

**CHILDREN AND THEIR SEARCH FOR A HOME: WHAT IT  
MEANS TO BE STATELESS IN THE 21<sup>st</sup> Century**

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July 2012

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\*The views in this research paper represent those of the author and do not reflect the position or policy of the United Nations High Commissioner for Refugees (UNHCR).

## PART ONE

Who is stateless and what does statelessness mean?

Statelessness is an issue that affects approximately 12 million people around the world according to estimates by the United Nations High Commissioner for Refugees (UNHCR).<sup>1</sup> The number is an estimate because UNHCR does not have comprehensive statistics to provide information on stateless populations worldwide.<sup>2</sup> The statelessness issue has particular effect on children in Africa, Asia, Europe, and the Middle East. Stateless individuals are people who “lack the legal bond of a nationality with any state.”<sup>3</sup> These individuals do not have citizenship of any state. These people are called *de jure* stateless persons.<sup>4</sup>

Everyone is entitled to nationality whether they are adults or children.<sup>5</sup> A stateless person is an individual not considered as a national by any state under the operation of its law.<sup>6</sup> Nationality is important because it is a legal bond between a person and a state. This provides a sense of identity and a wide range of rights for individuals. Those individuals who suffer most from

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<sup>1</sup> UNHCR Division of International Protection, UNHCR action to address statelessness, March 2010, 2.

<sup>2</sup> Ibid.

<sup>3</sup> Carol A. Batchelor, “Transforming International Legal Principles Into National Law: The Right To A Nationality And The Avoidance Of Statelessness,” *Refugee Survey Quarterly* 25 (2006): 1: doi: 10.1093/rsq/hdi0142.

<sup>4</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (UK: Edward Elgar, 2011), 3.

<sup>5</sup> Marisa O. Ensor and Elzbieta M. Godziak, eds., *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, (UK: Palgrave Macmillan 2010), 118.

<sup>6</sup> Brad K. Blitz and Maureen Lynch, *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (UK: Edward Elgar, 2011), 1.

statelessness are infants, children, and youth, who inherit their status from their stateless parents.<sup>7</sup>

Under the 1954 UN Convention relating to the Status of Stateless Persons, the term “stateless person” refers to anyone who is not considered a national by any State under the operation of its law. The absence of a birth certificate does not mean that a child is stateless. However, when a child does not have a birth certificate and he or she does not have an alternate means of tracing his or her family’s country of origin to apply for a passport, then the child may indeed be stateless or at risk of statelessness.<sup>8</sup>

The right to nationality has been further detailed in two key international conventions: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention was initially overseen as a protocol on stateless persons to be included as an addendum to the 1951 UN refugee convention. The 1951 UN refugee convention is the foundation of the protection regime and part of the guiding principles for helping refugees and guiding UNHCR’s work globally.<sup>9</sup> This 1954 Convention, relating to the Status of Statelessness, is considered the cornerstone of protection for stateless persons.<sup>10</sup> The 1961 Convention on the reduction of statelessness was introduced with provisions to end statelessness. However, the 1961

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<sup>7</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (UK: Edward Elgar, 2011), 2

<sup>8</sup> *Ibid*, 2.

<sup>9</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/home>, Stateless People.

<sup>10</sup> UNHCR Division of International Protection, *UNHCR action to address statelessness*, March 2010, 5.

Convention reiterates the main concerns of the 1954 Convention and asserts that nationality shall be granted by operation of law to a person born in the State's territory."<sup>11</sup> The 1961 Convention also has measures to avoid statelessness among children.<sup>12</sup> This was put into place in order to diminish statelessness over time.<sup>13</sup>

The UN General Assembly has designated the responsibility to promote the accession to and implementation of the 1954 UN Convention to UNHCR. Furthermore, UNHCR assists governments to implement or strengthen legislation, trains officials, and cooperates with other international non-governmental organizations (NGOs) on the statelessness issue.<sup>14</sup> UNHCR has expanded its work in profiling and advocating on behalf of measures to identify stateless persons.<sup>15</sup> In fact, UNHCR has been instrumental in bringing the statelessness issue to the forefront in the last few years with increased activities to address stateless populations and the pledge request at the 60<sup>th</sup> Commemoration of the 1961 UN Convention to reduce statelessness held in Geneva, Switzerland in December 2011.<sup>16</sup> This was to encourage States to further ratify the UN Statelessness conventions. Thus far, there are 68 State Parties to the 1954 Convention as of June 2011.<sup>17</sup> There have been increasing efforts to profile the stateless population by

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<sup>11</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (UK: Edward Elgar, 2011), 2.

