underexplored aspect of forced migration, this paper contributes to ongoing efforts to enhance the rights and well-being of stateless individuals displaced by conflict, persecution, and human rights violations.

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1.0 INTRODUCTION

In the complex tapestry of human displacement, where narratives of refuge, asylum, and migration intertwine, there exists a cohort often overlooked yet profoundly vulnerable: the stateless refugees. Within the broader discourse on forced migration, the plight of stateless individuals emerges as a critical intersection point, demanding meticulous examination. Stateless persons, bereft of the protective cloak of nationality, find themselves ensnared in a web of legal limbo and social marginalization, navigating treacherous paths towards basic rights and protections. The nexus between statelessness and refugee protection is a terrain fraught with challenges, complexities, and systemic injustices. While international human rights frameworks ostensibly provide robust safeguards for refugees, the reality for stateless refugees paints a starkly contrasting picture. Their experiences epitomize the fissures within the existing legal and institutional apparatuses, wherein the promise of asylum and protection often remains elusive. This paper embarks on a comprehensive exploration of the multifaceted landscape of statelessness within forced migration contexts. Through a meticulous examination of legal frameworks, empirical evidence, and illuminating case studies, it delves into the intricate dynamics shaping the rights and experiences of stateless individuals on the move. By dissecting the myriad barriers, they encounter in accessing asylum, protection, and durable solutions, this paper sheds light on the intricate hurdles impeding their journey towards security and stability. At the heart of this inquiry lies an acknowledgment of the profound impact of statelessness on the lives of vulnerable groups, including children, women, and minorities. Their narratives unveil intersecting forms of discrimination and exclusion, amplifying the urgency of addressing the root causes and systemic manifestations of statelessness within the refugee regime. Through a rigorous human rights lens, this paper critically evaluates the efficacy of existing international and regional mechanisms in addressing the plight of stateless refugees. It interrogates the gaps, shortcomings, and structural deficiencies inherent in current legal frameworks, illuminating the imperative for nuanced interventions and policy reforms. By foregrounding this often-overlooked facet of forced migration, this paper seeks to catalyse meaningful discourse and action towards enhancing the rights and well-being of stateless individuals displaced by conflict, persecution, and human rights violations. In doing so, it endeavours to contribute to the ongoing global efforts aimed at dismantling the barriers of statelessness, forging pathways towards dignity, inclusion, and justice for all displaced persons. As we embark on this journey of exploration, let us heed the voices of the stateless refugees, whose resilience amidst adversity

serves as a poignant reminder of our collective responsibility to uphold the fundamental principles of human rights and dignity in the face of displacement.

2.0 UNDERSTANDING THE ISSUES

Statelessness refers to the condition of individuals who are not recognized as citizens by any country under its national laws. This lack of citizenship can occur due to various reasons, such as being born in a territory where citizenship is not automatically granted, having parents with conflicting nationalities, or experiencing changes in national borders or laws that leave individuals without citizenship. Statelessness can also arise from the loss or revocation of citizenship, which might happen due to marriage, birth outside the country of nationality, or changes in legal provisions.

Forced migration is the compelled movement of individuals who flee due to threats of harm or death. It stems from conflicts like civil wars or persecution based on religion or ethnicity, and natural disasters such as floods or droughts. Those affected include refugees, internally displaced persons, and asylum seekers. Forced migration inflicts psychological and physical trauma, often leading to conditions like depression and PTSD. Examples include the Syrian Civil War, which triggered the Syrian refugee crisis, and climate-induced displacements, such as in Bangladesh due to sea level rise.

A refugee is someone who has been compelled to leave their home country due to various forms of persecution, violence, or conflict. This could be rooted in reasons such as race, religion, nationality, political beliefs, or belonging to a particular social group. Often, refugees are unable to return home due to the dangers they face there, which could include threats to their lives or freedom. Causes for becoming a refugee are diverse, ranging from war to ethnic or religious tensions, which force individuals and families to seek safety and asylum elsewhere.

