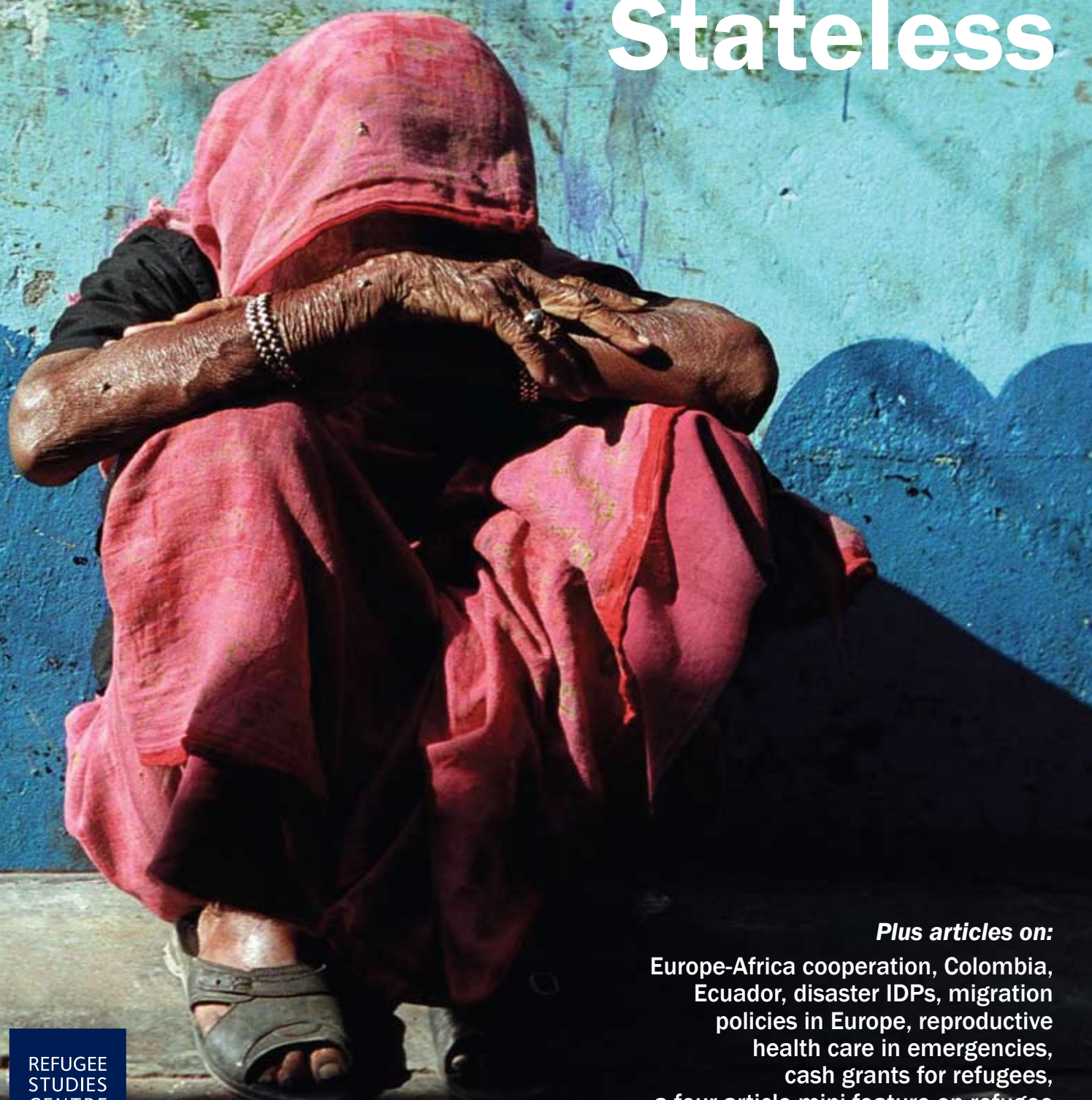


FORCED MIGRATION review

Issue 32
April 2009

No legal identity. Few rights. Hidden from society. Forgotten.

Stateless



Plus articles on:

Europe-Africa cooperation, Colombia, Ecuador, disaster IDPs, migration policies in Europe, reproductive health care in emergencies, cash grants for refugees, a four-article mini-feature on refugee status determination... and more.

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Forced Migration Review

Forced Migration Review (FMR) provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published in English, Arabic, Spanish and French by the Refugee Studies Centre of the Oxford Department of International Development, University of Oxford.

Staff

Marion Couldrey & Maurice Herson (Editors)
Musab Hayatli (Assistant Editor, Arabic)
Heidi El-Megrissi (Coordinator)
Sharon Ellis (Assistant)

Forced Migration Review

Refugee Studies Centre
Oxford Department of International
Development, University of Oxford,
3 Mansfield Road, Oxford OX1 3TB, UK
Email: fmr@qeh.ox.ac.uk
NEW Tel: +44 (0)1865 281700
NEW Fax: +44 (0)1865 281721
Skype: fmreview

www.fmreview.org

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Opinions in FMR do not necessarily reflect the views of the Editors, the Refugee Studies Centre or the University of Oxford. This publication was funded in part by a grant from the US Department of State. The opinions, findings and conclusions stated herein are those of the authors and do not necessarily reflect those of the US Department of State.

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Designed by

Art24 www.art-24.co.uk

Printed by

LDI Ltd www.ldiprint.co.uk

ISSN 1460-9819

Front cover photo:

After confirmation of their citizenship, Biharis in Bangladesh can now have hope of leading a normal life after decades of exclusion. UNHCR/G M B Akash



from the editors of

**FORCED
MIGRATION**
review

A 'stateless person' is someone who is not recognised as a national by any state. They therefore have no nationality or citizenship (terms used interchangeably in this issue) and are unprotected by national legislation, leaving them vulnerable in ways that most of us never have to consider. The possible consequences of statelessness are profound and touch on all aspects of life. It may not be possible to work legally, own property or open a bank account. Stateless people may be easy prey for exploitation as cheap labour. They are often not permitted to attend school or university, may be prohibited from getting married and may not be able to register births and deaths. Stateless people can neither vote nor access the national justice system.

As we are reminded by Mark Manly and Santhosh Persaud in their article in this issue, statelessness often means that leading a life like others in society is just not possible. Lacking access to the rights, services and legal documentation available to citizens, the world's stateless populations face unique challenges and require specialised responses from the international refugee regime as well as specific instruments for their protection.

We are grateful to Brad Blitz, Julia Harrington, Indira Goris, Sebastian Köhn, Mark Manly and Santhosh Persaud for their advice and support. We would also like to thank those agencies who generously provided funding for this particular issue: the US Department of State, Bureau of Population, Refugees, and Migration (PRM); the Open Society Justice Initiative; the European Union; the Statelessness Unit of UNHCR's Division of International Protection Services; and UNHCR's Africa Bureau. This issue is online at <http://www.fmreview.org/statelessness.htm>

Reader Survey: Our thanks to those of you who completed our Reader Survey and gave us your endorsement and your ideas. A summary report is on page 74 and a fuller report is online at <http://www.fmreview.org/2008survey.htm>.

Our mailing list: We need to ensure that our mailing list is as up to date as possible. If your contact details have changed recently, or if you expect them to change in the near future, please would you email us (fmr@qeh.ox.ac.uk) with the details. This will save possible wastage of FMR funds on postage.

FMR is moving offices: In April, the Refugee Studies Centre, where we are based, is moving in with the rest of the Oxford Department of International Development. All our contact details will stay the same except for our telephone and fax numbers which will change to +44 (0)1865 281700 (tel) and +44 (0)1865 281721 (fax). If you plan to visit us, our office address is now the same as our postal address (see opposite).

With best wishes.

Marion Couldrey & Maurice Herson
Editors

Forthcoming issues

- FMR 33 (due out in July 2009) will focus on protracted displacement situations.
- FMR 34 (November 2009) will focus on urban displacement. The call for articles is at <http://www.fmreview.org/urban-displacement/>. Deadline for submission of articles is 20 July (please note extended deadline).
- FMR 35 (March 2010) will focus on disability and displacement.

See <http://www.fmreview.org/forthcoming.htm> for details.



This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union.

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Statelessness: what it is and why it matters

Indira Goris, Julia Harrington and Sebastian Köhn

Since the Second World War, a right to nationality – though difficult to define and rarely enforced – has emerged under international law.

For many of us, citizenship only really matters when we travel abroad, when the Olympic Games are on, or when we vote in national elections. We do not think about our citizenship on a daily basis. For others, citizenship is an ever-present issue, and often an obstacle. Because recognition of nationality¹ serves as a key to a host of other rights, such as education, health care, employment, and equality before the law, people without citizenship – those who are ‘stateless’ – are some of the most vulnerable in the world.

The inclusion of the right to nationality in Article 15 of the Universal Declaration of Human Rights, like the UDHR as a whole, was motivated by the impulse to respond to the atrocities committed during the Second World War, among them mass denationalisations and huge population movements. Hundreds of thousands of Jews who survived the Nazi-perpetrated genocide fled their home countries, while millions of ethnic Germans were expelled from eastern European states, and millions of Poles, Ukrainians, Byelorussians and other minority populations of the Soviet Union either were forcibly expelled or fled for their safety.

Estimates of the current number of stateless persons in the world range from about 11 to 15 million. There is not only a lack of systematic attention given to collecting reliable statistics but also a lack of consensus on whom to include when counting stateless people. There is general agreement that people who are *de jure* (legally) stateless – those who are not considered as nationals by any state under its laws – should be counted. However, there are many millions of 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.

Although individuals who have legal citizenship and its accompanying rights may take both for granted, what they enjoy is one extreme of a continuum between full, effective citizenship and *de jure* statelessness, in which individuals have neither legal citizenship nor any attendant rights. In between these extremes are millions of *de facto* stateless persons denied effective protection.

Statelessness may result from various circumstances. States may simply cease to exist while individuals fail to get citizenship in their successor states; political considerations may dictate changes in the way that citizenship laws are applied; an ethnic minority may be persecuted by being denied citizenship; or a group may live in frontier areas and frequently cross borders, causing states on both sides of the border to deny them citizenship. There are individuals who become stateless due to personal circumstances, rather than persecution of a group to which they belong. Statelessness can arise from legal differences between countries, people renouncing one nationality without having acquired another or even, more simply, from failure to register the birth of a child. Added to this is a potential new category: small islands which, condemned by a changing climate to be swallowed by the sea, will see their entire populations become stateless.

The state of being stateless

Stateless people face a range of different problems, depending on where they live and why they are

stateless. Typically, because they lack access to identification papers to prove their citizenship, they are ineligible to vote and participate in political processes, unable to obtain travel documents and unable to access a range of government services and employment. In the European Union (EU), for example, stateless people, like other non-citizens, typically are not able to vote and may be barred from certain public sector jobs. In some EU states, large numbers of stateless people – such as Slovenia’s ‘erased citizens’² – are systematically denied access to both health care and education on a par with citizens. In Malaysia, stateless children in Selangor and Sabah are frequently denied access to basic education. In Niger, more than a hundred thousand Mahamid Arabs³ have had the threat of mass expulsion hanging over them for years.

Most of us never think about our nationality because we acquire it automatically when we are born. Indeed, the two most commonly employed principles for granting citizenship operate at the moment of birth: in legal terminology *jus soli* and *jus sanguinis*, the ‘law of the soil’ and the ‘law of blood’, respectively. *Jus soli* provides that those born in the territory of a country have the right to citizenship of that country, except for a few common exceptions such as children of foreign diplomats. *Jus sanguinis* confers citizenship on children whose parents are citizens of a given country. International law has not historically expressed a preference for one principle for granting citizenship over the other, and the legal regime of many states is effectively a hybrid of these two principles. For those who do not receive citizenship at birth or who need to change citizenship, most countries permit, at least in principle, the acquisition of citizenship by naturalisation. In some countries there is also a limited opportunity to acquire citizenship

by a simpler process known as 'registration' or 'declaration'.

One of the main reasons people are denied or deprived of nationality, and thus rendered stateless, is racial or ethnic discrimination. The denationalisation and expulsion of tens of thousands of black Mauritanian citizens in 1989 were racially motivated. In Estonia, ethnic Russians have struggled with statelessness since independence in 1991.⁴

Gender discrimination is also a crucial factor in creating and perpetuating statelessness. Many countries around the world still do not have gender-neutral citizenship laws; in the worst cases, women lose their citizenship upon marriage to foreigners, and are unable to pass on their citizenship to their children. In Swaziland, the constitution adopted in 2005 stipulates that a child born after the constitution came into force is a citizen only if his or her

father is a citizen. In Africa alone, over 20 countries still deny women the right to pass on nationality to a foreign spouse. There are positive developments. In Botswana in the early 1990s a challenge to the constitutionality of the country's Citizenship Act on the ground that it discriminated on the basis of gender led to the Act being amended. Several North African countries have also taken significant steps in the last 15 years to end government-sanctioned gender discrimination by amending their citizenship laws to make them gender-neutral. Nevertheless, there is a long way to go in many countries around the globe.

Laws relating to statelessness

International law has traditionally recognised states' broad discretion to define eligibility for nationality. Article 15 of the UDHR grants the right to a nationality in general but gives no clue as to how responsibility for granting citizenship should fall on a particular state. This may

explain why the right to nationality has attracted little international attention and has developed slowly. But just as the discretion of states has been circumscribed by human rights norms in other areas, laws and practices on citizenship must be consistent with the principles of international human rights law.

Originally, norms to prevent statelessness were to be included in a Protocol to the 1951 Convention relating to the Status of Refugees but eagerness to deal with the large number of post-war refugees at the time led to adoption of the Convention without inclusion of the Protocol. Action on statelessness was thus delayed until the Convention relating to the Status of Stateless Persons⁵ was adopted in 1954. The Convention on the Reduction of Statelessness was adopted in 1961.

The 1954 Convention affirmed that the fundamental rights of stateless persons must be protected while the 1961 Convention created a framework for avoiding future statelessness, placing an obligation on states to eliminate and prevent statelessness in nationality laws and practices. Specifically, states may not deprive persons of citizenship arbitrarily or in such a way as to cause statelessness. While states retain broad control over access to citizenship, the legal power to withdraw citizenship once granted is more limited. Unlike the Refugee Convention, however, the two Statelessness Conventions have not been widely ratified.

In addition to the two treaties dealing specifically with statelessness, other international human rights instruments that have emerged since the adoption of the UDHR articulate principles that constrain states' discretion over nationality matters.⁶ These treaties have progressively given meaning to the scope and content of the right to nationality and in particular the right to be free from arbitrary deprivation of nationality.

On the whole, international law provides for a robust right to nationality and for special protection of vulnerable groups vis-à-vis this right. Although the record of ratification of relevant international instruments varies, the great majority of states are parties to one or several



Some 4,000 unregistered Rohingya refugees from Burma/Myanmar have set up a squalid unofficial camp outside the official Kutupalong Refugee Camp in Bangladesh.

treaties that guarantee the right to citizenship. As a group, children enjoy the most specific protections of their right to nationality, which is logical given that birth is the key moment for obtaining citizenship

for granting citizenship, a principle appears to be emerging whereby nationality is defined as a 'genuine and effective link' between the individual and the state. This focuses primarily on 'factual ties' as a basis

Conclusion

The world has a long way to go before the right to nationality is assured. The international community needs to:

- facilitate wider understanding of the different forms and grave consequences of statelessness
- enforce existing human rights norms – such as those prohibiting discrimination and ensuring due process – against citizenship regimes that are *prima facie* discriminatory or otherwise arbitrary
- enforce legal norms at the national and international levels to significantly reduce statelessness
- exert greater political pressure on states to acknowledge their protection responsibilities vis-à-vis individuals as citizens.

Wider acknowledgement of existing normative gaps relating to nationality should prompt the articulation of new and stronger norms that will require states both to grant citizenship and to refrain from arbitrarily depriving individuals of citizenship. States may well be reluctant to accept yet another principle that constrains their actions – but so it has been with every human right.

Indira Goris (igoris@justiceinitiative.org) is Program Officer for Equality and Citizenship, Sebastian Kóhn (skohn@justiceinitiative.org) is Program Assistant for Equality and Citizenship, and Julia Harrington (jharrington@justiceinitiative.org) is Senior Legal Officer for Equality and Citizenship at the Open Society Justice Initiative (http://www.justiceinitiative.org).

1. For the purpose of this article, citizenship and nationality are used interchangeably.
2. In 1996, the Slovene government literally erased the names of 18,305 residents from its register of citizens. These names were placed on a register of foreigners residing illegally in Slovenia who have since been denied social services. See http://www.justiceinitiative.org/db/resource2?res_id=103920
3. The problems facing the Mahamid Arabs are common also among other pastoralist communities that live in border regions. See article on p18.
4. In November 2008 the Government of Estonia reported that 7.9% of the total population has 'undetermined' citizenship.
5. <http://www.unhcr.org/home/PUBL/3d4ab67f4.pdf>
6. See box on p10.
7. As articulated by the International Court of Justice in the 1955 *Nottebohm Case (Liechtenstein v Guatemala)*.



UNHCR/C Doan

and children are in particular need of state services and protection.

The link between state and individual

There is still, however, a genuine normative gap in international law. Specifically, despite the right of every person to citizenship under international law, international law is by and large silent on the procedures and criteria for establishing a bond of nationality between the state and the individual.

Consideration of *jus soli* and *jus sanguinis* regimes show that both are essentially proxies for a common-sense criterion for citizenship: where an individual is likely to live, and therefore have the need and desire for citizenship and the security and rights that go with it. In other words, a person's legal right to citizenship should be operative in the country in which that person is most deeply embedded. In this way, citizenship enables the fullest possible exercising of all social, economic and political rights and duties.

In the absence of a widely ratified international treaty defining criteria

for nationality rights, determined by "...the habitual residence of the individual concerned ... the center of his [/her] interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated into his children..."⁷

Application of this principle would solve most cases of *de facto* statelessness in the world – certainly those in which ethnic discrimination has led to denial of nationality to groups that have been resident in the same country for generations, as well as those in which women's inability to pass citizenship to their children or husband leaves these individuals stateless. The usefulness of 'genuine and effective link' as a criterion for citizenship is enhanced by the fact that it reflects to a significant degree a person's will and desire to belong to a country.

Enshrining the effective link principle in international human rights law could oblige states to grant citizenship to individuals who have fallen through the cracks of *jus soli* and *jus sanguinis* regimes.

Vietnamese Nguyen Thi Phuong, right, at the house of her mother Mai Thi Lieu. Phuong married a Taiwanese man but was abandoned by her husband because she gave birth to two daughters instead of sons. At present she has neither Vietnamese nor Taiwanese citizenship.

UNHCR and responses to statelessness

Mark Manly and Santhosh Persaud

UNHCR and other actors have stepped up efforts to address statelessness. However, the global impact of statelessness is not yet sufficiently understood and far more needs to be done.

In legal terms, being stateless means that no state considers you a national under the operation of its law. The practical implications of this are very serious. For instance, stateless persons generally are not recognised as persons before the law and face difficulties in travelling, marrying and accessing education and health care. In short, statelessness often means that leading a life like others in society is not possible.¹

Since its creation, UNHCR has worked to provide international protection and to seek durable solutions for stateless refugees who are covered by its Statute and by the 1951 Convention. UNHCR also actively participated in the drafting of the two global statelessness instruments – the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In 1974 the UN General Assembly designated UNHCR as the organisation to which persons claiming the benefit of the 1961 Convention may apply for examination of their claims and for assistance in presenting those claims to state authorities.