<sup>12</sup> UNHCR Division of International Protection, "UNHCR Action to Address Statelessness," (March 2010), 5.

<sup>13</sup> *Ibid*, 5.

<sup>14</sup> <http://www.unhcr.org/cgi-bin/teXis/vtx/home>, Stateless People.

<sup>15</sup> UNHCR Division of International Protection, "UNHCR Action to Address Statelessness," (March 2010), 4.

<sup>16</sup> <http://www.unhcr.org/cgi-bin/teXis/vtx/home>, Stateless People.

<sup>17</sup> <http://www.unhcr.org/cgi-bin/teXis/vtx/home>, Stateless People.

the Committee on the Elimination of Racial Discrimination and other UN Agencies such as the Office of the High Commissioner for Human Rights.<sup>18</sup>

In this research paper, I will present some of the factors that influence the increasing problem of child statelessness and how international organizations such as the United Nations can advocate with governments in tackling and addressing this issue. One of the gaps is that few states have ratified the statelessness conventions and growing numbers of individuals have been left without nationality.<sup>19</sup> As mentioned earlier, UNHCR has no comprehensive statistics to profile the stateless populations, as the respective governments do not have registration data on these groups.<sup>20</sup> As Laura van Waas says, “Some organizations that are engaged on the issue of statelessness approached the issue in a pragmatic and flexible manner. These organizations focused more broadly on the treatment of or problems faced by the persons involved, using this as a means of identifying situations of concern.”<sup>21</sup>

There are serious problems which occur in relation to statelessness issues including innumerable barriers which stateless persons face such as “denial of opportunities to establish a legal residence, travel, work in the formal economy, access to education, access basic health services, purchase or

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<sup>18</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 3.

<sup>19</sup> *Ibid*, 5.

<sup>20</sup> UNHCR Division of International Protection, *UNHCR action to address statelessness*, March 2010, 2.

<sup>21</sup> Laura van Waas, *Nationality Matters: Statelessness Under International Law*, (Intersentia, 2008), 23

own property, vote, hold elected office, and enjoy protection and security of a country.”<sup>22</sup> In addition to the lack of these basic human rights, the stateless individuals face other obstacles including access to basic documentation for births and marriages.<sup>23</sup> They have an inability to seek support through the courts due to lack of this documentation.<sup>24</sup>

However, the problem remains that de facto stateless people are not able to obtain proof of their national identity, residency, or other means of qualifying for citizenship and as a result are excluded from the formal state.<sup>25</sup> There is acknowledgement that de facto stateless people are unable to realize their human rights and may be vulnerable for lack of effective protection from the state to which they have a formal connection.<sup>26</sup>

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<sup>22</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 2.

<sup>23</sup> *Ibid*, 2.

<sup>24</sup> *Ibid*, 2.

<sup>25</sup> *Ibid*, 3.

<sup>26</sup> *Ibid*, 3.

## PART TWO

How do children become stateless and are their international human rights instruments to protect them?

There are three main components in acquiring citizenship: An individual may acquire it through blood, by birth in a country, or by naturalization. For instance, a newborn baby can obtain citizenship through the nationality of his/her parent(s)- jus sanguinis.<sup>27</sup> Alternatively, a citizenship by birthplace, jus soli, occurs when a child is given the nationality of a country where he or she was born irrespective of his or her parents' nationality.<sup>28</sup>

However, there may be gaps in the process by which children obtain citizenship. For instance, a government collapses and subsequently the new government enacts new laws that exclude minorities (including children) from acquiring citizenship.<sup>29</sup> Another main factor in child statelessness is lack of birth registration. Although the majority of unregistered children may not be stateless, it may be that children are unregistered because their parents may not want authorities to focus on their lack of a citizenship status.<sup>30</sup> In this situation, many of their parents are stateless as well.<sup>31</sup>

In other situations refugee mothers give birth to children outside of their home country. It can be challenging for the child to acquire his/her parent's

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<sup>27</sup> Marisa O. Ensor and Elzbieta M. Godziak, eds., *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, (UK: Palgrave Macmillan 2010), 121.