On the other hand, a stateless person is an individual who lacks citizenship in any country. Citizenship establishes a legal connection between a government and an individual, granting certain rights and responsibilities. However, statelessness can arise due to various factors, such as legal, technical, or administrative issues, including gaps in documentation or changes in national borders. Despite the fundamental right to nationality proclaimed in the Universal Declaration of Human Rights, many people find themselves without citizenship, which deprives them of basic rights and protections. The Universal Declaration of Human Rights underlines that **“Everyone has the right to a nationality.”**³

³ Article 15- Universal Declaration of Human Rights

It's important to note that the true scale of statelessness is likely much larger than officially reported figures. Many countries do not provide comprehensive data on statelessness, and some of the most populous nations with significant stateless populations do not report this issue at all. This lack of data obscures the full extent of the problem, making it challenging to address effectively on a global scale. Therefore, efforts to address statelessness must involve not only raising awareness but also improving data collection and implementing policies to prevent and reduce statelessness worldwide.

3.0 LEGAL FRAMEWORKS FOR PROTECTING STATELESS REFUGEES

Article 1 - Definition of the term "stateless person"

For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

This Convention shall not apply:

- They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
- They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
- They have been guilty of acts contrary to the purposes and principles of the United Nations.

Statelessness poses challenges within international law, as individuals lacking citizenship lack typical protections. However, international humanitarian law addresses rights and protections of stateless individuals, notably in armed conflicts. According to Article 73 of Additional Protocol I (API) to the Geneva Conventions, stateless persons are treated as civilians, granted protections during conflicts. Additionally, Articles 35-46 of the Fourth Geneva Convention (GCIV) stipulate rights for stateless persons akin to foreign nationals in conflict zones. Two conventions address statelessness: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The latter focuses on preventing statelessness, requiring states to grant nationality to those born within their territory or with at least one parent's nationality. The former sets minimum standards for stateless persons' treatment, reaffirming rights under host state laws, including family, personal, property, and movement rights, protection against expulsion, and access to courts and services. These

conventions complement each other, aiming to prevent statelessness and protect the rights of stateless individuals within the international legal framework.

Rights under the Convention Relating to the Status of Stateless Persons⁴,

Family Rights, Respect for Personal Status, Freedom of Conscience, and Religion (Arts. 4, 12):

Article 4: Stateless persons have the freedom to practice their religion and educate their children like nationals.

Article 5: No diminishment of rights or benefits granted by a state to stateless persons outside the Convention.

Article 6: Stateless persons must fulfill requirements like nationals to enjoy certain rights, except where impossible due to statelessness.

Article 7: Treatment equal to aliens by the state, with exemptions after three years' residence.

Article 8: No exceptional measures solely based on previous nationality, unless prevented by national legislation.

Article 9: Provisional measures in grave circumstances in the interest of national security.

Article 10: Recognition of enforced residence during WWII and uninterrupted residence periods for certain purposes.

Article 11: Encouragement of settlement for stateless seamen.

Article 12: Personal status determined by domicile or residence law, ensuring respect for related rights.

Right to Property (Arts. 13, 14):

Article 13: Treatment at least as favorable as aliens regarding property acquisition and rights.

Article 14: Protection for industrial and artistic property in habitual residence, and comparable protection in other Contracting States.

Right of Association (Art. 15):

Article 15: Favorable treatment regarding non-political and non-profit associations and trade unions.

Right of Access to Courts (Art. 16):

Article 16: Access to courts and legal assistance equivalent to nationals in habitual residence, with similar treatment elsewhere.

⁴ https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

Right to Engage in Different Professions (Arts. 17–19):

Article 17: Right to wage-earning employment, with consideration for assimilating rights to nationals.

Article 18: Right to self-employment in various fields, with treatment comparable to aliens.

Article 19: Favorable treatment for practicing a liberal profession.

Right to Benefit from Various Social, Administrative, and Other Public Services (Arts. 20–25):

Articles 20–25: Equal treatment with nationals regarding rationing, housing, education, public relief, labor legislation, social security, and assistance when foreign authorities are inaccessible.

Right to Freedom of Movement, Travel Documents, and Transfer of Assets (Arts. 26–30):

Articles 26–30: Right to choose residence, move freely, receive identity and travel papers, avoid higher fiscal charges, and transfer assets for resettlement purposes.

