

STATELESSNESS AND HUMAN RIGHTS:

THE ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

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Abstract:

Statelessness, the condition of not being a national from any State, is one of the most serious but unknown violations of Human Rights, and that is the reason why the United Nations have been increasingly motivated to deal with this problem. The most important instruments of international law related to the statelessness issue are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Even though these Conventions do not impose excessive obligations to the States, they have been ratified by only a few States: 66 the former and 38 the latter. However, in the past decades there has been a very important action of the United Nations High Commissioner for Refugees (UNHCR) –the competent authority in the matter within the UN System– related to statelessness. The work of the UNHCR towards stateless people has the following key areas: identification, prevention, reduction and protection. With the support of the UNHCR, some States like Sri Lanka (former Ceylon), Estonia and Latvia have been able to successfully reduce the cases of statelessness and in this way they have improved the Human Rights situation in these countries.

Key words:

Statelessness; UNHCR; right to a nationality; Human Rights.

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**Resumen:**

La apatridia, la condición de no ser nacional de ningún Estado, es una de las más serias pero desconocidas violaciones a los Derechos Humanos y por esa razón las Naciones Unidas se han visto crecientemente motivadas para enfrentar este problema. Los instrumentos internacionales más importantes sobre el tema de la apatridia son la Convención sobre el estatuto de los apátridas de 1954 y la Convención para reducir los casos de apatridia de 1961. Si bien estas convenciones no imponen obligaciones excesivas a los Estados parte, sólo unos pocos Estados las han ratificado: 66 la primera y 38 la segunda. Sin embargo, en las últimas décadas ha habido importantes actuaciones de la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) –la autoridad competente sobre esta materia en el Sistema de Naciones Unidas– relacionadas con la apatridia. El trabajo del ACNUR sobre apátridas se desarrolla alrededor de cuatro áreas fundamentales: identificación, prevención, reducción y protección. Con el apoyo del ACNUR algunos Estados como Sri Lanka (antiguo Ceilán), Estonia y Letonia han logrado reducir los casos de apatridia y de esta manera han mejorado la situación de los Derechos Humanos en estos países.

Palabras clave:

Apatridia; ACNUR; derecho a una nacionalidad; Derechos Humanos.



INTRODUCTION

According to the United Nations High Commissioner for Refugees (UNHCR), there are nearly 12 million stateless people in the world², this is, individuals who are not considered as nationals by any state³. Taking into consideration how this situation violates –among others– article 15⁴ of the Universal Declaration of Human Rights⁵, the United Nations and its subsidiary organs have been increasingly motivated to identify, prevent and reduce the cases of statelessness in the world, and to protect stateless people⁶.

The United Nations General Assembly decided in 1974⁷ to request the UNHCR to assume the responsibilities given in articles 11 and 20 of the Convention on the Reduction of Statelessness of 1961 to “a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority”⁸. Up to these days, the UNHCR has been the competent authority within the UN system to address statelessness.

The current paper will be divided in four parts: the first one is intended to give an approach to the concept and implications of statelessness, and to the current regulation of the matter; the second one deals with the matter of the UNHCR and its actions related to statelessness; at a third moment, some successful cases of statelessness reduction will be presented and finally some conclusions will be made.

2 UNHCR, “Global Appeal 2010 – 2011 Addressing Statelessness”, *UNHCR website*, [online], available at: <http://www.unhcr.org/4b02c5e39.html>, accessed: February 23rd 2011.

3 UNHCR, “Stateless people, searching for citizenship”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c155.html>, accessed: February 23rd 2011.

4 The mentioned article states as follows:

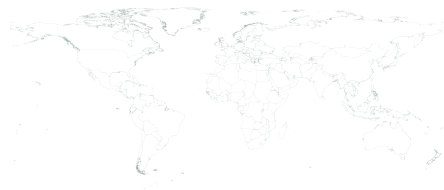
“Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

5 *Universal Declaration of Human Rights*, GA Res. 217 (III), UNGAOR, 3rd session, 1948.