<sup>28</sup> *Ibid*, 121.

<sup>29</sup> *Ibid*, 121.

<sup>30</sup> *Ibid*, 121.

<sup>31</sup> *Ibid*, 121.



nationality. In addition, citizenship in many countries is determined through the father's nationality. Therefore, women who are living apart from their husbands or single women may not be able to pass on their nationality or register their children.<sup>32</sup>

In the Universal Declaration of Human Rights, Article 15 established the right of every person to a nationality. "This right was fundamental to the enjoyment in practice of the full range of human rights."<sup>33</sup> In principle, a person was considered a national at birth through application of legal instruments (such as a constitution, nationality law, or executive orders) of the state of birth or of their parents' state of citizenship. However, not "everyone acquires nationality at birth by application of law. Some are left without nationality after a loss of citizenship".<sup>34</sup> They are called *de jure* stateless persons and are the principal subject of concern in the 1954 Convention relating to the Status of Stateless Persons.<sup>35</sup>

There are human rights instruments that are also put into place to combat the child statelessness issue. In the Convention on the Rights of the Child (CRC), States have been required to register children at birth (Article 7). However, Plan International estimated that 51 million births per year were not registered.<sup>36</sup> The importance of birth registration was that it provided

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<sup>32</sup> Marisa O. Ensor and Elzbieta M. Godziak, eds., *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, (UK: Palgrave Macmillan 2010), 122.

<sup>33</sup> <http://www.unhcr.org/refworld/statelessness.html>.

<sup>34</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 3.

<sup>35</sup> *Ibid*, 3.

<sup>36</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 9.

permanent and official evidence of a state's recognition of his or her existence as a member of society. The CRC also specified that children have the right to nationality. In fact, Article 8 emphasizes that State parties respect the right of the child to preserve his or her identity including nationality, name, and family relations.<sup>37</sup>

However, there are also international instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which guarantees that women shall be granted "equal rights with men with respect to the nationality of their children."<sup>38</sup> Fortunately, twenty countries have changed their citizenship laws in order to give women the right to pass on their nationality to their children since CEDAW was ratified in 1981.<sup>39</sup>

Another matter of serious concern is the impact that non-registration of births may have on minority populations. It should be noted that while lack of birth registration does not equate to statelessness, lack of documentation has been used to deny people access to citizenship and state services.<sup>40</sup> For many vulnerable people, the first hurdle to overcome is the registration of their child's birth.

The essential idea is that all people, including children, are guaranteed protection of their human rights under international law without regard to

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<sup>37</sup> Marisa O. Ensor and Elzbieta M. Godziak, eds., *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, (UK: Palgrave Macmillan 2010), 120.

<sup>38</sup> *Ibid*, 122.

<sup>39</sup> *Ibid*, 122.

<sup>40</sup> *Ibid*, 123.

their nationality.<sup>41</sup> For minorities, the protection of their human rights is further elaborated on in Article 27 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and article 30 of the Convention on the Rights of the Child (CRC).<sup>42</sup> Although there may be recognition that States can withdraw citizenship rights in the cases of a reasonable test, these conditions do not apply to children.<sup>43</sup> In fact, Article 15 of the Universal Declaration of Human Rights (UDHR) restates the importance of universal protection which is relevant to children which is further elaborated in article 25 (1), and “states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care.”<sup>44</sup> Although states have the right to determine criteria for nationality, international human rights law states that children -especially stateless children -are entitled to rights irrespective of their nationality status.<sup>45</sup>

One of the key international human rights instruments is the Convention on the Rights of the Child (CRC), as mentioned above. This provides and protects the rights of children in reference to their human rights as well as on matters of nationality.<sup>46</sup> As mentioned earlier, Article 7 is essential in detailing that a child has a right to a name and nationality and also ensures

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<sup>41</sup> Jacqueline Bhabha, ed., *Children Without A State: A Global Human Rights Challenge*, (Massachusetts: The MIT Press, 2011), 44.

<sup>42</sup> *Ibid*, 44.

<sup>43</sup> *Ibid*, 44.

<sup>44</sup> *Ibid*, 45.

<sup>45</sup> *Ibid*, 45.