The massive increase in statelessness due to the break-up of the USSR, Yugoslavia and Czechoslovakia and the emergence of successor states in the early 1990s underlined the need for a more effective international response to statelessness. As a result, the UN General Assembly entrusted UNHCR with a global mandate to work to prevent and reduce statelessness and to protect stateless persons. UNHCR therefore has a mandate with two distinct elements: to address situations of statelessness which occur around the world and to assist in resolving cases which may arise under the 1961 Convention. The efforts of UNHCR thus far have been facilitated

by a number of developments at the international level.

The changing international context

Behind the label ‘statelessness’ we find a broad range of issues, many of them quite complex, including birth registration, nationality legislation, state succession, migration and international law. But while the sovereign discretion of states in the field of nationality has been gradually eroded since the adoption of the Universal Declaration of Human Rights, in the end it is action by states that is required to prevent and reduce statelessness. UNHCR cannot substitute for states. What UNHCR can do, however, is document gaps in legislative and administrative frameworks and provide assistance to address them. Possession of nationality is closely linked to who ‘belongs’ in a society and as a result acquisition of nationality by an ‘outsider’ will depend to a large degree on political will. Where there is the political will to act, seemingly intractable problems can be resolved.

Fortunately, there is now a greater range of actors involved and their collective efforts are no doubt helping to build the political will of states. The Council of Europe has not only adopted conventions on nationality and statelessness but also mandated a committee of experts to put forward recommendations on measures to give effect to children’s right to a nationality. The Asian-African Legal Consultative Organization adopted a resolution on Legal Identity and Statelessness in 2006. Some states, such as Indonesia, Nepal, Bangladesh and Ukraine, have sought to address statelessness in their own countries, leading by example. Others, such as the US, have increasingly placed addressing statelessness on their foreign policy agenda. NGOs such

as Refugees International and the Open Society Justice Initiative undertake considerable research and advocacy in the area.² There is a growing interest in statelessness in academic circles as well.

Related to this is the growing relevance of international legal standards. Global and regional treaty and ‘soft’ law form an increasingly comprehensive web of standards on issues of prevention and reduction of statelessness and protection of the human rights of stateless persons.³ In large part due to a sustained campaign by UNHCR, there has been a significant, if gradual, increase in the number of States Parties to the two UN treaties designed specifically to address statelessness. The number of parties to the 1954 Convention has now risen to 63. While the number of States Parties to the 1961 Conventions is lower, recent years have seen a steady progress; since 2005 it has been acceded to by states as diverse as Romania, Rwanda, Senegal, New Zealand, Brazil and Finland, bringing the total number of States Parties to 35.

There is also a range of other universal and regional treaties which regulate issues relating to nationality and statelessness, including prohibiting discrimination on the grounds of race and sex and obliging states to grant nationality in specific circumstances.

Identification of statelessness

Understanding the scale of statelessness, its causes and consequences will evidently be a necessary step to addressing the problem. Stateless people are in many ways the ultimate ‘forgotten people’ and identification of statelessness remains a major challenge. Frequently, stateless persons live on the margins of society and are, almost by definition, ‘uncounted’. States may be reluctant to gather more detailed data due to political sensitivities. As a result, statistics on statelessness worldwide

An Indian origin plantation worker outside her house at Chrystler's farm estate, Kotagala, Sri Lanka. A law in 2003 enabled Indian origin Tamil plantation workers to obtain citizenship provided their families had been in Sri Lanka since 1964. Many stateless plantation workers were automatically granted citizenship upon a special declaration but not all of them were reached in the citizenship campaigns.



UNHCR/G. Amarasinghe

are incomplete. UNHCR has published country-level data for some 54 countries referring to a total of 3 million people but estimates that there are possibly about 12 million stateless people worldwide.

Because the identification of statelessness goes beyond statistical reporting, UNHCR has undertaken or funded academic and policy-oriented research, studies on specific countries and field-based research, such as a study on statelessness in Canada⁴ and research on the Bihari/Urdu-speaking population in Bangladesh.⁵

Prevention and reduction

States bear the primary responsibility for preventing and reducing statelessness. One focus of UNHCR's work is therefore the promotion of accessions to the 1961 Convention on the Reduction of Statelessness. The Convention is particularly important because statelessness often results from differing approaches by states to nationality issues and a common set of rules is therefore essential. Nonetheless, all states should institute safeguards against statelessness, regardless of whether they are parties to the 1961 Convention or not.

The UN General Assembly has specifically requested UNHCR to "provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation." UNHCR has therefore provided such advice to dozens of governments around the world on both prevention and reduction of statelessness.

In addition, it collaborated with the Inter-Parliamentary Union to publish *Nationality and Statelessness: a Handbook for Parliamentarians* which has now been published in 16 languages.⁶

Even states which are not party to the 1961 Convention can implement safeguards in their national legislation to prevent and reduce statelessness. In providing technical advice, UNHCR draws on the safeguards found in the text of the Convention but also refers to other human rights treaties. It advocates, for example, that states include a safeguard that nationality should be acquired by all children born in the territory who would otherwise be stateless. This safeguard is explicitly contained in several regional treaties and, as a result, over 90 states already have an obligation to grant nationality to children born in such circumstances.

Also in the area of prevention, lack of birth registration can be an insurmountable obstacle to proving nationality acquired by descent (as the person cannot prove who their parents are), or by birth on the territory (as there is no proof of where the person was born). In Serbia UNHCR has therefore worked with the government to modernise birth registries to make it far easier for people to obtain proof of their identity, including nationality.

Citizenship campaigns

Faced with large-scale (and often protracted) statelessness situations, a number of governments have

undertaken citizenship campaigns, including measures such as granting nationality based on residence or birth in the territory, registration of stateless persons and issuing documentation proving nationality. For example, in 2003 UNHCR provided advice and operational support for a citizenship campaign in Sri Lanka. Over 190,000 formerly stateless Tamils who had been brought over to work on the tea plantations ('Estate Tamils') acquired proof of their new Sri Lankan citizenship. In 2007 Nepal issued proof of nationality to 2.6 million people. More recently, Turkmenistan has conducted a registration drive with support from UNHCR in which some 12,000 people of undetermined nationality have applied for naturalisation and are now awaiting decisions.

Nationality procedures are often unknown to people who are stateless or are sufficiently complex that many people do not understand them. Also, the costs of travel and obtaining documents and photographs mean that many people require financial assistance to do such basic things as register the birth of a child or satisfy documentation requirements for naturalisation. Public information about campaigns and procedures and practical assistance are therefore vital.

In Ukraine, UNHCR has worked with the NGO Assistance for many years to disseminate information on nationality procedures and provide legal aid to persons who are stateless or at risk of being stateless. Similar work is being done by the NGO

Praxus and the Humanitarian Centre for Integration and Tolerance in Serbia. A project with the Norwegian Refugee Council has addressed numerous cases relating to late birth registration and documentation in Cote d'Ivoire. These legal aid programmes have resolved tens of thousands of cases. However, many people do not receive the advice and support they desperately need which is why such programmes need to be implemented more systematically.

Very practical measures of assistance can go beyond advice and assistance in filing applications. In the former Yugoslav Republic of Macedonia, UNHCR's partner, the Legal NGO Network, accompanied persons whose application for nationality had been rejected and helped them to file appeals, in some cases up to the Supreme Court.

Holding a citizenship campaign does not mean that all problems are solved. Strict deadlines in citizenship campaigns carry the risk that part of the population, usually particularly vulnerable groups, may be left out despite efforts to include everyone. This occurred in Nepal, where UNHCR is now working with a range of partners to address the gaps.⁷

In Sri Lanka, UNHCR and UNDP are implementing an 'Access to Justice' project where mobile registration clinics allow those Estate Tamils not covered by the citizenship campaign to obtain identity documents.

Although legally these people already have Sri Lankan nationality, they face difficulties obtaining a National Identity Card. In Ukraine, several years after major naturalisation initiatives, the NGO Assistance continues to help a remaining population of some 3,500 persons who had returned after deportation during the Soviet period.

Acquiring a nationality and obtaining documentation often do not fully remedy the discrimination which in many cases is both a cause and at the same time a major consequence of statelessness. Formerly stateless persons often need assistance to ensure full integration into society and the enjoyment of their rights on an equal footing with other nationals, that is, to make their nationality fully effective. As a general rule, this requires 'mainstreaming' formerly stateless persons in existing programmes. In Bangladesh, UNHCR has advocated for the full inclusion of the Urdu-speaking populations (often referred to as Biharis), who were long treated as stateless, in poverty reduction programmes.⁸

Protection

Despite efforts to prevent and reduce statelessness, the reality is that statelessness continues to occur and progress to resolve existing situations is often very slow. Until they are able to acquire an effective nationality, stateless persons need the dignity, stability and protection that come with recognition of their

status and enjoyment of their human rights. The 1954 Convention sets out a minimum set of rights which is complemented by standards set out in UN and regional human rights treaties. Protection, however, can only be temporary while exploring avenues towards the acquisition of a nationality.

UNHCR's activities in the area of protection focus mainly on the promotion of accession to the 1954 Convention and on advocacy and technical advice based on that Convention and relevant human rights standards. It has provided advice to a range of states on compatibility of national legislation with the 1954 Convention and on establishment of procedures to determine whether individuals are stateless.

Interventions by UNHCR relating to protection of stateless persons have tended to focus on broad questions of law and policy but it has also intervened in individual cases, mainly through legal aid programmes run in conjunction with NGOs.

Conclusion

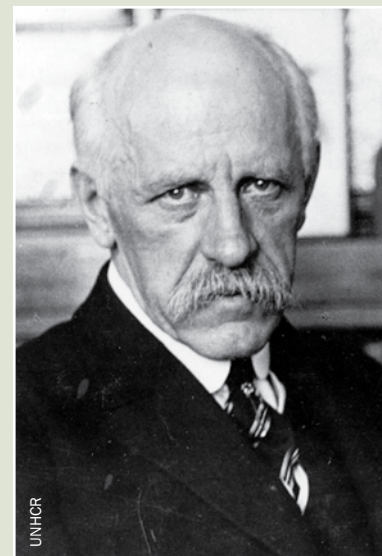
UNHCR has undertaken a wide range of activities to address statelessness but clearly more needs to be done. In acknowledgement of this, addressing statelessness more effectively is now one of UNHCR's Global Strategic Objectives. Notably, statelessness is one of four 'pillars' in the new budget structure which

Fridtjof Nansen

In the entrance hall of the UNHCR headquarters in Geneva stands a bust of Fridtjof Nansen. Nansen was a scientist and an explorer, as well as a diplomat, politician and great humanitarian on behalf of refugees and stateless people. He was the first High Commissioner for Refugees, appointed in 1921 by the League of Nations. His mandate initially covered people in flight from or expelled by the new Soviet Union. A decree of 1921 had deprived most of them of their nationality and they were thus stateless. Nansen's solution was to invent what became known as 'the Nansen Passport' which, while not a

passport as such, allowed the holder to travel and have a legal identity. The Nansen Passport was honoured by the governments of 52 countries and helped millions of stateless Russians and others to have rights.

After Nansen's premature death in 1930, often attributed to his overwork on behalf of refugees and stateless people, the Nansen International Office for Refugees took over the work of the High Commission and received the Nobel Peace Prize in 1938. UNHCR was set up in 1951. It gives the Nansen Refugee Award every year for outstanding work on behalf of refugees.



Fridtjof Nansen in New York in 1929

becomes fully operational in 2010. Training and policy guidance to staff and partners are being stepped up.

As UNHCR continues to move to implement its mandate more systematically, it will seek to work with a broader range of states, national and international NGOs and other international agencies. Other organisations need to look at how statelessness intersects with their own work. NGOs working with women, for example, can consider how gender discrimination in nationality legislation leads to statelessness, while those working with minority populations can seek to address the impact of statelessness on minorities. Universities should look to include statelessness in their courses and research priorities.

The existing international legal framework, lessons learned from responses in recent years and the

growing number of actors involved are all positive. However, given the magnitude of the problem, the often complex issues which cause and perpetuate statelessness and the sometimes deeply rooted political opposition to solutions, a far greater international effort is needed.

Mark Manly (manly@unhcr.org) is Head and Santhosh Persaud (persaud@unhcr.org) is Associate Protection Officer (Statelessness) in UNHCR's Statelessness Unit (<http://www.unhcr.org/statelessness/>).

Most of the documents referred to in this article and other documents related to statelessness and to UNHCR's policies and activities can be found at <http://www.unhcr.org/statelessness/> or <http://www.unhcr.org/refworld/statelessness.html>

1. See the issue of *Refugees* magazine which highlights many of these experiences <http://www.unhcr.org/publ/PUBL/46dbc0042.html>

2. See article p25.

3. see Box below.

4. <http://www.unhcr.org/home/PROTECTION/40629fc7.pdf>

5. Eric Paulsen, 'The Citizenship Status of the Urdu-speakers/ Biharis in Bangladesh', *Refugee Survey Quarterly* vol 25, Issue 3, 2006.

6. Arabic, Bulgarian, English, French and German versions of the Handbook available at <http://www.unhcr.org/refworld/docid/436608b24.html>,

7. See article p28.

8. See article p30.

Statelessness: An Analytical Framework for Prevention, Reduction and Protection

This new 94-page UNHCR publication aims to help states, UNHCR and partners to better understand the causes of statelessness, the consequences and the protection needs of the affected persons; to minimise the risks in specific contexts; and to develop strategies to reduce the causes of statelessness and meet the needs and protect the rights of the stateless. Online at <http://www.unhcr.org/protect/PROTECTION/49a271752.pdf> For hard copies please email HQP04@unhcr.org.

Statelessness and nationality: legal instruments

The right to nationality is covered not only by those international instruments specific to statelessness – the 1954 Convention relating to the Status of Stateless Persons (http://www.unhcr.ch/html/menu3/b/o_c_sp.htm) and the 1961 Convention on the Reduction of Statelessness (http://www.unhcr.ch/html/menu3/b/o_reduce.htm) – but also by a large number of other instruments. The limited number of States Parties to the 1954 and 1961 Conventions underlines the importance of general human rights obligations relating to the right to a nationality. These include:

- Hague Convention on Nationality (1930) <http://tiny.cc/HagueNationality1930>
- OAS Convention on the Nationality of Women (1933) <http://tiny.cc/OASNationalityWomen1933>
- Convention on the Nationality of Married Women (1957) <http://tiny.cc/NationalityMarriedWomen1957>
- Declaration of the Rights of the Child (1959) <http://tiny.cc/RightsofChild1959>
- Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1963) <http://tiny.cc/MultipleNationality1963>
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965), which directs States Parties to guarantee racial equality in the enjoyment of the right to nationality. <http://tiny.cc/CERD1965>
- International Covenant on Economic, Social and Cultural Rights (1966) <http://tiny.cc/EconomicSocialCultural1966>
- International Covenant on Civil and Political Rights (1966), which recognises the right of “every child ... to acquire a nationality” <http://tiny.cc/CivilPolitical1966>
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), which requires States

Parties to “grant women equal rights with men to acquire, change or retain their nationality.” Crucially, CEDAW also states that States Parties must ensure equality between men and women in terms of conveying nationality to one’s children. <http://tiny.cc/CEDAW1979>

- Declaration on the Human Rights of Individuals Who are not Nationals of the Country In which They Live (1985) <http://www.un.org/documents/ga/res/40/a40r144.htm>
- Convention on the Rights of the Child (1989), which guarantees children’s right to acquire a nationality and includes an obligation on states to utilise their laws in order to avoid statelessness among children. <http://tiny.cc/RightsofChild1989>
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) which states that “each child of a migrant worker shall have the right to ... a nationality.” <http://tiny.cc/MigrantWorkers1990>
- Convention on the Rights of Persons with Disabilities (2006), which emphasises the right of a person with disabilities to acquire a nationality, not to be arbitrarily deprived of their nationality on the basis of disability and to obtain, possess and utilise documentation of their nationality; it also reiterates the specific right of children with disabilities to acquire a nationality after birth. <http://tiny.cc/Disabilities2007>

In addition, regional instruments like the European Convention on Nationality (<http://tiny.cc/EuropeanNationality1997>) also contribute to protecting the rights of stateless people. In April 2008, the Permanent Council of the Organisation of American States approved the Inter-American Program for a Universal Civil Registry and “the Right of Identity” (<http://tiny.cc/InterAmericanCivilRegistry2007>).

Although the record of ratification of relevant international instruments varies, the great majority of states are parties to one or several treaties that guarantee the right to citizenship.

North Arakan: an open prison for the Rohingya in Burma

by Chris Lewa

Many minorities, including the Rohingya of Burma, are persecuted by being rendered stateless.

Hundreds of thousands have fled to Bangladesh and further afield to escape oppression or in order to survive. There were mass exoduses to Bangladesh in 1978 and again in 1991-92. Each time, international pressure persuaded Burma to accept them back and repatriation followed, often under coercion. But the outflow continues.

The Rohingya are an ethnic, linguistic and religious minority group mainly concentrated in North Arakan (or 'Rakhine') State in Burma, adjacent to Bangladesh, where their number is estimated at 725,000. Of South Asian descent, they are related to the Chittagonian Bengalis just across the border in Bangladesh, whose language is also related. They profess Sunni Islam and are distinct from the majority Burmese population who are of East Asian stock and mostly Buddhists.

Since Burma's independence in 1948, the Rohingya have gradually been excluded from the process of nation-building.

The 1982 Citizenship Law

In 1982, Burma's military rulers brought in a new Citizenship Law¹ which deprived most people of Indian and Chinese descent of citizenship. However, the timing of its promulgation, shortly after the refugee repatriation of 1979, strongly suggests that it was specifically designed to exclude the Rohingya. Unlike the preceding 1948 Citizenship Act, the 1982 Law is essentially based on the principle of *jus sanguinis* and

identifies three categories of citizens: full, associate and naturalised.

Full citizens are those belonging to one of 135 'national races'² settled in Burma before 1823, the start of the British colonisation of Arakan. The Rohingyas do not appear in this list and the government does not recognise the term 'Rohingya'. Associate citizenship was only granted to those whose application for citizenship under the 1948 Act was pending on the date the Act came into force. Naturalised citizenship could only be granted to those who could furnish "conclusive evidence" of entry and residence before Burma's independence on 4 January 1948, who could speak one of the national languages well and whose children were born in Burma. Very few Rohingyas could fulfil these requirements. Moreover,

the wide powers assigned to a government-controlled 'Central Body' to decide on matters pertaining to citizenship mean that, in practice, the Rohingyas' entitlement to citizenship will not be recognised.

In 1989, colour-coded Citizens Scrutiny Cards (CRCs) were introduced: pink cards for full citizens, blue for associate citizens and green for naturalised citizens. The Rohingya were not issued with any cards. In 1995, in response to UNHCR's intensive advocacy efforts to document the Rohingyas, the Burmese authorities started issuing them with a Temporary Registration Card (TRC), a white card, pursuant to the 1949 Residents of Burma Registration Act. The TRC does not mention the bearer's place of birth and cannot be used to claim citizenship. The family list, which every family residing in Burma possesses, only records family members and their date of birth. It



Stephen Hendry

Peace Walk for Rohingyas

does not indicate the place of birth and therefore provides no official evidence of birth in Burma – and so perpetuates their statelessness.

The Rohingya are recognised neither as citizens nor as foreigners. The Burmese government also objects to them being described as stateless persons but appears to have created a special category: ‘Myanmar residents’, which is not a legal status. However, on more than one occasion, government officials have described them as ‘illegal immigrants from Bangladesh’. In 1998, in a letter to UNHCR, Burma’s then Prime Minister General Khin Nyunt wrote: “These people are not originally from Myanmar but have illegally migrated to Myanmar because of population pressures in their own country.” And a February 2009 article in the government-owned *New Light of Myanmar* newspaper stated that “In Myanmar there is no national race by the name of Rohinja.”