6 UNHCR, “Stateless – UNHCR Actions, How UNHCR Helps the Stateless”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c16a.html>, accessed: February 25th 2011.

7 *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the convention may apply*, GA Res. 3274 (XXIX), UNGAOR, 29th session, 1974.

8 Convention on the Reduction of Statelessness, article 11, 1961.



1. An approach to the concept and implications of statelessness and to the current regulation of the matter

According to the Convention relating to the Status of Stateless Persons of 1954 –the first international treaty related exclusively to the statelessness issue– the term “stateless person” means a person who is not considered as a national by any State under the operation of its law⁹. The International Law Commission has observed that the definition of stateless person contained in Article 1(1) is now part of customary international law¹⁰.

However, doctrine has established two different kinds of statelessness: *de jure* (in law) and *de facto* (in practice). The first kind is the one contained in the first article of the Convention, this is, people who are legally stateless, who are not recognized as a national by any State. However, the second kind of statelessness is much more difficult to identify. Goris, Harrington and Köhn define *de facto* stateless people as “people who have not been formally denied or deprived of nationality but who lack the ability to prove their nationality or, despite documentation, are denied access to many human rights that other citizens enjoy. These people may be *de facto* stateless – that is, stateless in practice, if not in law – or cannot rely on the state of which they are citizens for protection”¹¹. The UNHCR considers that the distinction between *de jure* and *de facto* statelessness is that *de jure* stateless people are not considered as nationals under the laws of any country, while *de facto* statelessness occurs when a person formally possesses a nationality, but the nationality is ineffective¹².

Even though the two types of statelessness might be difficult to differentiate, the concept beyond them is significantly different: *de jure* statelessness is related to the violation of the right to nationality itself, while *de facto* statelessness is a problem with the rights attached to nationality¹³.

For the purposes of the current paper, the statelessness issue will be addressed only related to *de jure* statelessness, because the UNHCR mandate to prevent and deal with statelessness does not include *de facto* cases. Besides, *de facto* stateless people are covered by international human rights law, in a different regulation than *de jure* statelessness; the most important conventions on statelessness –the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness– do not apply to *de facto* stateless people.

9 Convention relating to the Status of Stateless Persons, article 1 (1), 1954.

10 UNHCR, *Expert meeting “The concept of Stateless Persons under International Law” Summary conclusions*, meeting held at Prato, Italy, 27-28 May 2010. P.2.

11 Indira Goris, Julia Harrington and Sebastian Köhn, “Statelessness: what it is and why it matters”, *Forced Migration Review*, Oxford, vol. 1, num. 32, april 2009, p. 4.

12 UNHCR, “What is Statelessness?”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c158.html>, accessed: February 28th 2011.

13 UNHCR, *Expert meeting “The concept of Stateless Persons under International Law” Summary conclusions*, meeting held at Prato, Italy, 27-28 May 2010. P.2.



The UNHCR has identified the principal causes of statelessness, in order to focus its action there and try to solve or at least reduce the statelessness problem. Since nationality is a legal bond between an individual and a State¹⁴, it is each State who determines what individuals become nationals of a certain country. The right to a nationality might be recognized as *ajus soli* (right of the soil) or *jus sanguinis* (right of blood), depending on how an individual acquires it. States that use *jus soli* system recognize as a national the individual who was born in the territory of the State, while *jus sanguinis* recognize nationality to individuals which one or both parents (depending on the country) are nationals of the State. In some States it is also recognized a third way to acquire nationality: through *jus domicile* (right of the residency), this is, individuals who have lived a certain time in a State –along with some other conditions– may become nationals of that State. However, it might occur that nationality laws in several countries collide, having as result a stateless person.