Respect for Rights in Terms of Expulsion and Naturalization (Arts. 31, 32):

Article 31: Expulsion only for national security or public order reasons, with due process, evidence submission, appeal rights, and reasonable period for seeking legal admission elsewhere.

Article 32: Facilitation of assimilation and naturalization, expediting proceedings and minimizing costs.

The Global Consultations on International Protection, initiated by UNHCR in 2001, aimed to assess the evolution of refugee protection since the 1951 Convention, fostering dialogue among stakeholders. It comprised three tracks: ministerial meetings, expert roundtables, and UNHCR Executive Committee sessions. The resulting Declaration of States Parties reaffirmed commitments to refugee protection and stressed the importance of cooperation for durable solutions. Expert roundtables addressed interpretative challenges of the 1951 Convention, such as cessation clauses and family unity, providing guidance for consistent application. Meanwhile, UNHCR Executive Committee meetings focused on issues beyond the Convention's scope, like registration and refugee protection in mass influx situations. The Consultations facilitated dialogue among diverse stakeholders, promoting understanding and consensus on key protection principles. Despite not resolving all interpretative differences, they paved the way for UNHCR Guidelines on International Protection. The Agenda for Protection, adopted in 2002, outlined six goals to strengthen refugee protection, including enhancing implementation of the Convention, sharing burdens equitably, and addressing security concerns. It serves as a comprehensive action plan for UNHCR, governments, and partners. The UNHCR 2004 process,

launched towards the end of the Consultations, aimed to bolster UNHCR's position within the UN system and enhance multilateral support. It led to institutional priority-setting and a UN General Assembly resolution lifting the time limitation on UNHCR's mandate. Convention Plus, initiated in 2003, seeks special agreements to enhance refugee protection beyond the 1951 Convention. It focuses on strategic resettlement, development assistance for durable solutions, and addressing irregular secondary movements, aiming to bridge gaps in international protection. Convention Plus aims to address gaps in refugee protection by fostering multilateral cooperation and responsibility sharing. It seeks to resolve challenges related to resettlement, development assistance, and irregular secondary movements, complementing efforts to achieve comprehensive solutions for protracted refugee situations.

4.0 BARRIERS IN PROTECTION OF REFUGEES

1. **Rising refugee populations:** The number of refugees globally has surged, surpassing 20 million by 2003, reflecting ongoing conflicts and human rights abuses worldwide.
2. **Shift in refugee demographics:** Refugee populations have diversified, with asylum seekers originating from various countries and ethnic backgrounds, complicating the management of refugee flows.
3. **Decreasing asylum applications:** While industrialized countries have seen a decline in asylum applications, negative attitudes towards asylum seekers persist, contributing to restrictive asylum policies.
4. **Concerns about mixed migration:** States grapple with managing asylum systems inundated by migrants with mixed motives, including economic migrants and those seeking refuge, straining resources and administrative capacities.
5. **Tightening asylum policies:** Industrialized nations enact measures to prevent unauthorized entry and restrict access to asylum procedures, citing concerns about national security and societal stability.
6. **Disproportionate burden on developing countries:** Developing nations hosting large refugee populations lack adequate support, leading to strained resources, security challenges, and limited capacity for long-term refugee care.
7. **Unequal humanitarian aid distribution:** Humanitarian assistance often prioritizes high-profile crises, neglecting protracted refugee situations in regions like Africa, exacerbating the suffering of vulnerable populations.

8. **Limited durable solutions:** Many refugees face uncertainty and lack clear pathways to durable solutions such as repatriation, resettlement, or local integration, prolonging their displacement and vulnerability.
9. **Protection concerns:** Refugees encounter discrimination, violence, and exploitation, both within refugee camps and in host communities, further exacerbating their plight and hindering their ability to rebuild their lives.
10. **Challenges of repatriation:** Facilitating the return of refugees to their home countries entails significant logistical and developmental hurdles, including rebuilding infrastructure, ensuring sustainable reintegration, and addressing ongoing security concerns.