Deprivation of citizenship has served as a key strategy to justify arbitrary treatment and discriminatory policies against the Rohingya. Severe restrictions on their movements are increasingly applied. They are banned from employment in the civil service, including in the education and health sectors. In 1994, the authorities stopped issuing Rohingya children with birth certificates. By the late 1990s, official marriage authorisations were made mandatory. Infringement of these stringent rules can result in long prison sentences. Other coercive measures such as forced labour, arbitrary taxation and confiscation of land, also practised elsewhere in Burma, are imposed on the Rohingya population in a disproportionate manner.

Restrictions of movement

The Rohingyas are virtually confined to their village tracts. They need to apply for a travel pass even to visit a neighbouring village – and they have to pay for the pass. Travel is strictly restricted to North Arakan. Even Sittwe, the state capital, has been declared off-limits for them. Their lack of mobility has devastating consequences, limiting their access to markets, employment opportunities, health facilities and higher education. Those who overstay the time allowed by their travel pass

are prevented from returning to their village as their names are deleted from their family list. They are then obliterated administratively and compelled to leave Burma. Some Rohingyas have been prosecuted under national security legislation for travelling without permission.

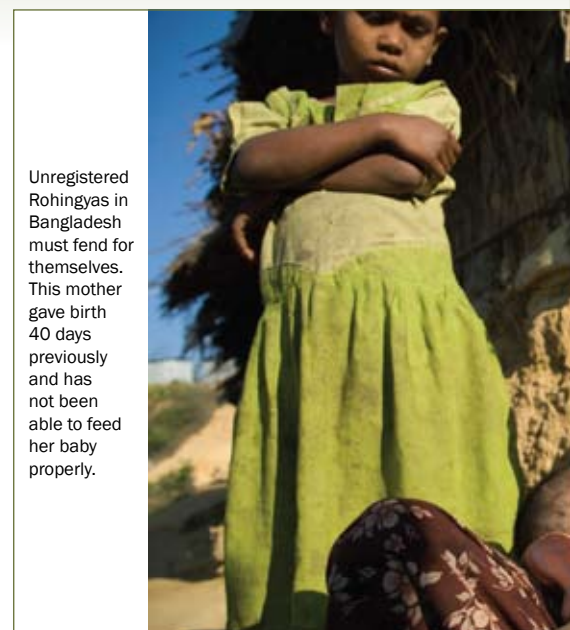
Rohingyas are also forbidden to travel to Bangladesh, although in practice obtaining a travel pass to a border village and then crossing clandestinely into Bangladesh has proved easier than reaching Sittwe. But, similarly, those caught doing so could face a jail sentence there for illegal entry. Many people, including patients seeking medical treatment in Bangladesh, were unable to return home when, during their absence, their names were cancelled on their family list. Once outside Burma, Rohingyas are systematically denied the right to return to their country.

Marriage authorisations

In the late 1990s, a local order was issued in North Arakan, applying exclusively to the Muslim population, requiring couples planning to marry to obtain official permission from the local authorities – usually the NaSaKa, Burma’s Border Security Force. Marriage authorisations are granted on the payment of fees and bribes and can take up to several years to obtain. This is beyond the means of the poorest. This local order also prohibits any cohabitation or sexual contact outside wedlock. It is not backed by any domestic legislation but breaching it can lead to prosecution, punishable by up to 10 years’ imprisonment.

In 2005, as the NaSaKa was reshuffled following the ousting of General Khin Nyunt, marriage authorisations were completely suspended for several months. When they restarted issuing them in late 2005, additional conditions were attached including the stipulation that couples have to sign an undertaking not to have more than two children. The amount of bribes and time involved in securing a marriage permit keeps increasing year after year.

The consequences have been dramatic, particularly on women. Rohingya women who become pregnant without official marriage authorisation often resort to



Unregistered Rohingyas in Bangladesh must fend for themselves. This mother gave birth 40 days previously and has not been able to feed her baby properly.

backstreet abortions, an illegal practice in Burma, which has resulted in many maternal deaths. Others register their newborn child with another legally married couple, sometimes their own parents. Some deliver the baby secretly in Bangladesh and abandon their baby there. Many children are reportedly unregistered. Many young couples, unable to obtain permission to marry, flee to Bangladesh in order to live together.

Education and health care

As non-citizens, the Rohingya are excluded from government employment in health and education and those public services are appallingly neglected in North Arakan. Schools and clinics are mostly attended by Rakhine or Burmese staff who are unable to communicate in the local language and who often treat Rohingyas with contempt. International humanitarian agencies are not allowed to train Muslim health workers, not even auxiliary midwives. Some Rohingya teach in government schools, paid with rice-paddy under a food-for-work programme as they cannot hold an official, remunerated teacher’s post.

Restrictions of movement have a serious impact on access to health and education. Even in emergencies, Rohingyas must apply for travel permission to reach the poorly equipped local hospital. Access to better medical facilities in Sittwe hospital is denied. Referral of



UNHCR/Suthep Kritsanavarin

critically ill patients is practically impossible. Consequently, patients who can afford it have sought medical treatment in Bangladesh but are sometimes unable to return to their village. Likewise, there are few secondary schools in North Arakan and pupils need travel permission to study outside their village. The only university is in Sittwe. After 2001, most students could no longer attend classes and had to rely on distance learning, only being allowed to travel to Sittwe to sit examinations. Since 2005, however, even that has been prohibited. Not surprisingly, illiteracy among the Rohingyas is high, estimated at 80%.

For the Rohingya, the compounded effect of these various forms of persecution has driven

many into dire poverty and their degrading conditions have caused mental distress, pushing them to flee across the border to Bangladesh.

In exile

In Bangladesh, the 28,000 Rohingyas still remaining in two camps are recognised as refugees and benefit from limited protection and assistance by UNHCR but it is estimated that up to 200,000 more live outside the camps. Bangladesh considers them as

irregular migrants and they have no access to official protection.

The combination of their lack of status in Bangladesh and their statelessness in Burma puts them at risk of indefinite detention. Several hundred Rohingyas are currently languishing in Bangladeshi jails arrested for illegal entry. Most are still awaiting trial, sometimes for years. Dozens have completed their sentences but remain in jail – called ‘released prisoners’ – as they cannot be officially released and deported, since Burma refuses to re-admit them.³

Tens of thousands of Rohingyas have sought out opportunities overseas, in the Middle East and increasingly in Malaysia, using Bangladesh as a transit country. Stateless and undocumented, they have no other option than relying on unsafe illegal migration channels, falling prey to unscrupulous smugglers and traffickers, or undertaking risky journeys on boats.⁴

In Malaysia or Thailand, the Rohingyas have no access to protection. They are regularly caught in immigration crackdowns and end up in the revolving door of ‘informal’ deportations. Since Burma would not take them back, Thailand has occasionally deported Rohingya boat people unofficially into border areas of Burma controlled by insurgent groups.

“We, Rohingyas, are like birds in a cage. However, caged birds are fed while we have to struggle alone to feed ourselves.”

A Rohingya villager from Maungdaw, North Arakan

Malaysia usually deports them over the border into Thailand in the hands of brokers. Against the payment of a fee, they are smuggled back into Thailand or Malaysia

and those unable to pay are sold into slavery on fishing boats or plantations.

In December 2008, Thailand started implementing a new policy of pushing back Rohingya boat people to the high seas. In at least three separate incidents, 1,200 boat people were handed over to the Thai military on a deserted island off the Thai coast and ill-treated before being towed out to sea on boats without an engine and with little food and

water. After drifting for up to two weeks, three boats were finally rescued in the Andaman and Nicobar Islands of India and two boats in Aceh province of Indonesia. More than 300 boat people are reportedly missing, believed to have drowned.

The issuing of a TRC to Rohingyas has been praised as ‘a first step towards citizenship’. On 10 May 2008, the Rohingyas were allowed to vote in the constitutional referendum but ironically the new Constitution, which was approved, does not contain any provisions granting them citizenship rights. There is no political will for the Rohingyas to be accepted as Burmese citizens in the foreseeable future.

Recommendations

On 2 April 2007, six UN Special Rapporteurs put out a joint statement addressing the Rohingya situation and called upon the Burmese government to:

- repeal or amend the 1982 Citizenship Law to ensure compliance of its legislation with the country’s international human rights obligations, including Article 7 of the Convention of the Rights of the Child and Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women;
- take urgent measures to eliminate discriminatory practices against the Muslim minority in North Rakhine [Arakan] State, and to ensure that no further discrimination is carried out against persons belonging to this community.

In addition, Bangladesh, Malaysia and Thailand should put in place effective mechanisms to allow Rohingyas access to protection as refugees.

Chris Lewa (chris.lewa@gmail.com) is coordinator of The Arakan Project, a local NGO primarily dedicated to the protection and promotion of human rights for the Rohingya minority of Burma, through documentation (including first-hand testimonies) and research-based advocacy.

1. See <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=3ae6b4f71b>
 2. See <http://www.myanmar.gov.mm/ministry/hotel/fact/race.htm>
 3. See article p42.
 4. See Chris Lewa ‘Asia’s new boat people’, FMR 30: <http://www.fmreview.org/FMRpdfs/FMR30/40-41.pdf>

We have no soil under our feet

Kristy Crabtree

In the muddy setting of an overcrowded camp in Bangladesh, Jhora Shama tells me her story. Jhora is an unregistered refugee, a Rohingya, who has been living illegally in Bangladesh for 16 years.

She fled to Bangladesh from Arakan [Rakhine] State in Burma after her family's farm was ransacked, their livestock confiscated and her husband tortured. He now works in Malaysia and sends money to her but it is never enough and her family often goes to bed fighting hunger pains. Because she lives in Bangladesh illegally,

she cannot work and must go out to beg for money. She hopes to find a family to take her children as housekeepers because there is no food here.

Conditions in this unregistered refugee camp are far below the minimal international standards for protection, and those living in the registered camps are only recently starting to see improvements after living in dismal conditions for 17 years.

They live in a state of uncertainty, without hope for any real solution to their displacement and without the tools to become self-reliant. Another refugee, Abu Khatul,

lamented: "Here, in Bangladesh, we are just passing time. This is life? We have no soil under our feet. Nothing is ours. It's an uncertain life. We can't go back [to Burma] but here we're not living, not working, we have no resources, and not all our needs are met. I am hoping for another future, for another country."

Kristy Crabtree (kcrabtree@episcopalchurch.org) is Assistant Program Manager at Episcopal Migration Ministries (<http://ecusa.anglican.org/emm.htm>).

The names of refugees interviewed by the author have been changed to protect their identity.

Rohingya refugees in Teknaf camp in Bangladesh.



Ethiopia-Eritrea: statelessness and state succession

Katherine Southwick

There is a need to strengthen international law on nationality rights and avoidance of statelessness in the context of state succession and international conflict.

The experiences of people of Eritrean origin in Ethiopia and of those deported to Eritrea during the 1998-2000 border conflict illustrate the need for an initiative that would help prevent arbitrary loss of nationality and the resulting risks to other human rights in the Horn of Africa or elsewhere. Border changes may then occur – reflecting evolving group identities – without necessarily being precursors to statelessness.

While relations between Ethiopia and Eritrea are tense today, the two countries' heads of government used to be great allies. Both led rebel movements which joined forces to overthrow the brutal dictatorship of Mengistu Haile Mariam. After Mengistu was deposed in 1991, the two leaders established separate provisional governments in Addis Ababa and Asmara. In 1993, after 30 years of struggle, Eritrea peacefully seceded from Ethiopia following a referendum. But the citizenship status of persons of Eritrean origin, particularly of those living in Ethiopia, was unclear. Almost 16 years later, nationality rights of individuals in both countries remain fragile.

Voting in the referendum was open to "any person having Eritrean citizenship." The Eritrean nationality law provides that anyone who qualifies for citizenship by birth or through naturalisation and who wishes to be recognised as an Eritrean citizen must apply for a certificate of nationality. Numerous people of Eritrean origin – living in Eritrea, Ethiopia or elsewhere in the world – accordingly obtained Eritrean ID cards and nearly all voters chose independence.

Ethiopian law does not permit dual citizenship but at the time of the referendum and Eritrean independence, with the nationality

laws of both countries still unresolved, the two countries' ministries of internal affairs declared that "until the issue of citizenship is settled in both countries, the traditional right of citizens of one side to live in the other's territory shall be respected." The Ethiopian government also continued to issue passports and other identification documents to those who had voted in the referendum. Eritrean officials later contended that people holding Eritrean IDs at the time of the referendum were not Eritrean citizens because the Eritrean state was 'provisional' and had not yet come into existence.

The Ethiopian Constitution of 1995 also provides that "[n]o Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will." In 1996, both governments agreed that "Eritreans who have so far been enjoying Ethiopian citizenship should be made to choose and abide by their choice." Implementation was nonetheless postponed pending resolution of trade and investment issues. Perhaps because both countries initially felt much mutual goodwill, difficult subjects such as citizenship and border demarcations were left unresolved. Finally in 2004, the Eritrea-Ethiopia Claims Commission (EECC), which was established to decide, through binding arbitration, claims brought by the two governments and their nationals, determined that those who had qualified to participate in the referendum had acquired dual nationality because both states continued to treat them as nationals.

Denationalisation and deportations

Despite the amicable start, simmering tensions over port access, currency exchange and

border disputes erupted into armed conflict in May 1998. By the end of the fighting in December 2000, both sides had lost tens of thousands of soldiers and around one million people were displaced.

In 1998, an estimated 120,000 to over 500,000 persons of Eritrean origin were living in Ethiopia. During the course of the war the Ethiopian government sought to justify denationalising and deporting them on the basis that they had acquired Eritrean citizenship by voting in the referendum. Individuals had not been informed that participation in the referendum would amount to renunciation of their Ethiopian citizenship. Around 70,000 people were expelled, initially individuals deemed to be security threats (including those prominent in business, politics, international organisations – including the UN – and community organisations with links to Eritrea). In July 1999, the Ethiopian government declared that all those who had been expelled to Eritrea were Eritrean citizens, having acquired citizenship by voting in the 1993 referendum. In August 1999, all those who had voted in the referendum and remained in Ethiopia were ordered to register for alien residence permits, which had to be renewed every six months.

Those who were to be expelled were interrogated at police stations, where their identification documents were destroyed. Their assets were frozen and business licences revoked, and most of them were unable to dispose of their property before being deported. They were detained for days, weeks or months before they were bussed up to the Eritrean border or forced to flee through Djibouti. The EECC determined that loss of nationality and expulsion of individuals identified through Ethiopia's security review procedures were lawful "even if harsh for the individuals affected." However, deprivation of

nationality and expulsion for any other reasons were deemed illegal.

Eritrea also deported around 70,000 Ethiopians during the conflict, although the nationality status of persons of Ethiopian origin in Eritrea was never in dispute. Most of them were resident aliens working in urban areas. They too suffered discrimination, violence and harsh conditions during deportation.¹

Eight years after the war's end, relations still remain very tense. The Eritrea-Ethiopia Boundary Commission's 2002 decision awarding disputed territory to Eritrea has not been enforced and the UN peacekeeping mission departed from the region months ago. Both governments appear to be fighting by proxy in Somalia, and their leaders' entrenched personal animosity afflicts thousands of lives in the region. Eritrean society remains highly militarised and both sides have troops stationed along the border. In this insecure environment, nationality rights – among others – remain vulnerable.

Today, the International Committee of the Red Cross estimates that 10,000 to 15,000 Ethiopian nationals still reside in Eritrea, most of whom have not been given permanent status or citizenship in Eritrea.²

On the fate of people of Eritrean origin in Ethiopia, reports are mixed. Between 2000 and 2004, individuals of Eritrean origin or from mixed families were allegedly arrested, detained and sometimes beaten or raped by Ethiopian authorities on suspicion of collaborating with or spying for Eritrea.³ To its credit, the Ethiopian government quietly introduced a new nationality proclamation in 2003, which apparently enabled many Eritreans living in Ethiopia to re-acquire Ethiopian citizenship. With a national ID card, persons of Eritrean origin are presumably no longer restricted from work, travel, education and other social services. However, many individuals still conceal their Eritrean background for fear of discrimination and harassment.

Families of mixed heritage continue to suffer from prolonged separation as the war ended all travel and

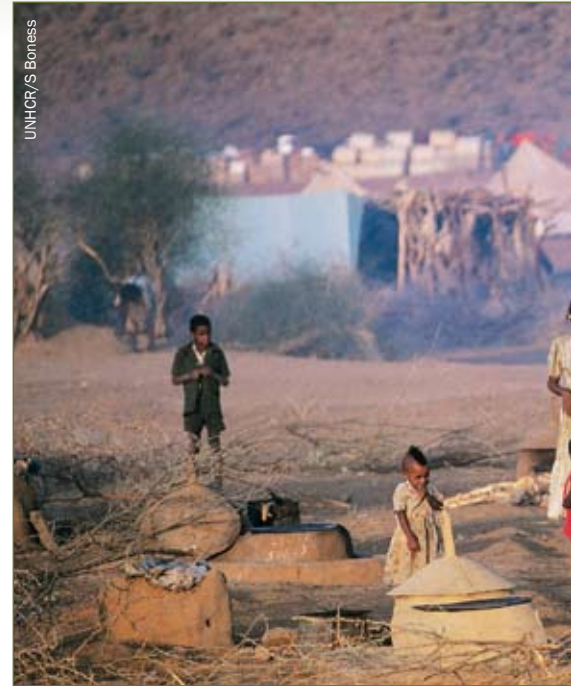
communication between the two countries. In 2008 on a research trip for Refugees International, a colleague and I met one woman in Addis Ababa who recently visited her father in a third country, having not seen him in the ten years since his deportation. An elderly Ethiopian widow cannot visit the grave of her husband in Asmara. We also met Ethiopians who had lost touch with Eritrean friends and loved ones after the deportations. A 2006 study of Ethiopian-Eritrean refugee families in Cairo found that “people who are of mixed parentage have often found it impossible to gain recognition of either nationality on account of their parentage or administrative obstacles,” concluding that such persons “are at least *de facto* if not *de jure* stateless.”⁴

Nationality rights

Beyond general efforts to strengthen the rule of law, fortifying the right to nationality and avoidance of statelessness within the context of state succession are essential. Violations of the right to nationality were (and continue to be) at the root of other human rights issues in the Horn of Africa. Other parts of Africa and the world are vulnerable to similar problems. Lack of clarity on nationality status following Eritrea's creation, along with weak norms against statelessness, enabled Ethiopia to deprive thousands of persons of Eritrean origin and mixed families of numerous human rights. Weak norms have also apparently emboldened Eritrea to obstruct citizenship for Eritrean-Ethiopian families and certain deportees now living in Eritrea are denied access to employment and social services and are vulnerable to governmental and social harassment and abuse.

Constructing a framework

Although neither Ethiopia nor Eritrea is party to the two Statelessness Conventions, key principles on statelessness and state succession can be drawn from several sources and recently statelessness in the context of state succession has gained further prominence. The breakup of the former Soviet Union and Yugoslavia and the split of Czechoslovakia have highlighted the need for a clear framework. Certain international instruments provide guidance on how to handle nationality issues in state succession.