Other causes of statelessness, besides the above mentioned, are: gender discrimination, independencies of new states and state succession¹⁵. In some states women cannot pass their nationality to their children or to their foreign husbands, heightening the risk of their offspring to become stateless. The phenomenon of state succession and independencies of new states are quite similar as causes of statelessness. When a new state is created, as a consequence of an independence process or succeeding another state, one of the first must-do things is to determine the body of nationals. In the past, such as the African decolonization process, ethnic criteria were widely used to determine nationality, which made thousands of people to become stateless. In addition, most of these countries adopted the *jus sanguinis* system to pass nationality, forcing parents to pass on statelessness like a genetic disease¹⁶. This same problem has been faced with the dissolution of States such as the USSR, Yugoslavia and Czechoslovakia.

The importance of the right to a nationality –and the reason why the statelessness issue is so important– is that having a nationality is a gateway to other rights; it is not without justification that the German philosopher and political theorist Hannah Arendt viewed the statelessness as lacking the very “right to have rights”¹⁷. Hannah Arendt herself became stateless in 1933 when she lost her German citizenship after fleeing the Nazis; being stateless for 16 years made her realize that “to be stripped of citizenship is to be stripped of worldliness; it is like returning to a wilderness as cavemen or savages... they could live and die without leaving any trace”¹⁸.

14 UNHCR, “Searching for citizenship”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c155.html>, accessed: March 24th 2011.

15 UNHCR, “The Causes of Statelessness”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c15b.html>, accessed: April 7th 2011.

16 *Ibid.*

17 Hannah Arendt, “The Origins of Totalitarianism”, quoted in: Matthew J Gibney, “Statelessness and the right to citizenship”, *Forced Migration Review*, Oxford, vol. 1, num. 32, april 2009, p. 50.

18 Hannah Arendt, “The Origins of Totalitarianism”, quoted in: Philippe Leclerc and Rupert Colville, “In the shadow”, *UNHCR Refugees Magazine*, Geneva, issue 3, num. 147, 2007, p. 5.



There are many implications of being stateless, even though people hardly ever realize the huge importance that nationality has in a daily basis. Thus, the absence of a nationality implies that a person cannot vote or be elected; accessing many basic services –such as schooling, social security, health care system, retirement schemes, international travel, work, justice system, among others– is very difficult, if not impossible. Since nationality enables individuals to receive their nation’s protection both domestically and internationally and allows a State to intercede on behalf of a national under international law¹⁹, stateless people certainly become unprotected. Being stateless means not being able to exercise many rights, including the basic human rights that should be recognized to every person just for the fact of being person, not for the fact of being a national of a state. Although national governments may have the primary responsibility for implementing internationally recognized human rights in their own countries (...), human rights are the rights of all human beings, whether they are citizens (...) or not²⁰.

Dealing with this problem, the international community has established the right to a nationality in several treaties, such as the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, as well as the Universal Declaration of Human Rights, as mentioned above. However, the two main efforts related to create binding instruments of international law related to statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Even though these Conventions were adopted on behalf of the request of the Economic and Social Council (ECOSOC)²¹ and the General Assembly²² of the United Nations, both of them have been only ratified by a few states; the 1954 Convention has 66 State Parties, and the 1961 Convention has 38.

The backgrounds of these Conventions can be found primarily in the context of World War II (1939-1945), when it is well known that thousands of people became either refugee or stateless. As a fact, prior to the Nazi’s implementation of the “Final Solution” to the “Jewish Question”, the Nazi government purposefully rendered stateless all Jews in its territory²³. Taking into consideration this situation, one of the first priorities of the just created United

19 Clay Collins and David Weissbrodt, “The Human Rights of a Stateless Person”, *Human Rights Quarterly*, vol. 1, num. 28, February 2006, p. 245.

20 Jack Donnelly, “Universal Human Rights in theory and practice”, quoted in: Clay Collins and David Weissbrodt, “The Human Rights of a Stateless Person”, *Human Rights Quarterly*, vol. 1, num. 28, February 2006, p. 249.

21 See: ECOSOC Resolution 526A (XVII) from 26th April 1954.

22 See: GA Resolution 896 (IX) from 4th December 1954.

23 Hannah Arendt, “Eichmann in Jerusalem”, quoted in: Clay Collins and David Weissbrodt, “The Human Rights of a Stateless Person”, *Human Rights Quarterly*, vol. 1, num. 28, February 2006, p. 265.