<sup>46</sup> *Ibid*, 45.

that States should register births to facilitate this process.<sup>47</sup> In Article 8(1) of the declaration, it says, “State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference.”<sup>48</sup>

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<sup>47</sup> Jacqueline Bhabha, ed., *Children Without A State: A Global Human Rights Challenge*, (Massachusetts: The MIT Press, 2011), 45.

<sup>48</sup> *Ibid*, 45.

## PART THREE

### **The effects of statelessness on children globally**

#### **Asia**

In Thailand, Burmese children are stateless and do not have access to education and health service. “The influx of refugee women, men, and children who had arrived in Thailand from the late 1980s after the current military regime in Burma, the State Law and Order Restoration Council, took power in 1988, and stopped pro-democracy human rights movements.”<sup>49</sup>

There are an estimated 3 million stateless persons in Thailand. Of the 3 million, there are approximately 100,000 stateless children living in the border towns of Mae Sot and Ranong. The Thai government granted temporary residency rights in 2001 for one year to those individuals who had taken part in a government survey. However, the problem was that these individuals had to prove that they had one parent who was actually born in Thailand.<sup>50</sup>

Although the Thai government ratified the 1989 Convention on the Rights of the Child (CRC) and has instructed all-state hospitals to issue birth registration documents to any parents, many of the hospital staff did not

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<sup>49</sup> Human Rights Watch Asia, *Thailand: Children from Burma seeking asylum in Thailand*, (Human Rights Watch, 1997), 1.

<sup>50</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 39.

implement the law because these parents were reportedly migrants. Despite the fact that Prime Minister Thaksin Shinawatra announced that 2 million stateless people would be granted Thai citizenship in 2005, which was to cover different groups of stateless people including children studying in Thailand and other individuals who had lived there consecutively for 10 years, it never materialized.<sup>51</sup> It failed because the reforms did not occur and Prime Minister Shinawatra was overthrown.<sup>52</sup>

In Malaysia, a similar situation has occurred in reference to child statelessness. There are approximately 70, 000 registered Rohingya refugees who were registered and currently live in Malaysia. The Rohingya initially came in 1984; however they arrived in larger numbers than expected due to the increasing expulsions by the Burmese military regime.<sup>53</sup> In the Malaysian Constitution, children were granted citizenship if they were born on Malaysia's territory, or they would be stateless. However, this did not apparently extend to the Rohingya children. Due to their situation, the children could not attend school, their families were at risk of arrest or deportation, and their families became increasingly poor.<sup>54</sup> The Malaysian government recognized the Rohingya in November 2004 as people of recognized concern. However, they only granted them temporary stay permits that still did not address the needs of the Rohingya and their children.

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<sup>51</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 39.

<sup>52</sup> *Ibid*, 38.

<sup>53</sup> *Ibid*, 38.

<sup>54</sup> *Ibid*, 38.

In Eastern Malaysia, there had been years of irregular migration of children from both the Philippines and Indonesia. The undocumented Filipino children were from the Mindanao region in the Philippines. They arrived in the early 1970s due to a Moro insurgency that began in that region. These children were stateless or at risk of statelessness. There were an estimated 36,000 stateless children of Indonesian origin in Sabah who were the children of palm oil plantation workers or guest workers.<sup>55</sup> In these cases, the Filipino and Indonesian parents were not registering their children's birth because they were also undocumented. This situation put the children further at risk. In some cases, the children were left alone when their parents were arrested or deported because the parents were undocumented themselves.<sup>56</sup> Since the Malaysian government did not recognize these unregistered children as nationals, the children were left stateless. Like Thailand, Malaysia is a signatory to the Convention on the Rights of the Child (CRC), which outlines in Article 7 that all children have a right to acquire nationality at birth.<sup>57</sup> However, it appears that individuals can only access citizenship if one parent is a Malaysian citizen.<sup>58</sup> Their foreign parents can register their children for birth certificates; however, the government has highlighted on the certificates that the parents were foreigners who were known as "orang asing." Based on these multiple issues, the children could not attend the government schools in Sabah.

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<sup>55</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 38.

<sup>56</sup> *Ibid*, 40.

<sup>57</sup> *Refugees International Bulletin*, (Refugees International, June 13, 2007), 1.

<sup>58</sup> *Ibid*, 1.