In 2001, the UN General Assembly adopted the International Law Commission's (ILC) Articles on the Nationality of Natural Persons in Relation to the Succession of States. The Preamble “recognize[s] that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals.” States concerned are to “take all appropriate measures to prevent persons who, on the date of succession of States, had the nationality of the predecessor State from becoming stateless ...” States should enact nationality legislation and “should take all appropriate measures to ensure that persons concerned will be apprised ... of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.” The Articles emphasise respect for the wishes of the persons concerned and for family unity. They prohibit discrimination and arbitrariness in denying rights to retain, acquire or choose a nationality. When a state separates from another, a predecessor state cannot withdraw its nationality from persons who qualify to acquire the nationality of the successor state if such persons have habitually resided in or “have an appropriate legal connection with” the predecessor state.⁵



People of Eritrean origin deported from Ethiopia, in Camp Shelab in Eritrea. 2001

The 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession is rooted in the notion that “the avoidance of statelessness is one of the main concerns of the international community in the field of nationality.” The Convention obliges the successor state to grant nationality to persons who would become stateless as a result of the succession if they habitually resided or had “an appropriate connection with the successor state.” The predecessor state also “shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor state and who would otherwise become stateless.” Like the ILC Articles, the European treaty underscores respect for the wishes of those affected and stresses that states must take all steps necessary to “ensure that persons concerned have sufficient information about rules and procedures [regarding] the acquisition of their nationality.”⁶

In the case of Ethiopia and Eritrea, the judgments of the EECC are binding regarding international law violations in connection with the border war. Significantly they do not derogate from the fundamental obligation to prevent statelessness and for all decision-making processes to be reasonable and to avoid arbitrariness. Even in cases where loss of nationality was considered

reasonable under the circumstances, those individuals who lost Ethiopian nationality must still be assured Eritrean citizenship.

While the African Charter on Human and People’s Rights does not explicitly address avoidance of statelessness, it does prohibit mass expulsion of non-nationals on discriminatory grounds and identifies the state’s duty to protect and

assist the family, as “the natural unit and basis of society.”⁷

Guided by these principles, we can imagine a different scenario for nationality rights in the course of Eritrea’s secession. Resolution of citizenship issues should have been a top priority when both countries established provisional governments in 1991. Before the referendum, both countries should have clarified and informed all who might qualify to vote about the consequences voter registration could have on their citizenship. Once conflict broke out, Ethiopia should have confined loss of nationality and expulsion only to those individuals who had undergone a transparent security review process. People, and their families, should have received fair notice of their expulsion orders. Spouses and children of people being deported should have had the option to stay in Ethiopia or accompany their loved one to Eritrea and, along with other persons of Eritrean origin, should not have lost Ethiopian citizenship without having acquired Eritrean citizenship. Eritrean nationality laws should have facilitated speedy acquisition of citizenship in such cases.

To strengthen nationality rights and avoidance of statelessness in state succession, concrete steps should be taken. Ethiopia and Eritrea should:

- protect individuals and ethnically mixed families from statelessness, by internalising standards set forth in the UN Statelessness Conventions and by becoming party to them⁸
- promote full integration of Ethiopians of Eritrean origin in their respective countries
- reunite families by re-establishing interstate travel and communications
- devise plans to compensate victims of the 1998-2000 conflict, consistent with the EECC decisions.

The international community should:

- collectively articulate clear standards for avoiding statelessness in state succession, such as by creating an Optional Protocol to the 1961 Convention on the Reduction of Statelessness using as a basis the ILC Articles and the Council of Europe Convention
- support UNHCR efforts to advise countries on developing nationality laws which incorporate nationality rights principles in state succession
- promote overdue accession to UN Statelessness Conventions.

Katherine Southwick (katherine.southwick@gmail.com) is an international lawyer and was previously the Robert L Bernstein Fellow at Refugees International (www.refugeesinternational.org).

1. See for example Eritrea-Ethiopia Claims Commission, Partial Award: Civilian Claims, Ethiopia’s Claim 5 (Dec. 17, 2004), pp. 30-31, [http://www.pca-cpa.org/upload/files/ET Partial Award Dec 04.pdf](http://www.pca-cpa.org/upload/files/ET%20Partial%20Award%20Dec%2004.pdf) (stating liability for violations of international law against Ethiopians in Eritrea).

2. Human Rights Watch, *The Horn of Africa War* (2003), p47.

3. Louise Thomas, ‘The Son of a Snake is a Snake: Refugees and Asylum-Seekers from Mixed Eritrean-Ethiopian Families in Cairo’, FMR Working Paper No 7 (2006), p31-32.

4. Thomas *ibid*, p22.

5. <http://www.unhcr.org/refworld/type,INTINSTRUMENT,,4512b6dd4,0.html>

6. <http://conventions.coe.int/Treaty/EN/Treaties/Html/200.htm>

7. <http://www1.umn.edu/humanrts/instree/z1afchar.htm>

8. These recommendations are drawn in part from Refugees International, ‘Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin’, 30 May 2008, available at <http://www.refugeesinternational.org/content/article/detail/10668/>.

Am I stateless because I am a nomad?

Ekuru Aukot

As a pastoralist from Turkana, who am I and where is my nationality, my citizenship?

I hail from the Ateker nation, an Itung'a-speaking group, bound by ethno-linguistic ties and practising nomadic pastoralism as our main livelihood activity. The Ateker inhabit the borderland area straddling four countries – Sudan, Ethiopia, Kenya and Uganda.

They occupy the peripheral semi-arid and arid borders of their respective nation-states and are arguably the most marginalised peoples there. This is also one of the most conflict-prone zones in the Horn and East Africa region, with both intra- and inter-ethnic conflicts with other Ateker groups and non-Ateker neighbouring communities. The zone also suffers from weak or absent state institutions.

I am primarily known as a Kenyan because I hold a Kenyan passport. Yet I am a member of a group that is spread across at least four countries. So where is my real nationality, my citizenship, my state? Or rather, where is my loyalty? These are complex questions in the light of the discourse around nationality and citizenship as well as their co-relation to statelessness; in the context of a nomadic pastoralist, what benefits accrue to me from having a nationality since I move through porous borders, de-linked from government machinery? When I come across government agents such as the police, they are more often than not the instruments of persecution. As a nomadic pastoralist, I owe my first allegiance to the Ateker nation in all its manifestations across four countries.

When my people visit the modern urban centres in Kenya, they say they are visiting Kenya; and when I go to my village in north-western Kenya, they ask me “how is Kenya?” or “how is the land of *emoit* (the foreigner)?” There is a fundamental explanation for this in the context of

how the nation-state has developed over the years. The process of denationalising other peoples, such as pastoralists, emerges when one tribe dominates politics and relegates others to the periphery. Within the context of post-colonial nation creation, pastoralists are forced into a nation, citizenship and nationality they do not subscribe to.

Back in the 1920s, while describing the Turkana (an Ateker group), a colonial administrator put it this way: *“There is nothing good that can come out of controlling the Turkana; the Turkana were but a problem that is best transferred elsewhere...”* Arguably he was right and this set in train the denationalisation of ethnic groups and in particular of the pastoralist communities of northern Kenya.

If I cannot therefore narrow down my nationality and even my citizenship to any of the four countries above, am I therefore stateless? This status at least allows the integrity of our way of life as a group. It seems to me that we nomadic and pastoralist communities do not first and foremost attach any meaning to the invisible boundaries that divide nation-states and therefore in one way or another determine a person's nationality. I am happy as a member of the Ateker nation and happy that

my nationality is with the Turkana, Toposa, Karamojong and Nyangatom.

Many modern-day states have to deal with the plight of nomadic pastoralist communities. It has taken Kenya at least 45 years to date and it has still not come up with a policy on nomadism or pastoralism. But even if the government were to write such a policy, what would it mean for me? Would it change me into being more Kenyan than Eturkanait? There is no simple solution to these dilemmas.

In nomadic and pastoralist regions the government is largely symbolic. Were any one of the governments to have a stronger presence in the Ateker region and assist its development, it would make a difference. In Sudan, some of the elite among the Ateker have already been thinking about how they can make themselves and their community accepted as equal citizens and nationals in all four countries. The case of nomadic peoples who not only exist across borders but move across them suggests that a single nationality would restrict them and that therefore it might be better to have multiple nationalities.

Ekuru Aukot (aukot@kituo-chasheria.or.ke) is Executive Director of Kituo Cha Sheria (Legal Advice Centre <http://www.kituo-chasheria.or.ke>) in Kenya where he also directs the Urban Refugee Intervention Programme.

A nomadic Turkana pastoralist herding his goats in Kenya.



Andrew Aitchison www.andrewaitchison.com

Kenyan Nubians: standing up to statelessness

Adam Hussein Adam

There is no official recognition of the Nubian community in Kenya and they face considerable discrimination as a result.

Kenyan Nubians have been defined as stateless people because their identity is questioned. They are without doubt one of the country's most invisible and under-represented communities – economically, socially, politically and culturally. This is because they have been silent victims of discrimination, exclusion and violations of human rights and fundamental freedoms for as long as they have been in Kenya.¹

Recent writing on issues of identity, citizenship, statelessness, marginalisation, and integration of minorities in Kenya has featured the Nubian community in one form or another. As a Nubian in East Africa and an activist, I experience these issues directly and forcefully.

My great-grandfather worked in the service of the British in Somalia around the First World War and later resettled in Meru, a small town on the slopes of Mt Kenya. His father before him worked for the Turko-Egyptian army in the Sudan. I, like my parents, was born in western Kenya.

Although I am well educated, I have experienced serious difficulties in interacting with government officials. Between 1992 and 2000, I applied unsuccessfully for a passport five times, losing jobs in the process. One manager once asked me why I did not have a recognisable ethnic identity and that this was why I could not be promoted. Apart from studying to university level, which is an exception rather than the rule, mine may as well be the story of most Nubians. It is a story characterised by the need to survive through challenges that are never explained to you. It is a story characterised by limited interactions with state officials who always remind you it is your privilege to be served by them. It is a story characterised by assuming false identities in order to belong.

Before I encountered these challenges in my own life and found out that many of my Nubian colleagues gave up hope of productive careers because of delayed or denied identity cards, I had accused most of them of being lazy. Today I understand that Kenyan Nubians, whether citizens or not, do not belong.

Nubians and statelessness

The Nubians first arrived in Kenya in the early 1900s and now number about 100,000. Nubians in East Africa are not a single ethnic group but a constellation of people belonging to different tribes. As a result of history, their religion (Islam) and their origins in the military, they have acquired a shared identity.

The vast majority of the Nubians in East Africa are descendants of Sudanese ex-servicemen in the British army. Following a mutiny in 1897 the British rescinded its decision to repatriate them and instead dispersed the community into Kenyan territory. The Nubians, who by then retained no ties with Sudan and had no claim to land in that country, could not return independently to Sudan and were therefore left with no choice but to remain in Kenya. Nubian villages became breeding grounds for soldiers for the British army. Although these people were forced conscripts into the Turko-Egyptian and British armies while Sudan was under Anglo-Egyptian rule, they also contributed to the British military efforts during the First and Second World Wars.

They were demobilised without proper compensation, pension or after-service benefits. Unlike the Indians who had also been relocated into the region by the British to render similar services, the Nubians were not accorded the privilege of British citizenship despite their loyal service to the British Crown. When constructing Kenya's social

set-up, the British colonial authority consolidated ethnic groups and designated them to native reserves. They deliberately left out the Nubians who were considered a detribalised community rather than a Kenyan tribe. The British also ensured that Nubians only owned temporary structures on the land they occupied. These events and decisions are the origins of the Nubians' temporary existence. As a consequence of this history and despite more than a century on Kenyan territory, Nubians do not belong to the social set-up of Kenya.

The Kenyan government uses both ethnicity and territory to establish belonging. Since both Nubian ethnicity and their territory of occupancy are contested by the government, most Nubians live as *de facto* stateless persons without adequate protection under national and international law, irrespective of the fact that they should be considered Kenyan citizens under the Constitution. In Kenya nothing defines your citizenship more than your ethnicity. Nubians face institutionalised discrimination in issuance of documents. They are subjected to a vetting process of ethnic determination in order to acquire an identity card or passports.

Kenya today does not have official figures of Nubians and does not include them in census reports. There is no official recognition of the community; the Kenyan government had classified the community as 'other Kenyans' or just 'others' and has only recently started a process of recording Nubians as a named clan of other Kenyans.

Above all, Nubians live in temporary structures throughout Kenya and often on contested lands. Most Nubians' settlements do not have title deeds and are only occupied on a Temporary Occupational Licence (TOL), leaving the present generation of Nubians as mere squatters.

Stateless individuals and communities like the Nubians are assumed to be hopeless and helpless victims, dependent upon the goodwill of others. Under the assumption that citizenship is the only vehicle for having a civic and political voice and that therefore stateless people lack any political identity, stateless people become less than fully human and are reduced to mere targets of humanitarian assistance. All energies are thus focused on how to acquire citizenship for stateless people as fast and as easily as possible.

What are the Nubians' issues?

Obstacles to citizenship are also faced by other minority groups in Kenya such as Kenyan Somalis and Coastal Arabs although the Nubians have experienced some progress. The real progress in Nubian experience is in their adaptation and mastery of living in Kenya without belonging. Lack of direct representations in any form of government has meant that Nubians speak through a third party. Where they have had the vote, Nubians have voted for any government in

power, however badly they have been treated by the institutions of that government. However, their lack of acceptance in society has emboldened the Nubian community's resolve to use other institutions of government to address their problems.

In 2003 the then Chairperson of the Kenyan Nubians' Council, the late Yunis Ali, encouraged a procession of Nubians marching to Kenya's High Court thus:

"My people! For a century, we have sought a compassionate hearing from all authorities in Kenya but we got none. Today, we march to the Kenyan High Court for justice – if not to get it, then as testimony that we stood up for our rights."

In the end, the challenge of standing up to statelessness – or any human rights abuse – is that as a victim you see it through the emotional lenses of feelings and experience; others will then judge you as subjective. When you stand apart and subject the issue to objective criteria, legal

definitions limit one's expression; most of the legal terms are not expressive enough for local realities. For Kenyan Nubians the lack of a link to the state, lack of integration and lack of social acceptance have been part of our existence. We are neither Sudanese nor accepted as Kenyans.

As a statelessness advocate, I believe that legal links are important for anyone belonging in contemporary society; however, without addressing the social acceptability of any community of a people, groups like the Nubians will continue to live from one crisis to another.

Adam Hussein Adam (adamhusse@gmail.com) is the Open Society Initiative for East Africa (OSIEA) and Open Society Justice Initiative (OSJI <http://www.justiceinitiative.org>) Project Coordinator on the Citizenship and Statelessness Project in Africa.

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The Universal Birth Registration campaign

Simon Heap and Claire Cody

Birth registration is a critical first step in ensuring a child's rights throughout life.

Registration means proof of legal identity. It is vital for securing recognition before the law, protecting rights such as inheritance and making children less vulnerable to abuse and exploitation, especially if separated from their parents.

Articles 7 and 8 of the UN Convention on the Rights of the Child (CRC) declare that national governments must register children immediately after birth and that children enjoy the right from birth to acquire a nationality.¹ The CRC says that states must grant citizenship to children born in their country if they are not recognised by another country. Under international law then, every child is entitled to registration of their birth, including children born

to irregular migrants. In practice, however, there are many problems in the implementation of this rule, leaving many children stateless.

So why are 51 million children a year not registered at birth? The reasons why parents do not register their children include a lack of awareness of the importance of registration; the costs in both time and money of registering a new birth; the distance to a registry office; uncertainty that the child will survive; political turmoil; legal, social or cultural barriers; and the fear of persecution by the authorities.

Research by Plan International² in the Dominican Republic concluded that the denial of citizenship to children of

Haitian descent through the refusal of birth registration was creating new cases of statelessness.³ This was confirmed during the Dominican Republic's report to the Committee of the CRC, which elicited a harsh response from the Committee in 2008.⁴ In Thailand, migrants from Burma who have their nationality withdrawn by the Burmese authorities once they emigrate are among the stateless members of Thailand's ethnic minorities. These

"...it's a small paper but it actually establishes who you are and gives access to the rights and the privileges, and the obligations, of citizenship."

Archbishop Desmond Tutu, launching Plan's Universal Birth Registration campaign, February 2005⁵

stateless people are bearing stateless children, perpetuating the problem. Birth registration has become politicised in both Thailand and the Dominican Republic, leading to generations of children being denied their right to a nationality.

Creating incentives for birth registration is one of the big challenges. Birth registration seems to have little importance in countries such as Zambia, beset by poverty, HIV and AIDS, and Nepal, where high child mortality rates give parents little incentive to bear the expense of registering children. Registering the most marginalised children is also a major challenge. This group includes nomadic and indigenous groups, migrant and refugee children, street children, orphans, and abandoned and separated children. This is a problem not only in countries with low registration rates but also in those with higher rates where these groups are likely to be over-represented among the unregistered children.

Lessons and good practice

The global campaign on Universal Birth Registration – which by 2006 had secured over five million registrations – aims to reduce the obstacles to the registration of every child at birth and to build capacity in countries to ensure that children are registered.⁶ As part of this, Plan International and its partners have organised regional conferences to bring civil registrars and others together to share experiences, exchange ideas and provide examples for countries to consider when they are developing their national action plans. Among these are the following:

Governments may need to make substantial changes in policy and legislation to make birth registration universal, compulsory and permanent. National governments have to be influenced – and the political will generated – to change current policy and practice, create



UNHCR/F. Novak

new legal frameworks for civil registration, review and amend existing legislation, ensure that birth registration is a reporting requirement and adapt the design and operation of birth registration systems.

Partnering at all levels is crucial. At the grassroots level, for example, an Indian NGO network on birth registration working in 15 districts of Orissa since 2002 has collected birth registration information for over 3.2 million children and has secured an overall increase in birth registration levels from 33% to 83%. Partnerships can also bring in beneficial technical support, especially from UN agencies such as UNICEF. In Colombia, UNHCR works closely with the government and Plan International on birth registration, and Xi'an University in China and the Inter-American Children's Institute in Central America have been valuable academic partners.

It is important to involve children and communities in the design and implementation of legislation, policies and programmes. Such involvement ensures these are realistic and helps build trust in the registration systems.

In Cambodia, young volunteers have educated friends and elders by displaying posters highlighting the importance of birth registration and holding children's fairs on the subject. In Egypt, children's committees on birth registration are being established within local community-based organisations, with children themselves spreading the message of why birth registration is important.

Birth registration systems need to be flexible in recognition of the difficulties and differences in people's lives. In remote rural communities, decentralised birth registration systems and mobile registration can help improve accessibility. In remote rural areas with the lowest rates of birth registration in Honduras, the National People's Registry introduced systematic mobile registration. In Thailand, Plan International is working with its partners to coordinate activities specific to hill-tribe ethnic minority populations, refugees and migrant worker families, which has resulted in a network of local authorities, NGOs and community representatives in provinces with large ethnic minority populations.

14-year-old Doris Korodi was born to parents who fled the Papua Province of Indonesia in 1984. She is showing off her new birth certificate in a refugee settlement in Kiunga.



UNHCR/G. M.B. Akash

In some countries, in the absence of legal safeguards, the plight of statelessness is passed down through generations - as had been the case with this Bihari baby.

Free registration and birth certification make birth registration possible

for poorer people. The cost of registration is mentioned time and time again as a barrier to registering children. Removing the cost also demonstrates a state's commitment to ensuring the rights of every child. In Africa, campaign successes include free registration for all children up to 12 months in Ghana; free birth registration for six months in Guinea; reduction of birth registration fees in Burkina Faso and in the cost of late registration in Togo; and a government commitment to free registration in Guinea Bissau.

Retrospective registration may be necessary

where there is a backlog of children whose births have gone unregistered. In Senegal, the government is facilitating retrospective registration through free local court hearings and the number of unregistered children has fallen considerably as a result. In Sierra Leone, the government gave the National Office of Births and Deaths special permission to issue birth certificates to children over seven. In Bolivia, there was a successful three-year amnesty for the free registration of young people aged between 12 and 18.

Integration of birth registration into the broader child rights agenda is of fundamental importance

to the realisation of the CRC. This offers a variety of advocacy opportunities. A good example is Belgium, where birth registration has been successfully linked to the issues of child soldiers and child trafficking.