India's refugee protection framework presents challenges due to its dual system of refugee recognition. Refugees from non-neighbouring countries and Myanmar must seek recognition from UNHCR in New Delhi, while those from neighbouring countries must approach the Ministry of Home Affairs directly. However, India lacks a defined legal framework for refugee protection, relying on arbitrary executive policies and judicial pronouncements. While UNHCR's recognition of refugee status is not widely recognized by Indian authorities, courts have extended some constitutional protections to refugees. India's endorsement of the 2018 Global Compact on Refugees (GCR) was a positive step, but recent legislative amendments and government actions have created further ambiguity and restricted refugees' access to basic rights. The COVID-19 pandemic has further halted refugee registration and recognition processes, necessitating domestic and international advocacy for India to fulfil its commitments under the GCR and uphold humanitarian obligations.

5.0 CASE STUDIES AND EMPIRICAL EVIDENCE

5.1 *Rohingya Discrimination in North Arakan*

The Rohingya people in North Arakan face systematic discrimination and oppression, making their homeland feel like an open prison. Stripped of citizenship rights, they endure severe restrictions on movement, employment, education, and healthcare. Attempts to leave result in imprisonment, and neighbouring Bangladesh offers little refuge due to the risk of arrest for illegal entry. The denial of basic rights extends to healthcare, as those seeking treatment abroad risk being barred from returning home.

5.2 *Marginalization of Biharis in Bangladesh*

Similarly marginalized are the Biharis, who, despite an end to their statelessness, continue to face poverty and discrimination in Bangladesh. Living conditions in camps remain dire, with overcrowding and limited access to education and employment. Despite government poverty reduction efforts, the needs of the Urdu-speaking community are largely overlooked, with no comprehensive plans or funding for their social and economic rehabilitation. The lack of international support exacerbates their plight, with no NGOs or UN agencies taking substantive action.

6.0 STATE SUCCESSION AND CITIZENSHIP ISSUES BETWEEN ETHIOPIA AND ERITREA

The situation surrounding nationality rights in the context of Ethiopia's secession of Eritrea in 1991 was marked by a lack of clarity and proactive measures. Crucially, citizenship issues should have been addressed early on, with both countries' provisional governments prioritizing this matter. Ahead of the referendum, it was essential to inform potential voters about how their registration could impact their citizenship status. In the midst of conflict, Ethiopia ought to have handled the issue of nationality with more transparency and fairness. Expulsion and loss of nationality should have been confined to individuals who underwent a transparent security review process, with ample notice provided to those affected. Additionally, measures should have been in place to allow spouses and children of deported individuals the option to remain in Ethiopia or accompany their loved ones to Eritrea.

6.1 *Preventing Statelessness in State Succession*

To prevent statelessness in state succession, concrete actions must be taken by both Ethiopia and Eritrea. This includes adhering to the standards outlined in the UN Statelessness Conventions and actively becoming parties to them. Furthermore, efforts should focus on integrating Ethiopians of Eritrean origin into their respective societies, reuniting families through re-establishing interstate travel and communications, and devising plans to compensate victims of the conflict that occurred between 1998 and 2000, in line with decisions made by the EECC.

6.2 *Statelessness Among Thai Descendants in Japan*

Stateless individuals from Thailand residing illegally in Japan face significant challenges due to inadequate international legal protection. Born to Indochinese refugee parents who fled the first

Indochina War, they lack nationality in Thailand, Vietnam, or Laos. Despite Thailand's 1992 law offering nationality to such children, those in Japan cannot access it. They resort to illegal entry and work in Japan but live in constant fear of arrest and deportation, as they have no state to which they belong.

6.3 *Forced Migration: Sri Lankan Tamil Refugees in India*⁵

The complex situation of forced migration of Sri Lankan Tamil refugees in India explores the tough decision they face: whether to return to Sri Lanka or integrate into Indian society. It sheds light on the multitude of factors influencing their choices, such as access to information, livelihood opportunities, education, and security concerns. The recommendations stress the significance of understanding refugees' aspirations and working closely with governments and NGOs to devise effective strategies.