They could attend private schools, but the costs were quite high for these families.<sup>59</sup> Due to this situation many of these children were working at a very young age in fish markets and were effectively on their own due to their parent's deportation.<sup>60</sup>

## **Africa**

In Africa, the statelessness issue among children was a continuing and pressing issue in the region. In Egypt a 2004 law provided that children born to Egyptian mothers could claim Egyptian citizenship. This was very positive for children born after the implementation of the law. However, those children born prior to 2004 had to apply to the Interior Ministry based on President Hosni Mubarak's 2003 announcement on the issue.<sup>61</sup> There were approximately 400,000 to a million stateless children of mixed parentage living in Egypt. Moreover, the 2004 law did not apply to children of Egyptian mothers and Palestinian fathers.<sup>62</sup> The reason is that "Palestinians can not obtain Egyptian nationality based on a 1959 agreement which does not allow Palestinians to gain citizenship in order for them to preserve their national identity."<sup>63</sup>

In Kenya, the estimated number of stateless people specifically Nubian people is not known, but they were not granted citizenship when Kenya

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<sup>59</sup> Refugees International Bulletin, (Refugees International, June 13, 2007), 1.

<sup>60</sup> Ibid, 1.

<sup>61</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, Nationality Rights for All: A Progress Report and Global Survey on Statelessness, (Refugees International, 2009), 30.

<sup>62</sup> Ibid, 30.

<sup>63</sup> Ibid, 30.



became independent in 1963.<sup>64</sup> The British Colonial Administration had forcibly taken the Nubian from the Sudan in the 19th century.<sup>65</sup> The Government has not easily granted nationality to certain groups based on their historical or ethnic ties to other countries. For example, the Nubians who originated from Sudan, but who lived in Kenya for over a century with the Somalis of Kenya as well as the coastal Arabs, have been faced with discrimination, and consequently statelessness.<sup>66</sup> Due to the situation, the Nubian community lodged complaints with the Kenya High Court and then the African court on Human and People's rights.<sup>67</sup> However, there has been no judgment on these cases. The Nubian Kenyan women do not have Kenyan citizenship so their children were at risk of statelessness because they were not granted Kenyan nationality.<sup>68</sup>

A similar situation occurred in Mauritania. In 2008 the first of tens of thousands Mauritanian refugees who had been in exile since 1989 in Senegal returned to their country under a Tripartite agreement between UNHCR, Senegal, and the Mauritanian government.<sup>69</sup> Mauritanian citizenship is based on French citizenship law. In the French civil code, a child born in France of a parent born in France became French.<sup>70</sup> However,

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<sup>64</sup> Open Society Justice Initiative, *Nationality and Discrimination: The case of Kenyan Nubians*, 1.

<sup>65</sup> *Ibid*, 1.

<sup>66</sup> *Ibid*, 1.

<sup>67</sup> *Ibid*, 1.

<sup>68</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 30.

<sup>69</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 142.

<sup>70</sup> *Ibid*, 143.

Mauritanian nationality law differs from the French code in that it focuses on the gender of the parent. Therefore, children born to Mauritanian fathers were automatically Mauritanian, but those born to Mauritanian mothers were only Mauritanian if the father was stateless, of unknown nationality, or if the child rejected his or her father's citizenship before the age of majority.<sup>71</sup>

Beginning in 1989 as many as 100,000 black Mauritians were expelled from the country. The majority of Mauritania's population were lighter-skinned and of Arab descent.<sup>72</sup> The government viewed the expulsion of these individuals as part of a civil conflict. However, the government undertook considerable efforts to confiscate and destroy citizenship documents, since most of the adults had birth certificates and national identity cards.<sup>73</sup> Therefore, there was a racist element to the government's policies towards the black Mauritians. The others, especially children, were not able to return because they had not been registered at birth.<sup>74</sup> This has been problematic for the children who remained in Senegal, because Mauritanian refugee parents knew that their children could become citizens, but some were unwilling to register their

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<sup>71</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 143.

<sup>72</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 31

<sup>73</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 147.

<sup>74</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 31

children and allow them access to that citizenship.<sup>75</sup> These parents preferred to wait to return to Mauritania and obtain their citizenship or recognition of their citizenship rights in Mauritania.<sup>76</sup> Fortunately, a tripartite agreement was signed in November 2007 between Mauritania, Senegal, and UNHCR, and returns to Mauritania began in January 2008.