Integration of birth registration into existing public services

such as primary health care, immunisation and school enrolment is a cost-effective, efficient and sustainable way of ensuring birth registration. Birth registration rates rise where the process is integrated with vaccination and medical assistance at birth. In Ghana and Benin, for example, community health volunteers have been trained to record the information required for birth registration.

Training and capacity building of birth registration officials

helps improve their motivation and competence, and reduces the possibility of mistakes, fraud and corruption in the registration system. In Cameroon, civil registrars have received training and been supplied with the basic office materials they need to carry out their role effectively. In Sri Lanka, a toolkit has been developed to help officials carry out mobile registration.

Monitoring is essential to ensure birth registration systems continue to be responsive to their environment. This involves making any changes necessary to overcome administrative and bureaucratic obstacles. National governments need information systems for birth registration that will allow better follow-up and monitoring. In Pakistan, an online birth registration information management system allows all levels of government to view and track birth registration data. Another monitoring technique is free telephone helplines – such as in Bolivia and El Salvador – for providing information about birth registration procedures and registering any complaints.

Sustainability is best ensured by government ownership

of birth registration.

However, community involvement is equally important to ensure the continuity of birth registration systems in times of disaster or conflict, when formal methods may become inaccessible or may be hampered by political instability.

Simon Heap (simon.heap@plan-international.org) is Global Research Portfolio Co-ordinator and Claire Cody (claire.cody@plan-international.org) is Researcher at Plan International (<http://www.plan-international.org>).

A longer version of this paper, 'Children, Rights and Combating Statelessness: Plan's Experience of Improving Birth Registration', was presented at the Children without a State: A Human Rights Challenge conference at Harvard University, Boston, USA, 5 May 2008.

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Contesting discrimination and statelessness in the Dominican Republic

Bridget Wooding

Many decades of unregulated migration of Haitians who have come to live and work in the Dominican Republic have resulted in a significant population whose status is uncertain and who are vulnerable to widespread discrimination and abuses of human rights.

In the Dominican Republic, the questions of birth registration and nationality are closely entwined. As is common in Latin America, the rule of *jus soli* here means that a Dominican birth certificate has become the evidence of nationality for children who are born in the country. The birth must be registered for the individual to be able to apply for a *cédula* (identity card) or a passport. A birth certificate also provides access to a host of other rights and special protections for the child, such as protection against trafficking, child labour or early marriage.

Civil registry officials are charged with determining whether the child who has been brought before them to have his/her birth registered is eligible for Dominican nationality. If the official decides that the child does not qualify for Dominican nationality – such as in the case of unauthorised migrants from Haiti – they will refuse to register the birth and there is no clear appeal system against such a decision. The right to birth registration is thus equated to the right to Dominican nationality and denial of birth registration has become the mechanism for denial of nationality to children of irregular Haitian migrants.

Xenophobia

Dominicans hold deep-rooted prejudices against Haitians. They perceive Dominican identity as European, and above all Hispanic, in spite of the fact that Dominicans have African roots too. Dominican xenophobia had its most violent expression in 1937 when the dictatorship of Rafael

Leonidas Trujillo ordered the military to carry out a massacre of Haitian nationals and Dominico-Haitians in the border provinces; some 6,000 people were killed.

Almost fifty years after the overthrow of the Trujillo regime, xenophobia and racism are much less prevalent and virulent but there is still widespread ignorance and prejudice. Political leaders are reluctant to take a lead on the issue of Haitian migration for fear of being accused of betraying national interests. Successive governments have virtually failed in the task of introducing a legal framework compatible with international norms. Most political party leaders are reluctant to address the question and this is compounded by the attitudes of powerful groups in the private sector who have a vested interest in maintaining an unregulated flow of cheap and docile migrant labour in agriculture, construction and tourism. These factors have placed a particular burden on civil society practitioners in the human rights movement, both internationally and in the country. This movement originated

in the 1980s in the campaign against the abuse of migrant cane cutters. It continues today but has broadened the focus to encompass Haitian migrants and their descendents in the country as a whole. One notable change in the movement in recent years is that Dominican NGOs now play the lead role, with international partners providing support, rather than vice versa.¹

According to the Dominican Republic's 2004 Migration Law, a regularisation process for long-term irregular immigrants should have taken place – giving citizenship or legal residence to 'non residents' who meet certain requirements – before the law was implemented but the Dominican government has not produced any regularisation plan



Lorena Espinoza Peña

Children of Haitian descent – with the Dominican Republic flag painted on their faces – in a rally outside the Palace of Justice, Santo Domingo, March 2003.

Sonia Pierre, director of the Movement for Dominican Women of Haitian Descent (MUDHA), received the Robert F Kennedy Human Rights Award in 2006 for her fight against discrimination and efforts to secure nationality for persons of Haitian descent in the Dominican Republic.



change rather than tackle the issue piecemeal.

In October 1998, a group of regional human rights organisations supported the Dominico-Haitian Women's Movement (MUDHA²) in submitting a complaint to the Inter-American Human Rights Commission on Human Rights about the way in which the Dominican authorities had denied birth certificates to two young girls of Haitian descent, Dilcia Yean and Violeta Bosico. The Dominican NGOs on the ground had detailed local information on human

rights abuses endured by Haitians and their descendants in the country and, having exhausted all domestic remedies, decided to take the case – as a test case – through the Inter-American human rights system.

Seven years later, in September 2005, an important legal ruling from the Inter-American Human Rights Court (IACHR) made it binding for the Dominican Republic to comply with Article 11 of its Constitution which guarantees the right to Dominican nationality to all those born on Dominican soil (*jus soli*) unless they are the legitimate offspring of diplomats or born to persons in transit. The IACHR ruled that by denying these girls birth certificates the Dominican government had violated their rights to nationality, to equality before the law, to a name and to recognition of their judicial personality – rights set out in the American Convention on Human Rights which has been ratified by the Dominican Republic.³

The court also ordered that the Dominican government must:

- create a simple, accessible and reasonable system of late birth registrations
- take into account the particularly vulnerable situation of Dominican children of Haitian origin
- ensure that the requirements for nationality are clearly determined, uniform and not applied in a discretionary manner by state officials

- establish an effective process for reviewing refusal of birth certificates
- guarantee access to primary education for all children, regardless of their descent or origin.

On 14 December 2005, the Supreme Court of the Dominican Republic appeared to fly in the face of this landmark regional ruling, stating that the Haitian Constitution should be applied in precedence to the Dominican Constitution, ignoring the territoriality of the application of laws. This court decision says that denying Dominican nationality to the children of undocumented Haitian migrants does not leave them stateless since the Haitian Constitution establishes *jus sanguinis* – the rule that nationality is passed by the blood-line.

The combined result of the Dominican policy of denying birth registration to anyone with suspected Haitian parents and the difficulty of acquiring Haitian documents is that in many cases children are rendered stateless. In the eyes of the Dominican authorities, children inherit their parents' 'irregular' status. In the absence of regularisation programmes or a change in policy, permanent illegality is a very real possibility for many.

In UNHCR's 2006 ExCom meeting,⁴ it was stressed that the Yean and Bosico case had yielded the single most important legal ruling in the world on nationality and statelessness in 2005. Yet this appears to be insufficiently recognised in the Dominican Republic itself and comprehensive enforcement of the sentence seems a distant dream. To their credit, the authorities have complied with financial reparations but, unfortunately, show signs of deepening the discrimination which the Inter-American human rights system had ruled should not be repeated.

Nationality stripping

Two recent bombshells have stoked the debate, presenting fresh challenges for civil society activists. In September 2008, the Director of the Civil Registry prepared a document requesting that some 126 Dominicans of Haitian descent be stripped of their

to date. Until recently there was no alternative civil register or birth certificate for those children whose birthright claim to legally exist is negated. However, in early 2007, the Central Electoral Board established a Foreign Register for children born to undocumented foreign mothers.

For over a decade pro-migrant activists have paid increasing attention to and challenged in a variety of ways the denial of

“San papye – nou se kochon nan labou.” “Without papers – we are like pigs in mud.”

Luisa, an elderly agricultural worker born and brought up in the Dominican Republic

Dominican nationality to children of Haitian origins (or suspected of being of Haitian origins) born in the Dominican Republic. For example, the Dominican government continually repeats the fallacy that all descendants of Haitians who live in the Dominican Republic have access to Haitian nationality. The reality is that under the Haitian Constitution and Haiti's 1984 law on nationality, there are several groups of people of Haitian origin born outside Haiti who do not have automatic access to Haitian nationality.

Justice through the Courts

Early on, a strategic decision was taken by human rights activists to focus on trying to establish jurisprudence to achieve lasting

nationality on the grounds that their parents had neither a Dominican identity document nor a positive migration status at the time of the birth registration. According to the document in question, they were therefore “in transit”. As a Dominican journalist observed with heavy irony, the only possible place they could be in transit to would be “the after-life” because the vast majority has always been attached to this land of immigrants and emigrants.

The recently re-elected President Fernández put before the Congress in September 2008 a proposed reform of the Constitution which includes a new clause stating that Dominican nationality cannot be acquired by children born to those parents who are residing illegally on Dominican soil. Should this watered-down

version of *jus soli* be approved (and there is no obvious reason why it should not be, given that Ireland, for example, introduced exactly such a restriction on the acquisition of nationality), the legal debates will reach even more rarefied levels.

Beyond protesting vigorously against the possible illegal retroactive application of any constitutional change, civil society activists will continue to prioritise highlighting the need for a level playing-field. Unlike the US or most Latin America countries, which have received significant numbers of immigrants, the Dominican Republic has never had a regularisation programme for unauthorised long-term residents – yet is a strong advocate for the rights of Dominican émigrés and their descendants abroad.

However, perhaps the biggest obstacle to confronting the whittling down of the rule of law is not necessarily legal but cultural. While the regional jurisprudence is important and necessary, what is vital is reinforced civic education to ensure the state is called to account as a guarantor of fundamental rights.

Bridget Wooding (bwooding@flacso.org.do) is an associate researcher with the Latin American Faculty for Social Sciences Research in Santo Domingo, specialising in migration, gender and human rights.

1. See Wooding & Moseley-Williams, *Needing But Unwanted: Haitian immigrants and their descendants in the Dominican Republic*, CIIR, London, 2004.

2. <http://www.kiskeya-alternative.org/mudha/> (in Spanish)

3. See http://www.corteidh.or.cr/seriepdf/seriec_130_esp.pdf

4. Annual meeting in Geneva of UNHCR's Executive Committee

Advocacy campaigns and policy development

Brad Blitz

Although statelessness has never attracted the same level of interest as other areas that are central to international human rights jurisprudence, it is now part of official policy discourse at the UN.

For more than twenty years activists have produced declarations that implicitly link statelessness to the challenges of providing human security and promoting dignity, thus bringing it inside the human rights regime; for example, in 1986 the Declaration on the Right to Development recognised the universal freedom to “participate in and contribute to, and enjoy economic, social, cultural and political development, in which all human rights can be fully realised.”¹

More recently, however, the concept of statelessness has been explicitly tied to campaigns to regularise migration, nationality and identity, as well as to policies of non-discrimination. The challenge of preventing statelessness has also appeared on the back of the climate change agenda, in the recognition that

rising sea levels may spell the end to the existence of some low-lying states.

There are several forces driving the new agenda on statelessness. One emanates from the transformation of the Westphalian state² to more inclusive models of political organisation. Another is the increasing trans-border migration and the recognition of multi-ethnic and multi-national populations. In many parts of the world statelessness has become closely linked to the treatment of minorities and the right to non-discrimination. For example, in the European context the spirit of non-discrimination, primarily on the grounds of race and religion, has been extended to include a host of other social categories. This has made it more difficult to show bias on the basis of national origin and nationality status; there is increasingly an accepted belief that

minorities, foreigners and others may have legitimate claims on states where they reside, irrespective of whether they are citizens or not.

Mass protests

This argument has found practical support from grassroots campaigners who have sought to regularise the status of irregular workers, unsuccessful asylum seekers and ‘over-stayers’. Although not *de jure* stateless, many of those who are the focus of these campaigns lack an effective nationality and are highly vulnerable. Some protests have been organised through local NGOs, such as the Joint Council for the Welfare of Immigrants (JWC³) in the UK; others have been coordinated by non-professional associations, migrant community organisations and collectives. In May 2006 more than one million people withdrew their labour and took to the streets across US cities as part of a protest about the situation of the estimated 12 million undocumented migrants who, with the passage of a new bill, faced being criminalised yet lacked any route to citizenship.

The protests in the US resonated with similar, although smaller-scale, events across Europe. In May 2007, there was a public rally in the UK entitled 'From Strangers into Citizens' which called for the creation of a one-off regularisation – a 'pathway into citizenship' – for migrants who have been in the UK for four years or more. They should be granted a two-year work permit and at the end of that period, subject to employer and character references, be granted leave to remain. Such an approach, the organisers claimed, would bring great benefits to the UK economy and society.

Other targeted campaigns occurred in major European cities. In France, the debate over the 'sans papiers' – the undocumented former migrants from North Africa – was revived nine years after the first major occupation of a public building over the same issue. In April 2007, more than 90 individuals occupied a church just south of Paris demanding that their contribution to the French economy be recognised and insisting on regularisation of their rights to work, to social security and to education. Smaller, yet pan-European, actions in 2007 also included the 'caravan of the erased' where a convoy of activists travelled from Ljubljana in Slovenia to Brussels via several other European cities to protest about the cancellation of residency rights and mistreatment of more than 18,000 people who were struck off the national register and lost their social, economic and political rights shortly after Slovenia achieved independence in 1991.

International campaigns

Influential international NGOs and monitoring bodies have actively campaigned to raise the profile of both *de jure* and *de facto* stateless populations. To this end, they have been supported by UN Committees, including the Committee on the Elimination of Racial Discrimination, and UN agencies, including UNHCR and OHCHR. During Kofi Annan's first term as UN Secretary-General, there was considerable activity to examine the scope of the Committee on the Elimination of Racial Discrimination and explore ways in which the protection of human rights could be achieved through joined-up actions highlighting the relevance of social and economic

factors for development, safety and security. One consequence of this activity was the 2003 report on the Rights of Non-Citizens drafted by the UN Special Rapporteur on the rights of non-citizens.⁴

This report concluded there was a "large gap between the rights that international human rights law guarantees to non-citizens and the realities they must face" and noted that in many countries there were institutional and endemic problems confronting non-citizens. The report served to set an agenda for reform that was quickly picked up by US-based activists and human rights monitoring organisations working closely with UNHCR, such as Refugees International and the Open Society Institute's (OSI) Justice Initiative.

Although all these organisations worked closely with UNHCR's Statelessness Unit, they engaged in different styles of human rights advocacy. Refugees International mapped out the problem of denial of citizenship in a global study entitled *Lives on Hold: the Human Cost of Statelessness*.⁶ The OSI Justice Initiative concentrated its efforts on Africa, though not exclusively, and spearheaded legislation before international courts, most famously against the Dominican Republic.⁷

UNICEF and Plan International together spearheaded a ten-year-long campaign on universal birth registration which aimed to curtail some of the consequences which particularly affect both *de jure* and *de facto* stateless persons.⁸ These include the challenge of proving one's nationality for the purpose of accessing basic services, travelling, marrying, having a child and protecting one's children from the dangers of legal anonymity or being trafficked. Plan launched a global campaign in 2005 and with the assistance of UNICEF lobbied to ensure that birth registration, as a means of preventing statelessness, was included as a recommendation in the 2006 UN Secretary-General's Study on Violence Against Children.⁹

The reports issued by the human rights monitors and the legal cases brought before international tribunals raised the profile of

statelessness but it was not until 2005 that Western governmental bodies became directly involved in the coordinated cause of preventing statelessness. UNHCR and the Inter-Parliamentary Union co-published a handbook on statelessness aimed at all parliamentarians.¹⁰ In the same year, the US House of Representatives organised hearings on statelessness which led to the drafting of a bill on statelessness in 2006 which, while it would not bring the US closer to signing the 1954 and 1961 Statelessness Conventions, aimed to ensure that the US could at least comply with key elements to prevent statelessness within its borders.

Conclusion

While it is still too early to pronounce a truly global approach to combat statelessness, there has been important coordination between key policy actors and the issue has attracted greater attention across the human rights community. These developments have taken place in parallel to efforts directed by local activists in the developing world, for example the Bihari spokespeople in Bangladesh and the Madhesi organisers in Nepal. Although dispersed across the world, these activists have, after fifty years, reaffirmed the place of statelessness on the human rights agenda and have devised creative rights-based arguments for reform and greater inclusion.

Brad Blitz (bblitz@brookes.ac.uk) is Jean Monnet Chair in Political Geography at Oxford Brookes University and Director of the International Observatory on Statelessness (www.nationalityforall.org).

1. <http://www.unhcr.ch/html/menu3/b/74.htm>

2. The concept of nation-state sovereignty based on two principles: territoriality and the exclusion of external actors from domestic authority structures.

3. <http://www.jcwi.org.uk>

4. <http://www1.umn.edu/humanrts/demo/noncitizenrts-2003.html>

5. See also the report on denial of citizenship for the Advisory Board on Human Security and European Policy Centre http://www.epc.eu/TEWN/pdf/724318296_EPC%20Issue%20Paper%2028%20Denial%20of%20Citizenship.pdf

6. <http://www.refugeesinternational.org/policy/in-depth-report/lives-hold-human-cost-statelessness>

7. See articles on p4 and p23.

8. See article on p20.

9. <http://www.violencestudy.org>

10. http://www.ipu.org/PDF/publications/nationality_en.pdf

Latvia

When the Soviet Union split up, many people found themselves without citizenship in the new states where they had lived and worked for many years. In Latvia, the Law on Citizenship which was adopted after independence stated that only persons who were citizens of the country in 1940 and their descendants were to be considered as citizens at independence. A large Russian-speaking population was defined as 'non-citizens', even though they did not acquire Russian citizenship and had resided permanently in Latvia. They had to apply for citizenship, the requirements for which included conditions regarding residency and passing history and language tests.

In February 2009 the Grand Chamber of the European Court of Human Rights found that one such person, Natalija Andrejeva, should not be discriminated against in terms of her state pension "in the only State with which she has any stable legal ties and thus the only State which, objectively, can assume responsibility for her in terms of social security". The case highlights the fact that even in countries like Latvia, which in fact offers most of the same rights to this group of stateless persons as for nationals, there may still be areas where stateless persons face discrimination. To the benefit of many, Latvia has naturalised more than 128,000 stateless persons since the nationality law was adopted in 1994, while another 365,417 persons remain stateless.



UNHCR/V Tan

A group of Faili Kurds discuss their concerns at a meeting with UNHCR staff.

Iraq

The former government of Iraq decided in 1980 to strip a significant proportion of the Faili Kurds of their nationality; it is estimated that up to 220,000 of them were rendered stateless in the process. Although the decree was repealed in 2006, some Faili Kurds have had difficulty obtaining confirmation of their nationality, for reasons such as lack of documentation. Although a directive from the Ministry of Interior in March 2007 accelerated the restoration of citizenship, it is estimated that 100,000 Faili Kurds have not yet obtained confirmation of their Iraqi citizenship.

Ivory Coast

In the years of increasing political turmoil that led up to the outbreak of civil war in Ivory Coast/Côte d'Ivoire in 2002, the concept of 'Ivoirité' (belonging to Côte d'Ivoire) took hold. This defined Ivoirian nationals according to their ethnicity, casting millions of second and third generation West African immigrants into limbo because they were not considered Ivoirian but often had no links or proof of nationality with the countries of ancestral descent. Many Ivoirians lack proof of identity and this meant that Muslims from the north, who share ethnicity with immigrants from neighbouring Mali and Burkina Faso, were often unable to prove their Ivoirian nationality and were made foreigners in their own land. When the fighting started in earnest, many of these people were forced to flee to countries where they had no real roots, nor a right to nationality.