Nations was to help and protect refugees and stateless persons, primarily through the Human Rights Commission and the Economic and Social Council (ECOSOC). After several drafts, a Conference of Plenipotentiaries met in Geneva (Switzerland) in 1951 and adopted the 1951 Convention relating to the Status of Refugees. This Convention was applied primarily to European refugees, but also covered those stateless persons that were also refugees. As of April 1st 2011, there were 144 States Parties to the 1951 Refugee Convention²⁴.

Since the 1951 Convention did not apply to those stateless persons who were not refugees, the United Nations through several of its organs convoked a second Conference of Plenipotentiaries that met in New York in 1954 and adopted the 1954 Convention relating to the Status of Stateless Persons. A Third Conference of Plenipotentiaries was convoked in New York in 1961 to adopt the 1961 Convention on the Reduction of Statelessness; the idea of the latter Convention was to move forward in the regulation of statelessness, not recognizing rights and protection to stateless persons but trying to avoid future statelessness.

The 1954 Convention relating to the Status of Stateless Persons is the primary international instrument adopted to date, to regulate and improve the legal status of stateless persons²⁵. The general idea of this Convention is in the article 7, which states that: “Except where this Convention contains more favorable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally”.

In the other hand, the 1961 Convention on the Reduction of Statelessness is the primary international legal instrument adopted to date to deal with the means of avoiding statelessness²⁶. This Convention applies both *jus solis* and *jus sanguinis* systems of nationality, depending on the case, in order to avoid the most cases of statelessness as possible; it also deals with some other causes of statelessness, such as State succession, transfer of territory and renunciation or loss of nationality. The Convention in article 11²⁷ referred to the establishment of a body within the United Nations System to deal with the statelessness issue; in 1974 the General Assembly, through resolution 3274 (XXIX), requested the Office of the United Nations High Commissioner for Refugees to “provisionally undertake the functions foreseen under the Convention on the Reduction of Statelessness in accordance with its article 11 (...)”²⁸. Although this request was provisional, in 1976 the General Assembly

24 UNHCR, “States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol”, UNHCR website, [online], available at: <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>, accessed: April 28th 2011.

25 UNHCR, “Objectives and key provisions of the 1954 Convention relating to the Status of Stateless persons”, UNHCR website, [online], available at: <http://www.unhcr.org/3bd7d3394.html>, accessed: April 28th 2011.

26 UNHCR, “Objectives and key provisions of the 1961 Convention on the Reduction of Statelessness”, UNHCR website, [online], available at: <http://www.unhcr.org/3bd7d3914.html>, accessed: April 28th 2011.

27 Article 11 states as follows:

“The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority”.

28 *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the convention may apply*, GA Res. 3274 (XXIX), UNGAOR, 29th session, 1974.



passed a resolution where it “requests the United Nations High Commissioner for Refugees to continue to perform these functions”²⁹. Since that moment, the UNHCR has had activities in the field relating to identification and protection of stateless people, and to reduction and prevention of statelessness.

2. UNHCR and its actions related to statelessness

As told above, the UNHCR has taken the leadership in facing the problem of statelessness in the world. This work is done around four main areas: identification, prevention, reduction and protection. However, such an endeavor cannot be taken by the UNHCR itself, and it requires the assistance of different institutions and people with different perspectives and focuses. Indeed, the UNHCR has established a network of partners to meet the target of ending statelessness in the world; this network includes several organs of the United Nations system, Non-Governmental Organizations (NGOs), civil society and governments. Within the UN system the UNHCR has worked with the United Nations Children’s Fund (UNICEF) when it comes to children’s right to a nationality; the Office of the United Nations High Commissioner for Human Rights (UNHCHR) has as well a mandate to deal with statelessness since it involves human rights violations; the United Nations Development Fund (UNDP) aims at the full integration of stateless people into society, through access to justice or development programs³⁰; the United Nations Population Fund (UNFPA) helps the UNHCR with statistical information about stateless people, since most States do not have the will or the capacity to do such task. Aside from the UN system, it can be noted the work of Refugees International –a Washington-based NGO– and the Inter-Parliamentary Union (IPU). The IPU has been a great help in creating awareness on statelessness in the 157 member Parliaments; this work has been done primarily through two handbooks that have been translated to more than a dozen languages.