## **Europe**

In the Czech Republic there were an estimated 250,000 to 300,000 Roma who arrived there after World War II.<sup>77</sup> The estimated number of stateless was unknown, but there was a 1992 citizenship law that rendered some of the Roma stateless.<sup>78</sup> Although Slovakia agreed that those who had lived in the Czech Republic could receive Slovak citizenship even if they had been residing outside of Slovakia, the Czech Republic stated that those with Czech state citizenship from the former Czechoslovakia automatically received Czech national citizenship. However, those individuals who had Slovak citizenship had to apply for Czech national citizenship through naturalization even if they had resided in the Czech Republic. The law mainly affected the Roma population because approximately 95 percent of the Czech Republic's Roma people had moved to the Czech Republic from

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<sup>75</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 31.

<sup>76</sup> Marisa O. Ensor and Elzbieta M. Godziak, eds., *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, (UK: Palgrave Macmillan 2010), 125.

<sup>77</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 45.

<sup>78</sup> *Ibid*, 45.

Slovakia after World War II.<sup>79</sup> Thus, they were still considered Slovak citizens. However, they had not changed their citizenship, which led to their children being vulnerable to statelessness because their parents were considered Slovak citizens, although the children were not registered with legal documents.<sup>80</sup>

Concerning the Roma children, the law stated that all children under 15 years old were included in the applications of their parents, and that their parents had to both agree if the child would apply for citizenship. Many of these children were living in the Czech Republic's orphanages and were Roma children of Slovak origin.<sup>81</sup> In 1999 the Czech Republic amended its citizenship law to enable Roma residing in the Czech Republic and permanent residents to become citizens.<sup>82</sup>

In Germany, there were both Roma and Turkish people who faced statelessness. The Roma arrived in Germany in the 1970s and 1980s fleeing persecution from Poland, the former Yugoslavia, and Romania. However, the local authorities in the German government did not meet the asylum seeker's needs and often imposed strict police controls. In 1992 Germany and Romania had an agreement stating that all Romanians (many immigrant Romanians are Roma) who were not eligible for refugee status could be forced back to Romania. It appears that 40,000 to 50,000 Roma

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<sup>79</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 45.

<sup>80</sup> *Ibid*, 45.

<sup>81</sup> *Ibid*, 45.

<sup>82</sup> *Ibid*, 45.

were actually forced back. Subsequently, a 1994 law blocked Roma from acquiring residence permits in Germany.<sup>83</sup> This had consequences for the Roma children who were not eligible for citizenship even if their parents had acquired permanent resident status.

The Turkish people in Germany also faced problems, as the German nationality laws were extremely strict. Although the Turkish people were eligible for Turkish citizenship, third generation Turks born in Germany were considered foreigners. The German nationality laws were based on descent.<sup>84</sup> This would also be problematic for Turkish children. However, in 2000, legislation passed in Germany that gave German citizenship to children born to foreigners in Germany if they have reached certain residency requirements and naturalization procedures. However, there was no possibility of dual citizenship, and these children had to choose one citizenship between the ages of 18 and 23.<sup>85</sup>

## **Middle East**

One minority group that was vulnerable to statelessness in the Middle East were the Bidun, who were a minority residing throughout the Middle East in Kuwait, Bahrain, United Arab Emirates, Qatar, and Saudi Arabia beginning in the late 1950s and early 1960s.<sup>86</sup> In Bahrain, there were approximately 1,300 stateless Biduns. There is a Bahrain law that allowed

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<sup>83</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 46.

<sup>84</sup> *Ibid*, 46.

<sup>85</sup> *Ibid*, 46.

<sup>86</sup> *Ibid*, 50.

applicants of Arab descent who had lived in Bahrain for over 15 years to apply for citizenship and also held that non-Arab applicants who had lived in Bahrain for over 25 years could be legally entitled to citizenship.<sup>87</sup> However, this was not implemented systematically.