As part of the reconciliation process after the 2002-03 civil war, the National Unity government organised audiences foraines – mobile courts which can conduct late birth registrations and issue birth certificates which can be used to establish nationality and enable people found to be Ivoirian to vote in future elections. The process was officially completed in 2008 but there are indications that many persons still lack identity documents.



IRIN/Pauline Bax

People register to appear before a mobile court in Bouake, Ivory Coast, August 2006, hoping to receive documents proving Ivoirian citizenship ahead of elections.

Reducing *de facto* statelessness in Nepal

Paul White

Despite a recent large-scale government campaign to encourage applications for citizenship certificates in Nepal, many factors still impede take-up, in particular among certain sections of Nepalese society such as women, IDPs and indigenous communities.

From 1951, Nepal granted citizenship on the basis of a person's birthplace and descent. Naturalisation was possible for those who had been resident in the country for at least five years. A decade later, however, the provisions relating to naturalisation became more restrictive, placing emphasis on 'Nepalese origin' and the ability to speak and write Nepali. A new constitution in 1990 brought in legislation which restricted the granting of citizenship by descent to Nepali men, repealed the granting of citizenship by birth and required foreigners to be resident in the country for 15 years before qualifying for naturalisation. Estimates in 1995 of the number of those without full citizenship (and therefore often *de facto* stateless) ranged from 3.4 million to 5 million.

The aftermath of the 2006 democracy movement saw massive changes, including promises of amendments to the citizenship laws. Arguably the primary and political objective of the change was to issue citizenship certificates to as many Nepalis as possible in order to facilitate their participation in the Constituent Assembly election. New laws were quickly drafted and adopted, though with limited consultation. They revived the provision for citizenship by birth in Nepal but included a clause making applications for citizenship by birth valid for only two years after the enactment of the Citizenship Act of 2006 – until 26 November 2008.

There followed a massive and generally successful government campaign that resulted in the distribution of citizenship certificates to nearly 2.6 million eligible citizens – that is, all Nepali nationals aged

16 and above. The campaign took place in all 75 districts of Nepal, employing some 4,000 staff, between January and April 2006.

The citizenship certificate

Nepal's citizenship certificate confirms the legal identity of Nepali nationals and proves access (or improved access) to rights, opportunities and services that would not normally be available to non-citizens including: formal sector employment; banking facilities or micro-credit schemes; registration of businesses; civil registration of births, marriages and deaths; registration of property transactions; higher education; passports; and government benefits and allowances (for the aged, widowed, disabled, internally displaced and victims of the armed conflict). Failure to obtain a citizenship certificate often results in dire consequences that amount to *de facto* statelessness.

In order to obtain their citizenship certificate, citizens must produce documentation, such as the citizenship certificate or land registration of immediate family, and obtain supporting documentation from their Village Development Committee Secretary and other citizens with citizenship certificates.

Discussions during UNHCR field missions suggest that most citizens want their citizenship certificate but that there are many factors impeding them from obtaining one:

- lack of knowledge or motivation
- cost of obtaining photographs, photocopies and supporting documents (though official fees are nominal, these additional costs may be prohibitive)
- nomadic lifestyles which make application difficult as people may not be connected to a particular ward or village
- discriminatory and patriarchal practices in some communities which discourage women and girls from applying
- destruction or damage (during the 1996-2006 Maoist insurgency) to local registration offices, which provide supporting documentation
- remoteness of District Administration Offices – the only place where citizenship certificate applications can be made – and cost of travel; even if the application forms are in order, repeated trips or several days' stay in the district town are commonly required.
- more recently due to the violence in the Terai region, many VDC Secretaries have themselves been displaced and so are not available to sign supporting documentation.

UNHCR estimates that there are still some 800,000 Nepali citizens who are *de facto* stateless today. A number of national and international NGOs working in Nepal are challenging the practices, laws and policies which give rise to *de facto* statelessness. Some, as shown by the following examples, have targeted a specific area of need.

Women

Given the blatant discrimination against women in Nepal's citizenship regulations, which prevent married women from obtaining a citizenship certificate without the approval

of their husband or father-in-law and prevent women married to foreigners from passing citizenship to their children other than through naturalisation, the Forum for Women Law and Development (FWLD¹) has recently put citizenship issues at the forefront of their activities. FWLD has carried out research, issued requests in the media for notification of discriminatory practices, provided legal services related to citizenship, organised district-level awareness-raising conferences, produced advocacy materials and developed networks to make citizenship a national concern.

Citizenship certificates are a necessary part of micro-finance schemes as they are needed to open bank accounts, to obtain VAT registration and to be a member of a cooperative. Women in Makwanpur District have been encouraged to obtain their citizenship certificates as part of a micro-finance initiative supported by Plan Nepal.² More than ten thousand women are now involved in cooperatives and many of them are now also receiving training in managing cooperatives and mobilising rural women.

A study in 2006 by the Alliance Against Trafficking in Women and Children (AATWIN, a coalition of more than 20 NGOs and Community-Based Organisations) focused on the citizenship issues of survivors of trafficking, Badi women (a Dalit minority group), women in polygamous relationships and women living in squatter areas. The research concluded that there was a pressing need to combat constitutional discrimination and deprivation of women in the matter of citizenship certificates and that this “be combined with the fight against poverty and promotion of social inclusion, gender equity and women’s empowerment.” AATWIN proposes a mass legal literacy campaign for women, including advocacy on citizenship rights linked to other basic and economic rights.

IDPs

Many people displaced within Nepal during the violent years of the Maoist insurgency face almost insurmountable difficulties in obtaining a citizenship certificate. A displaced person needs first to get a

certificate from the VDC Secretary of his or her home village – who may themselves have been displaced and not been replaced. IDPs are also often reluctant to make contact with the authorities. The Norwegian Refugee Council³ worked through its Information Counselling and Legal Assistance project to help IDPs secure important replacement documents – but replacing the citizenship certificate is hard, usually requiring an expensive and sometimes perilous journey to the district headquarters of origin. Married women face particular difficulties as they often need permission from their husband or father-in-law for legal and administrative procedures.

Academics and lawyers have added their voices to oppose the discriminatory nature of the nationality laws and specifically pointed out the conflict between Nepal’s nationality laws and its international obligations to ensure the rights of all. In 2006 an initiative supported by the Finnish Embassy recommended that the citizenship certificate be issued to all indigenous Nepalis upon the recommendation of their ethnic organisation – appearing to favour a form of the principle of *jus connexionis* (the right of attachment) over *jus soli* and *jus sanguinis*.

In a landmark ruling in 2005, brought by Nepali NGO ProPublic,⁴ the Supreme Court declared that in the absence of the father a child’s birth must be registered based on the mother’s citizenship. The court ruled that the Registrar must register the birth of a child of indeterminate paternity, including those born to sex workers. However, the judgment was not widely circulated and some local authorities are reluctant to implement this law citing a lack of procedural directives, and so problems with birth registration and consequently citizenship certificates continue for children of unmarried mothers, unknown fathers, those abandoned by their father and those whose father denies the relationship.

UNHCR’s fieldwork supports the widely held view that the warmth of the welcome extended to citizens – in the form of legislation, personal treatment and local political mobilisation – is a significant factor, especially amongst the marginalised,

in encouraging citizenship certificate applications. UN agencies, the Nepali government, NGOs, CBOs and donors need to keep citizenship on their respective agendas in Nepal. There is scope – and need – for initiatives that may include:

- linking birth registration with provision of the citizenship certificate
- awareness-raising campaigns to ensure all Nepali women obtain a citizenship certificate
- protecting IDPs by ensuring that the Procedural Directives which give effect to the national policy on IDPs and include matters relating to documentation are signed into effect
- using Nepal’s next census in 2011 to count the number of Nepalis without citizenship certificates and establish the reasons for this
- providing additional support and mobile teams to indigenous communities especially those residing in very remote locations
- ensuring legislation is not discriminatory
- assisting rescued trafficked women to have access their citizenship certificate.

Paul White (paulwhite.au@gmail.com) is a Senior Protection Officer deployed to various UN agencies through PROCAP (http://ocha.unog.ch/ProCapOnline). This article is written in a personal capacity and does not necessarily reflect the views of UNHCR or any other agency.

1. <http://www.fwld.org.np>

2. <http://www.plan-international.org/wherewework/asia/nepal/>

3. <http://www.nrc.no>

4. <http://www.propublic.org>

To access more articles about Nepal, visit the following websites and use the search facility provided:

<http://www.fmreview.org>
<http://www.forcedmigration.org>

and click on the Nepal country page at:
<http://www.internal-displacement.org>

The end of Bihari statelessness

Khalid Hussain

Approximately 160,000 stateless Biharis live in 116 makeshift settlements in Bangladesh. Despite recent developments in voter and ID registration, they continue to live in slum-like conditions, facing regular discrimination.

The people known in Bangladesh as 'Biharis' or 'stranded Pakistanis' are the Urdu-speaking descendants of Muslims who lived in different Indian provinces but mostly in Bihar and who, at India's partition in 1947,

education and health-care facilities hampers community development.¹

Some of the camp residents, particularly the younger ones, have been struggling for years to be

for Bangladeshi citizens – giving access to 22 basic services.

A three-member delegation from the camps, including a member of the Association of Young Generation of Urdu-Speaking Community, Geneva Camp, met the Chief Election Commissioner of Bangladesh in July 2007 and submitted a petition for the inclusion of camp residents in the new list of voters. On 6 September 2007, the government agreed to give citizenship to those Urdu-speaking Biharis born after 1971 or who were under 18 years at the date of the creation of Bangladesh. In November 2007, twenty-three eminent academics, journalists, lawyers and human rights activists, in a joint statement, urged the government to offer citizenship rights, in line with the country's constitution, to all Urdu-speaking people in camps in Bangladesh.

In August 2008, the Election Commission began a drive to register the Urdu-speaking communities in the settlements around Bangladesh. This was an important first step towards integrating these minority communities into Bangladeshi society. Over several days, the Commission employed enumerators to take forms from door to door, registering hundreds of people each day. Now all camp residents are Bangladeshi citizens and all of them have National ID cards.

Unmet needs

Despite recent progress in voter and ID registration, however, 37 years of non-recognition have left the Biharis living in abject poverty and vulnerable to discrimination. They are still denied access to a Bangladeshi passport. Mustakin, a resident of Geneva Camp, explained: "Last September, I paid 2000 Taka [US\$29] for a passport but I wasn't given it, even after showing my national ID card."² In response, Abdur Rab Hawlader, director general of the Department of Immigration and Passports, said that his department "did not receive any instruction from the



UNHCR/G. M. B. Akash

The lack of basic services, such as toilets, washing facilities and garbage disposal and drainage systems, contribute to the appalling conditions faced by Biharis living in the Dhaka settlements.

moved to what became East Pakistan. Following the war between West Pakistan and East Pakistan, when East Pakistan became Bangladesh in 1971 the Biharis were left behind. As many of them were thought to have supported West Pakistan in the war, they were unwelcome in Bangladesh, were treated as stateless and have faced discrimination ever since.

The Bihari camps are mainly in urban areas and are beset by severe overcrowding, poor sanitation and lack of basic facilities. The slum-like conditions in these settlements have worsened over the years as the population has grown. With inadequate provision for clean water, waste disposal and sewage systems, there are chronic hygiene problems. Camp residents face discrimination in the job market and a severe lack of

recognised as Bangladeshi citizens. Over the last eight years they have filed two petitions with the High Court demanding voting rights. Ten young residents of Geneva Camp filed the first petition in 2001. The High Court declared them to be Bangladeshi citizens and directed the national Election Commission to include their names in the list of voters. Subsequently, the Election Commission included not only the names of the original ten on the list but also the names of residents of other camps. After 1 January 2007, when a new caretaker government was formed in Bangladesh, that list was declared null and void and a newly reconstituted Election Commission was given responsibility for preparing a fresh list of those eligible to vote and for issuing national identity cards –

authorities on issuing passport to Biharis." Living conditions remain overcrowded, with five to 15 people sharing one or two rooms. The threat of eviction and the need for education, skills training and employment are our chief concerns.

The government has initiated various development programmes for poverty reduction in accordance with its Poverty Reduction Strategy Paper (PRSP) but these do not address the needs of the Urdu-speaking community. How and when will the poverty-related challenges of this community be incorporated into the PRSP?

No NGOs or UN agencies have taken the initiative to collect comprehensive baseline data from which to develop both short- and long-term programmes for the social and economic rehabilitation of this community. Some argue that rehabilitating 160,000 camp dwellers would require a huge amount of funds and a range of well-planned strategies that Bangladesh, a poor country, is ill-equipped to provide without support from the UN and other international donor agencies.

We propose that the government of Bangladesh establish a rehabilitation trust fund to mobilise funding from

international Islamic organisations, bilateral donors and other national and international donor agencies in order to ensure a safe and secure future for future generations of Urdu-speakers in Bangladesh.

Khalid Hussain (Khalid.aygusc@gmail.com) is President of the Association of Young Generation of Urdu-Speaking Community (AYGUSC) and Assistant Coordinator of the NGO, Al-Falah Bangladesh.

1. See Policy Brief by the Refugee and Migratory Movement Research Unit (RMMRU) http://rmmru.net/Policy_Brief/Policy_brief_ISSUE_2.pdf

2. See *The Daily Star*, 26 January 2009: <http://www.thedailystar.net/newDesign/news-details.php?nid=72960>

Childhood statelessness

Maureen Lynch and Melanie Teff

Statelessness – the non-acquisition of citizenship – can blight a child's prospects throughout life.

Stateless infants, children and youth, through no fault of their own, inherit circumstances that limit their potential and provide, at best, an uncertain future. They are born, live and, unless they can resolve their situation, die as almost invisible people. Statelessness can also lead to poor home environments and to family separation, two important factors affecting child development.

Apart from the ways in which any person can become stateless, a child in particular can become stateless when a family migrates away from a country where citizenship is conveyed by *jus sanguinis*; a child has the right to citizenship of the parents' country of origin but cannot always access it and may instead become *de facto* stateless in the country where they grow up. Lack of birth registration can cause statelessness. Children may not be registered because parents fear drawing attention to their own status. A child can also become stateless when a birth record is destroyed or lost and there is no other means to link them with a particular country.

Inequitable laws also create childhood statelessness. Although in the last 25 years, at least 20 countries have changed their laws to give women the right to pass their nationality to

their children, the nationality of a child born to parents from different countries is still a concern when laws treat men and women differently. Where citizenship is determined exclusively by the father's nationality, stateless fathers, single women, or women living apart from their husbands face numerous barriers to registering their children. If a woman is unable to extend citizenship to her spouse, statelessness may be imposed on her and the children. Whether parents are married or not may also determine a child's nationality. For example, one legacy of UN peacekeeping is fatherless children – and the citizenship rights of children born to UN troops and female nationals are not always clear.

In the end, perhaps the most obvious reason why children become stateless is that they cannot act for themselves.

Protection and rights

Birth registration is the official record of a child's birth by the state and a government's first acknowledgement of a child's existence. It is crucial to ensuring a culture of protection. Consider the following examples.

On the day that the child of a Burmese asylum seeker is born in a Thai hospital, the birth record is

removed. The Burmese government also disavows responsibility. Not recognised by either Burma or Thailand, this child is stateless.

Children of Mauritanian refugees born in Senegal have the right to be registered as Senegalese citizens but some parents are unwilling for this to happen. They prefer to wait until they can return to Mauritania and register their children there.

Children of a Kuwaiti mother and a Bidoon – stateless – father are also Bidoon. Since a child of a divorced Kuwaiti woman or widow can theoretically acquire citizenship, there is an incentive to divorce for the sake of the child.

At a briefing on stateless children the US Congress was told about the case of a stateless family whose asylum appeal was denied was related. The five-year-old daughter was placed in a cell with her mother. The eight- and 14-year-old sisters were detained together elsewhere. The 15-year-old son was held alone. The father was separated from his family by hundreds of miles. The three-year-old was not held because she is a US citizen.

Being stateless also means not being able to access many other rights available to citizens. For stateless children, medical care



Stateless near the Kyrgyzstan-Uzbekistan frontier.

Refugees International

may be less readily available or more costly than for others. Children without birth certificates cannot be legally vaccinated in at least 20 countries. Government assistance programmes offering medical attention to impoverished nationals, including for HIV/AIDS, may not serve stateless children.

Education is usually limited or unavailable for stateless children. Some families are told their children can attend school only if space is available after all other citizens' children have registered; some governments feel that offering education to stateless children is too costly; in other cases, parents are forced to pay high tuition fees so children can attend private schools.

In Sabah, for example, children of migrants of Filipino and Indonesian descent with *orang asing* (foreigner) on their birth certificates or those without birth certificates cannot go to government school. In Thailand, the Ministry of Education is supposed to issue the Regulation on Evidence of a Child's Birth for School Admission to honour Article 29 of the Convention of the Rights of the Child but not all children receive this document and if they do not, cannot attend class. One stateless child said, "I don't want to pick chillies and onions in the plantation. I want to go to school. I want to wear a school

uniform proudly and learn the materials in a proper classroom."

Syria recognises the right of Kurdish children to primary education but not in their native language. To attend secondary school, they must also obtain permission from state security. Those who are *maktoumeen* (unregistered) do not receive their diploma from secondary school. One stateless young man with the highest marks in his high school class now sells tea in front of the University of Damascus, which he once dreamt of attending.

Passports, essential for international travel, are generally not issued to stateless children. Not having travel documents means no possibility of education abroad, travelling to visit family and relatives, or even seeking specialised medical care.

While every child is entitled to state protection against exploitation and abuse, stateless children have no such guarantee. Lack of documents proving age leaves them unprotected by child labour laws. A 13-year-old stateless girl who escaped her Thai owner said, "I was sold for less than 800 baht (US \$20) to work as a housemaid...I ran away because they were going to sell me to work in the sex trade." Law enforcement agencies cannot prosecute traffickers without proof of the age and identity of those

trafficked. Some stateless children cannot be returned home without proof of nationality. If a stateless young person gets into trouble with the law and lacks proof of age, they may be prosecuted as an adult.

Recommendations

Every child should be able to develop as a full and productive citizen. "We want to be children. We want to enjoy our childhood," explained one stateless boy. To allow these children to enjoy their childhood, the following steps should be taken: starting with the provisions of the 1961 Convention:

- All states should respect the right of children to have a nationality and include provisions on non-discrimination in national citizenship laws.
- Every child, whether born to married parents or not, should be registered at birth and in cases of disputed nationality states should grant citizenship if the child would otherwise be stateless.
- States should make primary education free and compulsory for all children as well as provide access to health care, including immunisations, for all infants.
- The practice of detaining children should be abolished.

- States should enforce laws relating to the minimum employment age and assist efforts to prevent child labour, under-age military service and trafficking.
- The UN should pay special attention to issues relevant to stateless children and take steps to utilise all mechanisms of UN human rights bodies.

Maureen Lynch (maureen@refugeesinternational.org) is Senior Advocate for Statelessness Initiatives and Melanie Teff (melanie@refugeesinternational.org) is Advocate at Refugees International (www.refintl.org)

Stateless persons from Thailand in Japan

Chie Komai and Fumie Azukizawa

The difficulties faced by stateless persons from Thailand in Japan show only too clearly that the international legal framework for their protection is inadequate.

From around 1990 there have been people illegally entering Japan from Thailand. Though born and brought up in Thailand, they have no Thai nationality as their parents were ‘Indochinese refugees’ escaping the first Indochina War (1946-54).