2.1 Identification

In order to try to solve the statelessness problem, the UNHCR has firstly dedicated to identify this issue; this is, to gather information on statelessness, its scope, causes and consequences³¹. In this category of work, the UNHCR provides support to activities like population censuses and other related to statistical information with the aim of measuring the size of the problem and focus correctly they work. Despite all the efforts, the UNHCR has published country-level data for some 54 countries referring to a total of 3 million people but estimates that

29 *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the convention may apply*, GA Res. 36 (XXXI), UNGAOR, 31st session, 1976.

30 UNHCR, “Who UNHCR works with to help the stateless”, UNHCR website, [online], available at: <http://www.unhcr.org/pages/49c3646c1a6.html>, accessed: May 23rd 2011.

31 UNHCR, “Stateless – UNHCR Actions, How UNHCR Helps the Stateless”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c16a.html>, accessed: July 24th 2011.



there are possibly about 12 million stateless people worldwide³², so there is still a lot of work to do. The UNHCR also analyzes legislation to identify gaps that could lead to more cases of statelessness and researches the situation of stateless people³³. The main purpose of this task is to “map” stateless populations worldwide and their situation in order to perform properly the other duties.

2.2. Reduction

The second category of work is reduction; this is, seeking solutions for stateless populations. In order to accomplish this objective the UNHCR supports legislative changes and improvements to procedures to allow stateless people to acquire a nationality and helps individuals take advantage of these changes³⁴. The possible tasks that can be made depend on whether the statelessness situation in a certain country is large or small scale.

In large-scale situations, the most powerful task is to promote legal and political changes in order to include stateless people in the body of citizens of a country. These campaigns have to include tools to raise public awareness of the problem and must provide support to registration teams and all the other measures needed to assure the access of all stateless people to the new procedures.

On a smaller scale, the solution to reduce statelessness is through naturalization. In a general perspective, the UNHCR’s Field Offices advocate for lowering in each country the requirements and fees for naturalization of stateless people. Particular cases of a stateless person are faced through the cooperation of the UNHCR’s Field Offices and local or international NGOs that advice and give technical and legal support to these persons in order for them to file successfully their application to naturalization.

2.3. Prevention

Nonetheless, the main objective of the UNHCR is to accomplish the complete eradication of statelessness in the future. In that way, the UNHCR has listed ten reasons why people usually become stateless: conflict of laws, transfer of territory, laws related to marriage, administrative practices, discrimination, laws related to registration of births, *jus sanguinis* system of nationality, denationalization, renunciation of citizenship, and automatic loss of citizenship by operation of law³⁵. Having identified the causes of statelessness, it is easier

32 Mark Manly and Santhosh Persaud, “UNHCR and responses to statelessness”, *Forced Migration Review*, Oxford, vol. 1, num. 32, april 2009, p. 7.

33 UNHCR, “Statelessness Actions - Identification”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c16d.html>, accessed: July 24th 2011.

34 UNHCR, “How the UNHCR helps the stateless”, *UNHCR website*, [online], available at: <http://www.unhcr.org/pages/49c3646c16a.html>, accessed: July 24th 2011.

35 UNHCR, “Information and accession package: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness”, quoted in: Clay Collins and David Weissbrodt, “The Human Rights of a Stateless Person”, *Human Rights Quarterly*, vol. 1, num. 28, February 2006, p. 253.



to focus the work towards the power agents that could lead to a change in each of those 10 causes; this is what prevention looks into, specially promoting the accession of different States to the 1961 Convention on the Reduction of Statelessness.