These nationality laws affected the Bidun children. Bahraini men married to non-Bahraini women passed their citizenship to their children. However, Bahraini women married to non-Bahraini men cannot pass their citizenship to their children. This created more cases of stateless individuals. The only exceptions were for children born out of wedlock or for children whose father was not known.<sup>88</sup> Due to this growing trend, a group of 21 women's organizations submitted a report, which included a review of Bahrain's discriminatory nationality laws to be discussed and reviewed at the 42<sup>nd</sup> session of the committee of the Convention of Elimination of Discrimination against Women (CEDAW) in November 2008.<sup>89</sup>

In Kuwait, the Bidun were accorded similar treatment as Kuwaiti citizens until the 1980s. They had economic and social rights and access to services such as education, work, and medical care; however, they did not have political rights. Following the Iraq-Iran war from 1980 to 1988, the Kuwaiti government viewed the Bidun - who are mainly Shiites - as Iranians or as Iraqi supporters. After 1991, this situation followed a negative trend and continued with the Bidun targeted by the authorities and not allowed to

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<sup>87</sup> Katherine Southwick, J.D., and M. Lynch, PH.D, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, (Refugees International, 2009), 50.

<sup>88</sup> *Ibid*, 50.

<sup>89</sup> *Ibid*, 50.

work in government agencies, especially in the military or police.<sup>90</sup> In addition, small oil-producing countries like Kuwait give financial benefits with citizenship. They offer citizens subsidized education, medical care, grants, and long-term loans for housing, jobs, and social security.<sup>91</sup>

Lack of citizenship has negatively affected the Bidun; with Bidun individuals harassed by the police, not permitted to own property, and not allowed to register cars in their own name. They have been labeled as non-Kuwaiti or illegal residents. Bidun children had no access to subsidized education or health care. Their families had to send them to private schools that were expensive, and they required assistance from charitable organizations.<sup>92</sup> In addition, Kuwait's nationality laws only allow for citizenship of the children through the father's side. Therefore, if a Kuwaiti woman was married to a Bidun, then her children were also Bidun and not Kuwaiti. This also increased a Bidun child's vulnerability to stateless. Although other countries such as Algeria, Egypt, Morocco, and Tunisia have amended their nationality laws to enable mothers to pass on their nationality to their children if the father was stateless, Kuwait has restricted this in order to prevent Bidun children from gaining citizenship.<sup>93</sup>

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<sup>90</sup> Brad K. Blitz and Maureen Lynch, eds., *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, (UK: Edward Elgar, 2011), 178.

<sup>91</sup> *Ibid*, 179.

<sup>92</sup> *Ibid*, 180.

<sup>93</sup> *Ibid*, 184.

## **PART FOUR**

### **Responding to Statelessness among Children, and Recommendations**

Although UNHCR and other sister agencies have been working and advocating closely with governments to address statelessness as an issue on a global scale, it is clear that there are still many hurdles and obstacles before success is reached. The key actors are UNHCR, sister UN agencies, non-governmental organizations, and civil society. However, the issue of citizenship has a component of lack of awareness by stakeholders on this human rights issue, and lack of funding to address the issue in a proactive manner.

Although there has been an increase in redirecting the focus through cooperation with other stakeholders at the field level, there has to be also agreements by the governments in addressing some of the issues brought up in the research about child statelessness. In fact, it is noted that birth registration is one of the key gaps noted in Africa, Asia, Europe, and the Middle East. This was the constant factor which also prevented governments from ensuring that these children obtained citizenship. Furthermore, many of the countries still have not signed and ratified either the 1954 UN Convention Relating to the Status of Stateless People or the 1961 UN Convention on the Reduction of Statelessness. The other key factor was the passing on of citizenship by the mother to her children. Therefore, the issue of gender equality has to be addressed as well since a mother's ability to pass on her citizenship has enormous consequences for her children. Thus, the Convention on the Elimination of all Forms of



Discrimination Against Women (CEDAW) is a key legal instrument in combating this particular gap, which negatively affects children.

The other underlying factor such as ethnicity also contributed to a statelessness problem as highlighted by the situation of the ethnic Nubian people originally from Sudan who were still not considered Kenyan citizens despite the fact that they had been in Kenya since the 19<sup>th</sup> century. Race also was a factor in child statelessness as viewed by the black Mauritians who were expelled in the late 1980s as the majority of the Mauritanian population was light-skinned and Arabic. Finally, the factor of religion affected the situation for the Bidun people who were living in Kuwait and in the Middle East region. They were mainly Shiite Muslims and were viewed suspiciously by the government in Kuwait and Iraq. These factors worsened the stateless situation for the children as highlighted by the case studies above. Therefore, the implementation of international human rights standards to address discrimination and racism should be acceded to in order to address the issue of statelessness among these ethnic groups.