As their parents were born in Vietnam or Laos – where nationality laws work on the principle of *jus sanguinis* – they should have the right to nationality there. But many of those who fled Vietnam and Laos in the confusion of wartime have now passed away in Thailand, having shared little information on their own birthplaces with their children. It is therefore tremendously difficult for the refugees’ children to retrace their parents’ footsteps or find relevant official documents. In addition, many official records were lost during the war and the post-war period, and naturally neither Vietnam nor Laos holds either official or unofficial records of the birth and existence of refugees’ children born in Thailand.

In these circumstances it is almost impossible to expect that Vietnam or Laos should grant citizenship to them. They are *de facto* stateless persons whose situation is not dissimilar to that of *de jure* stateless persons. That is, for most of the Vietnamese and Lao refugees’ children, it is often too difficult to prove their ties to Vietnam or Laos more than 50 years after their parents’ flight.

In Thailand, which has not signed the 1951 Convention, ‘Indochinese

refugees’ (most of whom are anyway not ‘convention refugees’) and their children have very restricted freedom of movement, have limited access to education, cannot get permanent jobs at fair wages without Thai nationality and lack access to many of their basic rights. This is why some decide to enter Japan illegally in order to find work. As the Thai government will not provide the documentation which would permit them to travel abroad, they bought the assistance of illegal brokers who provided passports with false Thai names. With no legal residence status, they live in continual fear of arrest by the Japanese police or the Immigration Bureau. They work illegally for low wages with no access to welfare or even health services. Many of them mistakenly believed that, if arrested and deported from Japan, they would be able to return to Thailand despite not having Thai nationality.

The Immigration Bureau did indeed arrest and detain a number of them in preparation for deportation. However, they cannot be deported to Thailand or any other country as they have no state to which they belong. Without access to public records in Vietnam or Laos as evidence of their nationality there, the children have no way to prove that they are Vietnamese or Lao. And even if Vietnam or Laos did accept them, life would be very difficult; having been born and brought up in Thailand, almost all of their family members now live in Thai society and they have few, if any, links elsewhere.

While the Immigration Bureau slowly came to realise that there was nowhere to deport them to, many have wasted months or years in detention. After arrest they may be detained for months or years before there is any possibility of them being temporarily released. And even then they are still prohibited from working, which means they have to keep breaking Japanese law in order to work illegally to survive.

Thailand changed its nationality law in 1992 and decided to give Thai nationality to the children of Indochinese refugees if they apply for it in Thailand. However, the refugees’ children who had come illegally to Japan are not able to return to Thailand in order to apply for Thai nationality. Many were not even aware of the possibility of doing so – and so lost the best chance they might have to gain an effective nationality.

Recommendations

Japan should issue all such *de facto* stateless persons with a Special Permission for Residence (SPR); they would then be free to work legitimately for proper wages, access health services and bring up their children as they would hope to do.

UNHCR should work with the Japanese and Thai governments to help secure SPR for them in the short term and Thai nationality in the long term.

Chie Komai (t-komai@mud.biglobe.ne.jp) and Fumie Azukizawa (f-azuki@wd5.so-net.ne.jp) are attorneys of the Yokohama Bar Association in Japan.

Combating statelessness: a government perspective

Nicole Green and Todd Pierce

The US government believes that the prevention of statelessness and the protection of those who are stateless should be priorities for all governments.

Statelessness lurks behind many problems. All too often, it denies children access to education. It prevents their parents from working legally, and makes persons vulnerable to labour exploitation, sexual exploitation, trafficking in persons, arbitrary arrest and detention,

to see some of the most grievous consequences of statelessness.

A citizen is a person owing allegiance to and entitled to the protection of a sovereign state. Citizenship helps establish identity and instil human dignity. By contrast, statelessness,

There is little data on the history of statelessness or related population trends. Issues of citizenship and nationality (and related issues of immigration) may be politically sensitive. In the worst cases, governments have taken nationality away from their citizens for political reasons; in some cases, governments simply lack the capacity to officially recognise and document their citizens; and in other cases statelessness results from systematic discrimination or other gaps in citizenship laws and procedures. The citizenship laws of the Burmese regime explicitly exclude the Rohingya, for example. After the death of several hundred Rohingya migrants at sea in February 2009, the regime reiterated its position that the Rohingya are not among the official “national races of Burma”.

The US government cares about statelessness as an issue that carries repercussions for regional stability and economic development. US diplomats advocate directly with governments to prevent and resolve situations of statelessness within their territory. In Vietnam, for example, US diplomats are encouraging the government to naturalise nearly 10,000 stateless persons who fled Cambodia’s Khmer Rouge in the late 1970s. In 2007, the Department of State created a distinct sub-section devoted to statelessness in the Country Reports on Human Rights Practices it submits annually to the Congress. This new sub-section is included again in the recently released 2008 reports. Its inclusion is intended to help create public awareness about the existence of stateless populations, the challenges they encounter and progress made in resolving situations of statelessness.

Through diplomacy and humanitarian assistance, the US Department of State has sought to elevate statelessness as an important human rights and humanitarian issue in the US foreign policy agenda. The US is committed to



The Urdu-speaking community in Mirpur in Dhaka, Bangladesh, lives in poor housing conditions with families of 6-8 people living and working in a single room. Men and women work long hours – the men weaving saris at a factory and the women embroidering at home.

discrimination and other abuses. It denies families access to health care, and prevents them from marrying, owning property, opening a bank account or travelling. When stateless people become displaced, the question of which state they belong to becomes critical. We have only to look at the situations of Rohingya Burmese or Palestinian refugees

or the absence of citizenship, typically denies individuals the ability to exercise their human rights, poses obstacles to meeting their basic needs and prevents their full participation in society.

The problem of statelessness is not new but has been ‘in the shadows’, like stateless people themselves.

continued support for stateless populations. The US government is the single largest donor to UNHCR, the international agency with the mandate to protect stateless people.¹

US law is generally consistent with the objectives and principles of the two main conventions² that address the problem of statelessness; that is, the US does not contribute to the problem of statelessness, and US law does not treat stateless individuals differently from other aliens. The US has not, however, become a party to these international legal instruments because they contain some specific obligations that are inconsistent with US law. For example, the 1961 Convention prohibits the renunciation of nationality where such renunciation would result in statelessness. This legal prohibition in the Convention conflicts with US law, which has long recognised the right of Americans to renounce

their nationality, even if doing so would lead to statelessness. Thus, while we have not joined these two particular conventions, we are fully committed to their objectives; not being a party does not in any respect undermine our commitment.

Indeed, the US promotes the policy goals of these conventions and encourages other governments to join bilateral and multilateral efforts to prevent people from becoming stateless, identify those who are stateless, protect stateless people from exploitation, discrimination and other abuses, and promote solutions, including naturalisation, birth registration, resettlement and other measures to increase access to citizenship.

Whether they are deliberately excluded or simply fall through legal or administrative cracks, stateless persons have been described as

“legal ghosts”.³ The US government is pleased to support this issue of *Forced Migration Review* as an important effort to recognise stateless people, give voice to their stories, create awareness about the causes and consequences of their situation, and encourage the international community to find solutions to their plight.

Nicole W Green (GreenNW@state.gov) is Program Officer and Todd Pierce (PierceTJN@state.gov) is Public Affairs Advisor in the Bureau of Population, Refugees, and Migration (<http://www.state.gov/g/prm/>) of the US Department of State.

1. In 2008, the US provided over \$500 million to UNHCR, including contributions to the agency's core budget that supported protection and assistance activities for stateless populations.

2. Convention Relating to the Status of Stateless Persons (1954); Convention on the Reduction of Statelessness (1961)

3. *The World's Stateless People: Questions & Answers*, UNHCR, 2006, p5.

No place to go: statelessness in Israel

Oded Feller

Only in the past few years has Israel acknowledged that there exists a problem of stateless persons living in Israel; however, this has not prompted the state to recognise the distress of stateless people or to develop appropriate solutions.

Israeli law grants Jews preferred and almost exclusive status with regard to entry into the country. The Interior Minister has extremely limited authority when it comes to restricting an individual who complies with the criteria of the law from immigrating to Israel. On the other hand, the law allows the Interior Minister almost unlimited discretion in granting entry visas to non-Jews, and does not lay down criteria for issuing or refusing to issue these visas. In practice, most foreign nationals cannot acquire permanent Israeli residency status without the authorisation of the Interior Ministry, which only grants residency permits in a very limited number of cases.

The result is an immigration policy that violates human rights in general,

and most particularly the right not to be discriminated against on the basis of race. This rigid policy also underlies Israel's approach to non-Jewish stateless people.¹

According to Israeli law, stateless persons reside in Israel illegally. They are at risk of being arrested and held in detention as illegal residents. As a result of their lack of formal status, they are not entitled to work. They do not have access to national health insurance nor are they entitled to receive social services. They do not hold identification documents, and are therefore not allowed to drive, cannot open a bank account and have difficulties contracting marriages. If they leave Israel, they will not be allowed to return. There are between a few hundred and

a few thousand stateless persons currently residing in Israel.

Immigrants who lost their former citizenship

Three individuals who were citizens of the former Soviet Union but did not acquire citizenship in any of the states established after its break-up were arrested as illegal residents and thereafter held in detention. They were subsequently released a few months later when it became apparent that there was nowhere to deport them to. They remained in Israel without any legal status. In its response to a petition to grant them permanent residency status in Israel, the Interior Ministry claimed that the condition of statelessness is not a humanitarian consideration obliging the state to grant legal status to a person.

Later the Court of Administrative Affairs ruled that the Interior Ministry must encourage stateless persons to appeal to the Ministry to formalise

their status prior to being detained, since – if it is impossible to deport them from Israel in any case – it is pointless to detain them. The Court instructed the Interior Ministry to establish a procedure for dealing with cases of statelessness, in the framework of which stateless people would be granted temporary stay permits, and to define the level of cooperation expected from stateless persons in order to determine whether they could be repatriated to their countries of origin.

In response, the Interior Ministry has introduced a procedure for examining stateless people's applications for status – but only after the stateless person has been arrested. In other words, in order to secure a temporary stay permit, the stateless person must first be arrested and imprisoned and subsequently endure lengthy bureaucratic processes. These include being asked to produce documents from their country of origin, some or all of which they will not possess and will not be able to obtain. Furthermore, the procedure explicitly applies to people who previously held citizenship in other countries, and therefore does not provide a solution for stateless people who were born in Israel, such as the stateless Bedouin residents.

Stateless Bedouin

As a result of the disorder in the registration process during the

British Mandate and the early years of the State of Israel, and also due to the Arab Bedouins' difficulties in accessing the relevant authorities, some of the Bedouin residents of the Negev region of southern Israel were not registered and never received legal status in Israel. There exists no official estimate of the total number of stateless people from the Azazma tribe but human rights organisations estimate that a few hundred currently live in the Negev region.

The Interior Ministry refuses to provide services to the stateless members of the tribe or to resolve their problem of statelessness in a systematic manner. Over the years, the Interior Ministry has agreed to examine a number of individual requests for status on a case-by-case basis. This individual process is complicated and entails many bureaucratic burdens and expensive service fees. In addition, stateless persons – who do not hold identification documents – are required to prove their identity through a judicial process, an expensive process which necessitates hiring the services of a lawyer, gathering testimonies, paying fees and managing a complicated legal process.

Statelessness from birth

When a child is born to an Israeli father and a non-Israeli mother whose legal status in Israel has not yet been

formalised, the Interior Ministry demands that the father undergo a DNA paternity test to confirm that he is the biological father of the child. The parents must bear the costs of the legal proceedings and DNA testing themselves and until the conclusion of this process the child remains stateless and is not entitled to health services or social rights.

Children of permanent residents of Israel who are not citizens – primarily children of Palestinians who live in East Jerusalem – do not automatically receive legal status at birth. The child will acquire legal status in Israel if he or she is born in Israel to a parent who is a permanent resident and whose 'centre of life' is in Israel. It is the responsibility of the parents to submit a request for their child to be recognised as a resident, and to prove where the child was born and where the child's and parents' centre of life is. It can take months or even years for the application to be processed due, among other reasons, to the multiple and exhaustive bureaucratic procedures.²

If the child is born outside Israel – usually in the occupied Palestinian Territories – the parents must submit a request for family reunification in order to obtain legal status in Israel for their child. This request is subject to the provisions of the law which bars Palestinians from acquiring permanent status in Israel. As a result, in many cases the child is not entitled to receive health and social services; the most the child can hope for is a permit to reside in Israel with their family.

Israel's rigid immigration policy vis-à-vis non-Jews does not make any exceptions for stateless persons. Israel must recognise the distress of stateless persons and take action to develop appropriate solutions with transparent and public guidelines, while simplifying the cumbersome bureaucracy that currently prevails.

Oded Feller (oded@acri.org.il) is an attorney at the Association for Civil Rights in Israel (www.acri.org.il).

1. Any substantive discussion on the issue of stateless persons in Israel must extend to stateless persons in the Occupied Territories. However this article will only focus on stateless people living within Israel.

2. See Elodie Guego "Quiet transfer" in East Jerusalem nears completion' at <http://www.fmreview.org/FMRpdfs/FMR26/FMR2612.pdf> in FMR 26 on 'Palestinian displacement: a case apart?'

Bedouin protesting against house demolitions in the Negev.



Shabtal Gold

The lost tribes of Arabia

Abbas Shiblak

It is difficult to give precise figures of the number of stateless persons in the Arab region. Most countries in the region do not publish figures on the number of stateless communities in their midst. However, it is widely recognised that the number of stateless people in the Arab region is one of the highest in the world.

Exclusion and inclusion had been part of the process of state formation in the Arab region that took place when Ottoman rule ended and the European colonial powers divided up the Ottoman inheritance directly after the First World War. The emerging new sub-national states of Arabia cut through nomadic or semi-nomadic societies. The extended Bedouin tribes had for centuries moved with their animals without check points or border crossings.

Passports and identity documents were not only unknown but also undesirable devices brought by men with blue eyes, who wore trousers and funny hats. Many were suspicious of the new ways and chose not to have their names registered, or simply did not bother to do so as their way of life maintained the same rhythm it had always had. Even years after the newly born states were established, the Bedouin were still able to function as free and full citizens of these states. Papers did not have the meaning they have now and consequently thousands of people fell through the net and remained undocumented. The indigenous stateless communities in the Gulf region, today called the 'Bidoon', an Arabic word which means 'without [nationality]', are largely the victims of this process.

Foreign intrusion and armed conflict led to wide-ranging displacement and consequently to large numbers of stateless communities. The Arab-Israeli conflict has produced one of the largest refugee stateless communities in the world today as a result of the mass movement of Palestinians to other states after the 1948 and 1967 wars. More recent conflicts in Lebanon, Iraq, the Gulf region, the Horn of Africa and Western Sahara have generated a substantial amount of displacement

and statelessness, though on a smaller scale than that of the Palestinians.

The rise of pan-Arab nationalism, the political turbulence that has swept the region in the last few decades and ethnic and religious tensions have led to further exclusion and marginalisation of minorities and deprivation of citizenship, as in the cases of the Kurds of the Levant and the Shiites in Iraq and parts of eastern Arabia.

Control of nationality

A chain of out-of-date laws that still regulate various aspects of citizenship such as immigration, the status of refugees, the status of women and the rights of children are to a large extent responsible for generating and maintaining the phenomenon of statelessness in the region. In their efforts to assert their authority, most of the emerging states seem to have adopted a narrow concept of citizenship and restrictive nationality laws. Citizenship is largely conceived of as granted by the head of state and not as a fundamental right. There is, in most cases, no jurisdictional mechanism therefore to challenge the executive order to deprive someone or a group of people of their citizenship.

Most of the countries in this region adopted rigid criteria to grant their nationality based only on the principle of *jus sanguinis* through the male line, the husband or father. Children therefore inherit statelessness from their stateless fathers. Women have no rights in most of these countries to pass on their nationality, if they have one, to their stateless children. Most of these countries are not party to the 1951 Refugee Convention and almost none is party to the 1954 and 1961 Conventions on the Status of Stateless Persons.

Thus, there is no way to grant citizenship to immigrants or refugees in these countries. Naturalisation of foreigners and citizens of other Arab states is either prohibited by law or very restricted and left to the discretion of the rulers without clear criteria. Even where they have adopted some of the relevant international conventions or even inserted provisions into domestic laws, there is always a large gap between what the law says and its application. The most striking example perhaps is the persistence in ignoring the right of children to have citizenship among most of these states, which are all party to the Convention on the Rights of the Child.

A large but unknown number of *de facto* stateless individuals have been denied passports or the ability to travel by the authorities in their country because of their political or human rights activities. There is evidence to suggest that this is a widespread phenomenon in most Arab states. It is common practice that political opponents who live abroad are denied renewal of their passports (as are, usually, their family members).

Unlike in liberal democracies where social and economic rights derive from residency rather than nationality, in most developing countries and certainly in the Arab region, nationality is the key for other rights. Being stateless has a negative effect on all aspects of one's life, including the right to freedom of movement, to work, to access public services, to own property, to have a driving licence, to register a marriage, birth or death, or sometimes to have any identity document at all. Deprived communities can be a destabilising factor in any society, which can lead to further conflicts among states, as the case of the Palestinians and the Sahrawi or the Shi'ites deported from Iraq have proved.

Palestinians, Kurds, Bidoon and Sahrawi

Broadly speaking, the four main stateless communities in the region –

the Palestinians, the Bidoon of Arabia, the Kurds of Syria and the Sahrawi still living in exile in Algeria – are *de jure* stateless.

Almost half of the approximately 10 million Palestinians today are stateless holders of travel documents who live mainly in the Palestinian Authority (PA) controlled areas of the West Bank and Gaza Strip and in other countries of the Arab East. As long as there is no fully-fledged Palestinian state these communities will remain stateless under international law. This large stateless community has been taken care of by the specially constituted international relief agency UNRWA. It has thus long been considered as outside the mandate of UNHCR and dropped therefore from the list of stateless communities worldwide and from the international protection regime for refugees and stateless persons.

However, there is growing international awareness of the need to recognise the statelessness of Palestinian refugees and of the need to include them in the international protection regime. During the last few years, UNHCR has taken a step towards this by including within its protection Palestinian holders of travel documents outside UNRWA's areas of operation.¹

There are presently at least 500,000 stateless Bidoon in the Gulf States including Saudi Arabia. The largest group is in Kuwait, despite the flight of more than 100,000 of them during the Iraqi invasion of Kuwait in 1991 and the fact that afterwards the Kuwaiti authorities blocked their return. Security (which largely means the security of the ruling families), the desire to keep national wealth for the few in these oil-producing countries and in some cases the desire to keep the demographic balance in favour of the ruling families and against other religious or national groups remain the unspoken factors

behind inclusion and exclusion in most of these countries.

Rising nationalism under the Ba'athists led to thousands of Kurds in Syria – estimated at between 200,000 and 250,000 – being deprived of their nationality in the 1960s. The majority of these are still without a nationality despite recent signals from Syrian officials that the issue will be resolved. Ethnic and religious tension as a result of the Iran-Iraq war in the 1980s led to mass displacement, deportations and deprivation of



nationality for as many as 600,000 Iraqi Kurds and Shi'ites. The majority of them were allowed back after the fall of the old regime in 2003 but it is not clear in the present highly charged sectarian situation how many have regained their nationality.

Thousands of refugees who lack documentation have spilled out across the borders to the neighbouring countries from conflicts in the Horn of Africa and Sudan over the last three decades. And it is not clear how many Sahrawi out of an estimated 160,000 still living on the Moroccan-Algerian border have no nationality.