Prevention of statelessness means addressing possible causes of future statelessness³⁶. Each cause of statelessness requires some special activities. For instance, actions intended to reduce gaps in nationality legislation are led by UNHCR Field Offices (those located in each country, not the Headquarters at Geneva), who may consider proactively providing advice on international standards and how they may be implemented at the national level³⁷. The UNHCR advice works either with constitutional or legal provisions. The legal background of this recommended reforms are the 1954 and 1961 Conventions for State Parties, but for States that are not parties the UNHCR invokes other human rights treaties both from the universal and regional level.

However, other causes of statelessness cannot be addressed by Field Offices, such as cases of State succession. Whenever a Field Office notices the possibility of State succession (transfer of a part of the territory of one State to another State; separation of a part of the territory of a State and the formation of one or more new States or dissolution of a State and formation of two or more States), they alert the Headquarters Offices³⁸. In that situation, the UNHCR counts with a helpful tool that are the “Draft Articles on Nationality of Natural Persons in Relation to the Succession of States” elaborated by the International Law Commission (ILC) in 1999, which reflects general principles of law, existing treaty law and State practice, but numerous provisions constitute progressive development of international law³⁹. Even though the UN General Assembly has not passed a resolution encouraging the celebration of a treaty in such matters or declaring those articles, the legal weight of the ILC drafts cannot be denied.

2.4. Protection

While reduction and prevention strategies work out, the UNCHR has to make sure that stateless people enjoy the fundamental human rights as recognized by several treaties.

The most immediate measure that can be taken is the recognition of the stateless status to the population, and in this way the UNCHR assures that they are granted all the rights predictable to people in their condition. The Executive Committee has requested the UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording and granting a status to stateless persons⁴⁰.

36 UNHCR, “UNHCR Action to Address Statelessness. A strategy note”, *UNHCR Division of International Protection*, March 2010. P. 9.

37 *Ibid.*

38 *Ibid.*, P. 11.

39 *Ibid.*

40 Executive Committee Conclusion No. 106 (LVII), 2006.



In order to guarantee the enjoyment of rights by stateless persons, the UNHCR uses all the possible international law instruments, focusing mainly on the 1954 Convention on the Status of Stateless Persons and other treaties of the international human rights law. The most common violations of human rights to stateless persons are the ones related to the rights to housing, education and health⁴¹.

Finally, a key way to guarantee the exercise of basic human rights by stateless persons is to promote the accession of more States to the 1954 Convention since it is the only treaty which provides for an internationally recognized status for stateless persons. The Convention also resolves a series of practical problems through provisions on travel documents and administrative assistance⁴². In this task the UNHCR has not been alone, since several times the UN General Assembly has encouraged States to consider accession to the Convention.

3. Successful cases of statelessness reduction

Once governments and civil society have realized how big and important endeavor is dealing with the statelessness issue, dealing with it is a must-do task for all of them. Thanks to the UNHCR, several countries have taken measures in order to avoid future cases of statelessness, recognize stateless people as nationals and this way allowing them to exercise at least the basic human rights. Some of the most outstanding cases are .

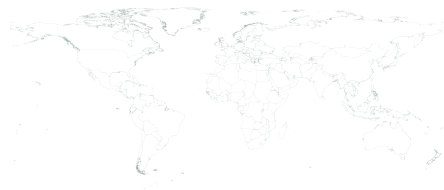
3.1. Sri Lanka (former Ceylon)

Statelessness in Sri Lanka started between 1820 and 1840, when thousands of Tamils (an ethnic group native from the province of Tamil Nadu, India) were brought from India to the territory of the country –while the island was still under British colonial rule– in order to work in the tea plantations that have made this island well known worldwide. These tea-pickers never acquired the nationality of their new country, and due to the strict nationality laws they had been stateless for almost 200 years, until in October 2003 the Parliament passed the “Grant of Citizenship to Persons of Indian Origin Act” to give immediate citizenship to people of Indian origin who have lived in Sri Lanka since October 1964 and to their descendants. The usually lengthy process of attaining citizenship was simplified by a “general declaration” countersigned by a justice of peace as proof of citizenship⁴³. With this new regulation, the UNHCR launched a campaign with the Ministry of Interior, the immigration authorities and worker’s associations to let tea-pickers know about the benefits of acquiring the nationality; many volunteers and mobile clinics moved to the tea plantations to help stateless people filling in the forms and giving advice about procedural issues. More than 190.000 people

41 UNHCR, “UNHCR Action to Address Statelessness. A strategy note”, *UNHCR Division of International Protection*, March 2010. P. 16.