UNHCR and its sister agencies such as UNICEF have been working in parallel with other non-governmental organizations such as Refugees International and the Open Society in addressing and bringing the issue of child statelessness on a global level. Children have been affected by the lack of ratification of the UN conventions relating to the status of stateless people and reduction of statelessness because governments are not prioritizing the problem of stateless children and adults. UNHCR has been mandated by the General Assembly to promote the accession to and implementation

of the 1954 Convention relating to the Status of Stateless people. In parallel, UNHCR has been encouraging governments to review their nationality laws to encourage birth registration of the undocumented children. Thus far, UNHCR has received pledges from several governments, but it is still waiting for accession to the respective UN stateless conventions.

In the last few years, UNHCR has been increasing its efforts towards addressing statelessness through its own internal mechanisms. Although there are few staff members dedicated to statelessness work, it is mandatory to include activities in the budgeting for the country operation planning by all UNHCR offices globally. Through the budgeting, UNHCR has increased its advocacy through print media and studies undertaken by UN staff members and consultants. These studies are extremely useful in addressing the issue of statelessness more directly with the government. In addition, staff from the protection and legal sections of the Office is also dedicated to ensuring that a percentage of their work is focused on stateless populations.

The lack of awareness by the general public and the lack of movement by the respective governments demonstrate that there is a need for more information and studies about the stateless population especially the stateless children who are suffering from the lack of legislation to address the gaps in citizenship. UNHCR has also been instrumental in convening a meeting, which brought governments together to its headquarters in Geneva, Switzerland to commemorate the 60<sup>th</sup> anniversary of the 1961

Convention to reduce statelessness and advocate for accession to the UN Conventions. Through the research and case studies gathered, it is essential that there are more direct measures in terms of advocating and amending of nationality legislation in order to address the continuing issue of child statelessness worldwide.

## **BIBLIOGRAPHY**

Ahmed, Imtiaz (editor), *The Plight of the Stateless Rohingyas*, The University Press Limited, 2010.

Batchelor, Carol A., Transforming International Legal Principles into National Law: The Right to a Nationality and the Avoidance of Statelessness, *Refugee Survey Quarterly*, Vol. 25, Issue 3, UNHCR 2006.

Bhabha, Jacqueline (editor), *Children without a State: A Global Human Rights Challenge*, the MIT Press, 2011.

Blitz, Brad K. and Maureen Lynch (editors), *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality*, Edward Elgar Publishing Limited, 2011.

Dona, Giorgia, and Angela Veale, Divergent Discourses, Children and Forced Migration, *Journal of Ethnic and Migration Studies*, Vol. 37, No. 8, September 2011.

Department of Social Affairs, United Nations, *A Study of Statelessness*, August 1949.

Ensor, Marisa O and Elzbieta M. Gozdzia, *Children and Migration: At the Crossroads of Resiliency and Vulnerability*, Palgrave Macmillan, 2010.

Refugees International Bulletin, Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness, June 13, 2007.

Southwick , Katherine, JD and Maureen Lynch, M. PH.D, Nationality Rights for All, Refugees International, 2009.

UNHCR Division of International Protection, UNHCR action to address statelessness, March 2010

<http://www.unhcr.org/cgi-bin/texis/vtx/home>, Stateless People.

van Waas, Laura, Nationality Matters: Statelessness under International Law, Intersentia, 2008.

## **ACKNOWLEDGEMENTS**

I would like to thank the Weatherhead Center for International Affairs at Harvard University as I have learned a great deal in the past year as a Fellow. Through the seminars and weekly meetings, I learned tremendously from my fellow Fellows and visiting Professors from Harvard University and other Universities. I also believe that I have contributed as well to a greater understanding of refugee protection and the problem of statelessness through my sessions with the Harvard community.

I would especially like to thank Mr. Steve Bloomfield and Ms. Kathy Molony, as they have been supportive and helpful throughout my fellowship this year.

I would especially like to thank Professor Sara Pugach who was extremely helpful in sharing her comments and views on the paper.

I would also like to thank my research assistant Ms. Kathy Lugo for her consistent and diligent work as my research assistant.

I would also like to thank my UNHCR Office in Budapest for allowing me to take a sabbatical to participate in the fellowship this year.

Finally, I would like to thank my Family and Laurent Teulieres for their constant support throughout my research and fellowship year.