6.4 *Challenges at the U.S.-Mexico Border*⁶

The situation at the U.S.-Mexico border reflects a complex interplay of factors contributing to forced migration. Thousands of migrants, including asylum seekers, are heading northward through Mexico, driven by various root causes such as persistent poverty, insecurity due to organized crime, and environmental stress. The Biden administration faces accusations of an "open border policy" from Republican opponents, despite perpetuating border policies initiated during the Trump administration. Issues surrounding asylum seekers, illegal immigration, and the sheer volume of migrants' strain resources and capacities at the border, exacerbating political tensions. Moreover, Mexico's role in controlling migrant flows, influenced by its leverage in bilateral relations with the U.S., further complicates the situation.

7.0 RECOMMENDATIONS FOR ENHANCING PROTECTION

1. States should ratify the 1954 and 1961 Conventions on Statelessness and enact necessary laws to determine stateless status domestically, ensuring legal protection and recognition for stateless individuals.
2. States must uphold human rights for all within their borders, regardless of nationality, acknowledging that everyone deserves basic rights and dignity.

⁵ <https://www.fmreview.org/return/valcarcelsilvela>

⁶ <https://www.brookings.edu/articles/the-us-mexico-border-challenge/>

3. States need to establish effective mechanisms to safeguard stateless individuals from abuses like human trafficking and indefinite detention, providing adequate protection and support.
4. Governments should adopt anti-discrimination measures, including training civil servants, reforming legal systems, and promoting rule of law, to combat exclusion and marginalization of stateless communities.
5. States should ensure children have the opportunity to obtain nationality at birth, preventing statelessness from being passed on to future generations.
6. Collaborating with organizations like UNICEF and Plan International, states should conduct birth registration campaigns, deploying mobile teams, if necessary, to ensure all children are registered at birth.
7. Facilitating naturalization for stateless individuals by considering residency and language skills, and easing requirements to acquire citizenship.
8. Simplifying access to citizenship procedures, reducing fees, and providing mobile registration units to ensure accessibility for those eligible for citizenship.
9. International donors should support UNHCR's efforts in preventing and reducing statelessness by providing necessary resources.
10. Aid from international donors and development agencies should effectively reach stateless groups, addressing their specific needs.
11. Governments and agencies should improve monitoring of stateless populations through embassies and human rights reports to better understand their situation.
12. Funding bodies should support research by academics and NGOs to understand the link between statelessness, poverty, and vulnerability, aiding in effective policy reform.

8.0 CONCLUSION

In conclusion, the plight of stateless persons within the context of forced migration presents a pressing human rights issue that demands urgent attention and action. Through the exploration of the intersection between statelessness and refugee protection, this paper has underscored the formidable challenges faced by stateless individuals in accessing fundamental rights and protections. From barriers to asylum and legal recognition to the compounded vulnerabilities experienced by marginalized groups within stateless populations, the complexities of this issue are vast and multifaceted. Critically evaluating existing international and regional mechanisms, it becomes evident that while strides have been made in addressing statelessness, significant gaps and shortcomings persist. The rights of stateless refugees remain inadequately protected, leaving them vulnerable to exploitation, discrimination, and prolonged displacement. Therefore,

it is imperative for stakeholders, including governments, international organizations, civil society actors, and academia, to collaborate and redouble their efforts in addressing these deficiencies. Building upon the insights gleaned from legal frameworks, case studies, and empirical research, this paper proposes a set of recommendations aimed at bolstering the protection of stateless persons within the refugee regime. These recommendations include enhancing mechanisms for documentation, facilitating legal recognition, and promoting nationality rights for stateless refugees. Additionally, targeted interventions are necessary to address the intersecting forms of discrimination and exclusion faced by vulnerable groups within stateless populations. By advancing a human rights-based approach, stakeholders can work collectively to ensure that stateless individuals displaced by conflict, persecution, and human rights violations are afforded the dignity, security, and opportunities they rightfully deserve. Through sustained advocacy, policy reform, and capacity-building initiatives, progress can be made towards closing the protection gap and realizing the full potential of international human rights norms in safeguarding the rights and well-being of all individuals, irrespective of their nationality or legal status. Ultimately, by prioritizing the rights of stateless refugees, we can strive towards a more just and inclusive world for all.