42 *Ibid*, P. 17.

43 Sulakshani Perera, “Sri Lankan”, *UNHCR Refugees Magazine*, Geneva, issue 3, num. 147, 2007, p. 20.



obtained Sri Lankan citizenship over 10 days in late 2003⁴⁴. However, the process has suffered some obstacles and delays due to the extreme poverty of tea-pickers and stateless people in general, and to the poor level of education of these persons that has not allowed them to realize the huge importance of being a national of any State; these people argue that they have lived many generations without having any national ID, and that there is no need to acquire it.

For those Tamils that have acquired nationality in the past years, life has improved substantially. For instance, some of them have been able to move to big cities such as Colombo, the country's capital. When they were stateless leaving the tea plantations was very risky and could get them problems with the authorities, so they were living in an almost feudal society. The measures adopted by the Sri Lankan government have improved the situation of the human rights in the country, and even if there is still a lot to do for Tamil people, at least they are Sri Lankan nationals now.

3.2 Latvia and Estonia

In the Baltic countries statelessness has been a problem since the dissolution of the former USSR, when many people were not able to acquire the new countries' nationalities, nor the Russian or any other from a successor State of the USSR. Latvia and Estonia have called this situation "non-citizenship" but under international law it can be qualified as statelessness.

The statelessness issue in the Baltic countries became a very serious problem in their process of admission to the European Union (EU), because as Evelyn Sepp, a lawmaker with Estonia's Center Party, noted, "from the point of view of a State or a union of States, a large number of stateless persons, who have been deprived of essential political rights, represents a threat to democracy and internal stability"⁴⁵.

In 1991 (the year Latvia restored its independence after the Soviet occupation) there were approximately 715.000 stateless people in the country according to a report of the "Federation Internationale des Ligues des Droits de l'Homme" and the Bar of England and Wales, and as of July 2011 there were approximately 319.000, according to governmental statistics, this is 14,4% of Latvian residents. Thousands of Latvian "non-citizens" were naturalized through public policies of the government that allowed naturalization with some minimum conditions such as being resident for at least 5 years, and having a good knowledge of Latvian language, Constitution and history. Besides, there have been taken some other measures to prevent future cases of statelessness, such as granting citizenship to children of stateless persons and noncitizens born within the country's territory⁴⁶.

44 *Ibid.*, p. 21.

45 Clay Collins and David Weissbrodt, "The Human Rights of a Stateless Person", *Human Rights Quarterly*, vol. 1, num. 28, February 2006, p. 276.

46 *Ibid.*, p. 275.



Even though the situation in Latvia has improved, it is still very worrying for the international community. In this sense have been several pronouncements of the Council of Europe Commissioner for Human Rights through the 2003 recommendations and several memorandums and the Organization for Security and Co-operation in Europe (OSCE) through the Edinburgh Declaration⁴⁷.

The statelessness situation in Estonia has much more of an ethnic background. The Soviet occupation of Estonia was more violent than in other Baltic countries. Thousands of Estonian people were killed, and thousands of Russians were forced to migrate to Estonia, which made these two communities enemies. When the country obtained its independence with the break-up of the USSR, the nationality laws determined that only people who held Estonian nationality before the occupation and their descendents could acquire Estonian nationality. This measure left thousands of Russians (almost 40% of the total population) stateless, because they could not apply to Estonian nor Russian nationality. Since the independence there has been a lot of discrimination against Russians. The two cultures live in separate environments (Russian-speakers live in the poor, rural northeast and the Estonian-speakers live in the rest of the country) it has been impossible for the stateless people to acquire the competences required to apply to Estonian nationality: proving a good knowledge of Estonian language, Constitution and history. However, it is difficult for Russians to learn Estonian since there is little mixing between the two groups, limiting opportunities for Russians to develop adequate Estonian language skills. To address this issue, the Estonian government has imposed a reform plan that increases the percentage of the school curriculum taught in Estonian⁴⁸. Legislative measures have been taken as well, and these include: giving automatic citizenship to children born in Estonia after 1992 whose parents have lived in Estonia for at least five years, giving disabled and elder people easier access to citizenship and reducing the time for the procedures.

NGOs such as Refugees International criticize the limited role the UNHCR has played in Estonia, whose active role could help giving a permanent solution to the thousands of cases of statelessness left. For instance, Estonia has not approved the Conventions on Statelessness and this has made that there are no binding instruments of international law to enforce the Estonian government to finally eradicate statelessness in the country, and guarantee the basic human rights to a discriminated minority.

⁴⁷ Edinburgh Declaration of the OSCE Parliamentary Assembly and Resolutions adopted at the thirteenth annual session. Edinburgh, 5 to 9 July 2004.

⁴⁸ Refugees International, "Left Behind: Stateless Russians Search for Equality in Estonia", *Refugees International website*, [online], available at: <http://www.refintl.org/policy/field-report/left-behind-stateless-russians-search-equality-estonia>, accessed: October 10th 2011.



4. Conclusions

First of all, it cannot be denied the great advances that have occurred since the creation of the United Nations, specially –to the matters of this paper– in the statelessness issue. The existence of binding instruments of international law that obligate States to protect stateless people through the recognition of their basic human rights and to adopt public policies towards the eradication of statelessness are huge advances that could not have occurred without the guidance and support of the United Nations. Through these two obligations, States have reinforced what they had declared in many occasions, especially through the 1948 Universal Declaration of Human Rights. However, since the Declaration is just a resolution of the General Assembly, they were needed more binding sources of international law to guarantee those rights, and that was the purpose of the 1954 and 1961 Conventions. In order for someone to claim that he or she has a right, it is necessary that someone has a correlative legal duty, as stated the Austrian jurist and legal philosopher Hans Kelsen. Unless we adopt a point of view of natural law, it is mandatory for saying that some has a right to nationality that States have the obligation to recognize it to a person. Indeed, that was the most important advance in the Conventions.

Nonetheless, only a few States have ratified the Conventions and that imposes a very big difficulty to the work of the UNHCR because they cannot violate the principle of independence that rules in international law. Nevertheless, lobbying activities should be promoted in order to convince the actors of the international system about the importance of dealing the statelessness issue. However, States should have a stronger commitment to the respect of human rights, at least occidental countries that have claimed themselves lovers of democracy and human rights. The international community has a very ambivalent attitude towards international law and human rights, but some minimums should be agreed and that includes the right to a nationality. In order to work towards the complete eradication and prevention of statelessness it is needed that States commit to this, both at the international and national levels; in the first one mainly through the accession to the 1954 and 1961 Conventions and the support to the UNHCR and in the second one through a transversal –administrative, legislative and judicial– work pursuing this objective in order to guarantee this basic human right to all the people, not only to citizens.



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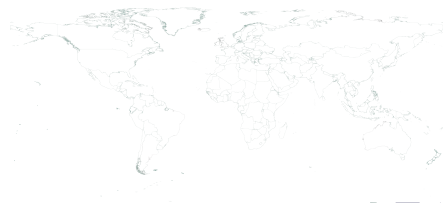
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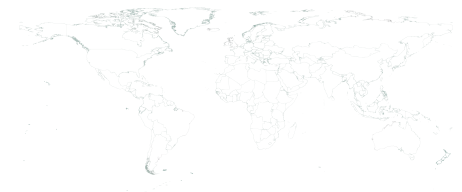
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