The future

Some of the Arab states have started to realise that they need to open up their restrictive nationality laws; the current situation is not only unrealistic in a rapidly changing world of pluralism but it is also essentially undemocratic and largely in breach of basic human rights. Saudi Arabia, among others in the Gulf, has inserted special provisions

into its laws to allow naturalisation of foreign professionals who have served the country. However, very few stateless persons will benefit from these new laws that are aimed at the rich and powerful. Other countries in the Gulf have moved to reduce the number of stateless Bidoon – officially described as the 'undocumented' – but many would not be able to meet the restrictive criteria required. Both Egypt and Morocco are trying to catch up with Tunisia in granting a mother's nationality to her stateless children. But it is a slow process and one that stops short of ending the plight of the present generations of stateless communities.

Bureaucratic inertia and the fact that the power to decide matters of citizenship lies with the executive rather than the courts still hamper the implementation of many changes in law. This is especially so in Egypt where stateless children of Egyptian

mothers are estimated to number more than 250,000. The United Arab Emirates took some steps recently to resolve the long-standing issue of its 'undocumented' residents but it is not clear how many will benefit due to the lack of transparency and any possibility of judicial review of the authorities' decision. There no indication yet that Kuwait is willing to change its ways and follow suit despite its promises to do so in the past.

It is also widely recognised that without a fully fledged Palestinian state and without peace and stability in the areas of conflict in this region, displacement and statelessness will keep spreading, bringing more misery and destabilisation to this region and undermining world peace.

Abbas Shibliak (ashib44@tiscali.co.uk) is a Research Associate at the Refugee Studies Centre (<http://www.rsc.ox.ac.uk>).

1. UNRWA assists refugees living in the Gaza Strip, the West Bank, Jordan, Lebanon and the Syrian Arab Republic.

Madagascar

In Madagascar, some members of the Karana community of Indo-Pakistani origin and other minorities are stateless because the nationality law which was adopted at the time of independence in 1960 defined citizens as those who were born of a Malagasy father, thereby excluding persons of other origins from citizenship. Children born of a foreign father but of a Malagasy mother only become citizens if they apply for nationality before reaching the age of majority.

In 2005, a small number of people who were descendants of 19th-century immigrants to Madagascar requested French nationality from the former colonial power after giving up on obtaining the Malagasy nationality. Madagascar was a French colony until 1960, and French regulations state that a person originating from a former French colony under certain circumstances can acquire the French nationality. Some were successful in their plea; however, many people missed the window of opportunity that was granted in which to make their naturalisation request. At present these people still have no nationality.

Western Sahara

When Spain abruptly withdrew from its colony of Western Sahara in 1976, many of the Sahrawi became stateless as the new state was not yet properly constituted. Both those who remained in Western Sahara and those who later became refugees in Algeria – currently some 90,000 – are in this sense the victims of a failed process of decolonisation, with no claim on the rights of citizenship in any country, even their own, since this is still on the UN's List of Non-Self-Governing Territories (<http://www.un.org/Depts/dpi/decolonization/trust3.htm>). Despite some cases where stateless Sahrawis have been granted Spanish residency, the Sahrawis' status vis-à-vis Spain is by no means clear in international law. And some Sahrawis may have a right to Spanish nationality. Many are considered by Morocco as its nationals, although Morocco's role in Western Sahara is contested.



Sahrawi refugee camp, Algeria.

UK

While most asylum seekers in the UK are registered and hence entitled to certain benefits, for rejected asylum seekers the situation is different; some are in many ways de facto stateless: because they have no documents, they are unable effectively to use their nationality and with no protection from their state of origin – but cannot leave the UK. Those who have had their asylum claim rejected do not have the right to any welfare-state provision and are unable to access rights and services that are essential for personal and social development in a post-industrial country like the UK. While some indirectly have access to housing and health care – for example in the cases of those who have their children or under-age siblings living with them – others are reliant on charity and goodwill from friends, doctors and teachers. They are living in a legal limbo that can seriously affect their mental health and damage their personal identity. "I feel isolated sometimes. I think to myself 'even animals are better than us'." (Interview with woman in her early twenties, 2007)

Information provided by Miguel Otero-Iglesias, based on a project funded by the Rothschild Foundation Europe and Ford Foundation's Grant Programme on the Study and Prevention of Antisemitism, Racism and Xenophobia in Europe.

Ukraine

After the break-up of the USSR, some of the survivors and descendants of 250,000 Crimean Tatars who were rounded up by Stalin in 1944 and deported to Central Asia found themselves in a range of situations where they were stateless (or at risk) if they headed home to the Crimean Peninsula in Ukraine. Statelessness occurred, for example, for those Tatars who left Central Asia without acquiring nationality of one of the newly independent states but also missed the 1991 deadline for acquisition of Ukraine nationality on the basis of residence and then had difficulties to naturalise.

With the technical advice of UNHCR, the government of the newly independent Ukraine brought in a succession of new laws that have helped reintegrate them and that have gradually untangled the bureaucratic complexity which was not just confined to Ukraine itself but also often involved the legislation of states where the Crimean Tatars had been residing before returning to Ukraine. A 1999 agreement between Ukraine and Uzbekistan (where the majority of Crimean Tatars had been deported) facilitated change of nationality and, as a result, helped avoid statelessness, so that the returnees could begin the process of reinstating themselves legally in Ukraine. By 2004, almost all of those Crimean Tatars who had returned held Ukrainian citizenship but the returns continue.



A Crimean Tatar showing his Ukrainian passport at the NGO Assistance's office in Crimea. 2005.



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Nowhere People

Whether a result of conflict, shifting borders or the manipulation of the laws and tools used to administer modern day society, stateless people are unwanted and unwelcome and find themselves excluded from society by forces beyond their control. Not only are they some of the most vulnerable and marginalised people in the world but they are also some of the most invisible as well.

Exposing the faces and the real-life stories and struggles of the stateless provides invaluable documentary evidence of the human consequences of their complex and often misunderstood situations. More importantly, it adds a visual and human dimension to the legal, human rights and humanitarian communities in their efforts to combat statelessness and give a voice to people who in most cases have none.

Photographs by Greg Constantine. Part of the ongoing project: Nowhere People.

Greg Constantine (greg@gregconstantine.com) is an award-winning photojournalist based in Southeast Asia. Since early 2006, he has been working on an ongoing, long-term project called Nowhere People, which documents the struggles of stateless people around the world. www.gregconstantine.com

1. Nubian elders in Kenya: "Politics and access to resources, including employment, are all based on ethnic computations and even the allocation of resources for development for communities: schools and education, for example. All of that is based on being clearly identified as part of the Kenyan community. To feel always discriminated against or to be reminded that you came from Sudan is not a very good thing for young people growing up who want to feel that they actually belong to this country."
2. Bohje, a Dalit man in southern Nepal, carries firewood in Dhodhana to sell in the markets of Lahan. "Without citizenship, I cannot have a passport. Without a passport, I cannot travel outside of Nepal and work in Qatar, UAE or Malaysia, like many other people from Nepal. I cannot send money home to help my family."
3. Young Filipino boys push around wooden carts in Safma fish market in Kota Kinabalu. Up to 30,000 children in Sabah, Malaysia, are stateless. Many have no form of identification, which makes them ineligible for admission to Malaysian schools. Without access to an education, many children are thrown into the workforce at a young age.
4. A Dalit man and his grandson rest in the morning. The man's family has lived in the Terai region of Nepal for over five generations yet he is still without Nepalese citizenship.
5. Bihari youth gather at a rally in Talab Camp in Dhaka, Bangladesh. Bihari across the country consider Bangladesh their home and feel it is essential they are recognised and provided with the rights granted to all Bangladeshi citizens.
6. Dalit women in a village in southern Nepal. None of the women in the village have Nepali citizenship. "Without citizenship we can't take any cases to court that deal with women's rights and violence against women. Here in Nepal, women are lower than second-class people. If we have citizenship, then we can fight to get our rights. If we have citizenship, then we are proud to be Nepali, but we don't have citizenship and I feel we are not Nepali."
7. The village where this Dalit woman and child live was too remote for Nepal's mobile citizenship unit to visit in 2007. Many people in the village who later went into town to register were turned away by local officials. None of the women in the village have Nepalese citizenship and none of the children have birth certificates.
8. A slum in Telipok, 40 kilometres outside of Kota Kinabalu in Sabah, Malaysia, is filled with stateless children. It is a struggle to get documents. Those children who possess documents are able to attend private schools and some public primary-level schools. Those who do not have documents are shut out of most public programmes.
9. After having their land seized and unable to travel outside of their town to find work, these men felt they had no choice but to leave Burma for Bangladesh. "Since we don't have nationality, we don't have any right to call any land our home. We can't live in peace because we don't have nationality. In Burma, they say we are from Bangladesh. When we come to Bangladesh, they say we are from Burma. People view us as if we don't exist." Zafar, 30
10. A 60-year-old man in Pat Godam Camp in the town of Mymensingh, Bangladesh, holds a photo of himself at the age of 19. "My family had 41 acres of land. We moved into the camp when the Bangladesh government seized it from us. In 1971, everything was taken from us."

The legal limbo of detention

Katherine Perks and Jarlath Clifford

Of the broad range of human rights violations suffered by stateless people, that of the right to be free from arbitrary detention has received little attention. The extent and scale of the problem are not fully known.

Physical restriction, including prolonged or indefinite detention, of those who have no effective nationality is increasingly common around the world.¹ Preliminary analysis of available research suggests that practically all types of stateless persons may be at risk of arbitrary detention. Without the full set of rights available to citizens, stateless persons face a greater likelihood of discrimination in the administration of justice, harassment and arbitrary detention. One common problem faced by stateless persons – as also by IDPs – is a lack of documentation which can leave them more vulnerable to rights violations.

Very little information is available on the plight of stateless persons in detention in their country of habitual residence; research suggests that this is not only because by their nature stateless populations are often ‘hidden’ but also because relatively little international attention has been paid to stateless populations. It seems that human rights research rarely identifies statelessness as a factor when reporting on individual detainees in their country of origin or habitual residence.

A growing body of information suggests that stateless people who are migrants, refugees or asylum seekers are extremely vulnerable to arbitrary detention and other forms of restriction, including immigration detention and restriction in closed refugee and displaced persons camps. The UN Working Group on Arbitrary Detention has found that “a straight analysis of the statistics indicates that in some countries the numbers of non-citizens in administrative detention exceeds the number of sentenced prisoners or detainees, who have or are suspected of having committed a crime.”² An unknown number of stateless persons are caught up in such practices and held with

other non-citizens in administrative detention, whilst their status is being determined, or ‘pending removal’ under immigration regulations.

Arbitrary detention

While the administrative detention of asylum seekers and irregular migrants is not expressly prohibited under international law, it can amount to arbitrary detention if it is not absolutely necessary given the circumstances. UNHCR and others have developed guidelines on alternatives to detention.³ Even where detention is not initially prohibited, it may become arbitrary over the course of time owing to the length of detention.

Furthermore, discussions concerning the legality of detention of stateless persons, whether *de jure* or *de facto*, must be guided by the fundamental principle of equality. This does not necessarily require identical treatment but rather different treatment according to the needs and particular circumstances of the individual. In order to fulfil this principle, a first step must be an appropriate status determination procedure capable of identifying stateless persons as a category of persons with unique protection needs. Although the issue of prolonged or indefinite detention of *de jure* and *de facto* stateless persons has reached the courts in a number of countries, the issue of discrimination is rarely addressed.

The situation of a stateless person differs fundamentally from that of other non-citizens. For example, legally stateless persons can be subject to lengthy detention while their status is being determined, owing to the delays inherent in attempting to prove that they are not a national of any state. Of particular concern are the protection gaps faced by non-refugee stateless persons in detention – an issue which has to date

received relatively little attention, as compared to the detention of refugees and asylum seekers.

When a stateless person is a refugee, he or she cannot be penalised for illegal entry or presence.⁴ Stateless persons who are not refugees do not enjoy such protection under the 1954 Convention Relating to the Status of Stateless Persons and are therefore potentially at greater risk of detention for breach of immigration regulations.

Most legally stateless persons in need of international protection are not refugees and have no claim to asylum. In many countries, non-refugee stateless persons who cannot acquire a legal status are subject to removal from the country, and may be detained pending removal. A legally stateless person who is refused asylum or otherwise deemed not qualified to remain lawfully, and who is detained or restricted ‘pending deportation’, often cannot be removed because a) they have no state of nationality to which they can be ‘removed’ and b) their country of habitual residence will not take them back. Thus, because removal is often impossible, what should be short-term detention in preparation for removal may become long-term or even indefinite, as officials try to convince another country to accept a stateless person. In countries where there is no limit to detention, stateless persons can face a real risk of indefinite detention.

One vivid illustration of this risk is the case of Ahmed Ali Al-Kateb, a stateless Palestinian man who was taken into administrative detention as an unlawful non-citizen in Australia in December 2000. With his claim to asylum rejected, no grounds to remain in Australia and no other country willing to receive him, he remained in detention until April 2003 when he was conditionally released by the Federal Court. In 2004 the High Court of Australia held that it would not in fact have been unlawful to detain him indefinitely. Following considerable pressure from advocacy groups, in May 2005 the

Australian government introduced a 'Removal Pending Bridging Visa' which applies to all detainees whom it is not reasonably practicable to remove for the time being and who have cooperated fully with efforts to remove them from Australia.

De facto statelessness

Individuals who are *de facto* stateless have no effective nationality and are without the protection of either the country where they are present or their country of legal nationality. *De facto* stateless persons can also find themselves in detention and in the same kind of legal limbo. This situation may arise as a result of a number of practical, humanitarian or legal circumstances, such as where deportation would violate the principle of *non-refoulement*; where the country of origin refuses to issue identity documents or to cooperate in re-admitting their national, preventing the completion of deportation proceedings; where, as in the case of Somalia, there is no functioning state of origin; or where there is no safe means of transportation to the country of origin.

One refused asylum seeker from Algeria was held in immigration detention in the UK for 16 months. At the end of his first five months in detention, the Algerian authorities notified the UK government that attempts to establish his identity had failed. Despite this, and although this person cooperated with efforts to facilitate his return to Algeria, he remained in detention for a further 11 months and was released only when the High Court ruled that his detention was unlawful because of its length and the "complete uncertainty about when it might be brought to an end by deporting him."

While there is a clear legal distinction between *de jure* and *de facto* statelessness, in practice both groups may be detained or restricted. UNHCR and others have expressed the view that stateless persons should not be detained only because they are stateless. If there is no alternative to detention, its maximum length should be specified, based on strict and narrowly defined criteria. This principle should now be translated into clear international and national legal standards and put into practice.

Katherine Perks (katherine.perks@equalrightstrust.org) is Legal Researcher and Jarlath Clifford (jarlath.clifford@equalrightstrust.org) is Legal Officer at The Equal Rights Trust (http://www.equalrightstrust.org/).

1. UNHCR 'Brief on Statelessness and Detention Issues', 27 November 1997 <http://www.unhcr.org/refworld/docid/4410638fc.html>
2. Report of the Working Group on Arbitrary Detention, Annual Report 2007, <http://www2.ohchr.org/english/issues/detention/index.htm>
3. UNHCR 'Alternatives to Detention of Asylum Seekers and Refugees', April 2006. <http://www.unhcr.org/refworld/docid/4472e8b84.html>
4. 1951 Refugee Convention.

The Equal Rights Trust is documenting the detention and physical restriction of stateless persons around the world, and is developing a legal advocacy strategy based on the universality of human rights principles. The project will identify cases where stateless persons are detained or otherwise restricted, due at least in part to their being stateless. The authors would welcome information concerning individual cases of stateless persons in detention.

Displaced Kosovo Roma and property rights

Jose-Maria Arraiza and Linda Öhman

The lack of secure property rights heightens the risk of statelessness for displaced Kosovo Roma in Montenegro.

Kosovo's declaration of independence on 17 February 2008 raised the question of statelessness for displaced persons originating from Kosovo. A large number of Roma, Ashkali and Egyptians displaced from Kosovo are presumed not to be registered as residents in Montenegro.¹ Lack of personal documents, property records and registered land titles exacerbates the problem and increases the probability that they will remain stateless. According to Amnesty International, 4,300 are living in Montenegro in a "legal limbo".² In August 2008, UNHCR published a statement suggesting that some 46% of displaced Kosovo

Roma living around the Montenegrin capital, Podgorica, can neither prove legal residence in Kosovo nor meet the necessary requirements to obtain Montenegrin citizenship and thus may be stateless.

Prior to Kosovo's armed conflict, many Roma families lived in *mahalas* (neighbourhoods) in housing that had been handed down to them for generations. The legal entitlements to these dwellings were never clear, for a number of reasons including unregistered inheritance, illegal construction (which Yugoslav municipal authorities ignored) or, quite simply, lack of a formal address.

Right to be protected

An individual displaced from an informal settlement across the border from a newly created state has certain rights under international law to protect their citizenship. As well as the right to a nationality and the prohibition against the deprivation of nationality of individuals, particularly as a result of discriminatory practices, the Council of Europe Convention on Nationality³ of 1997 also considers the problematic issue of state succession. In cases where a new state is created, the decision on the granting or retention of nationality should, according to the Convention, take into account a) a 'genuine and effective' link with the state, b) their habitual residence, c) their wishes and d) their place of origin.

Landlessness and/or inability to present cadastral records, certified contracts, registered inheritance certificates and other property-related documents, plus the fundamental problem of missing personal civil registry documents, increase the likelihood that displaced people will be stateless.

The Constitution of Kosovo and its Law on Citizenship sets out the requirements to become a citizen; all persons who were citizens of the Federal Republic of Yugoslavia on 1 January 1998 and were at that time habitually resident in Kosovo can be registered as citizens.

However, Roma displaced across borders will in some cases have a hard time proving this. Moreover, those who left Kosovo before then will have to seek naturalisation, which requires five years' residence in Kosovo. An exception to the five-year rule is possible if the individual is able to demonstrate that he or she is a part or direct descendant of the 'Kosovo Diaspora', broadly defined as the group that has maintained 'close family and economic links in Kosovo'. Without land titles and civil registration documents this will be more difficult.

Montenegro's Citizenship Law also requires five years of residence for people from one of the constituent Republics of the former Yugoslavia

before they can apply for citizenship. As in Kosovo, many displaced Kosovo Roma have neither personal civil registration documents nor proof of habitual residence.

Both problems could be addressed through appropriate action by the public authorities of both Kosovo and Montenegro to a) regularise the housing and property situation of the displaced Roma and b) ensure and promote their access to civil registration.

Housing and property rights

It would be easier to prove habitual residence if adequate property rights protection were actually in place. Decades of informal settlement formation and the impact of armed conflict have created a nightmarish property situation, which drives human rights organisations, legal aid offices and well-intentioned international agencies to despair. In Kosovo, the now defunct Housing and Property Directorate and

subsequently the Kosovo Property Agency (the mechanisms entrusted with resolving claims over property resulting from the conflict) were designed to evict illegal occupants from residences and to confirm the title of occupied land. They were not designed, however, to provide better solutions, such as compensation or housing reconstruction, for those



UNHCR/Dz. Demic



UNHCR/C. Caizirro

Displaced Roma from Kosovo in Konic 1 camp, in the suburbs of Podgorica, Montenegro.

cases in which unregistered informal settlements were destroyed and their inhabitants displaced.

So while all displaced persons have, in accordance with international principles,⁴ the right to return home and to recover their possessions or to be compensated for them, the displaced Roma have not been able to exercise these rights without proper documentation or registered property title. The displaced are at the mercy of the political expediency of local governments. In the majority

of cases, this means no return at all, even less compensation and another turn of the screw of segregation.

An example of victimisation

The *mahala* of Rudesh/Rudeš, an impoverished 'informal settlement' in the outskirts of Istog/Istok, was destroyed in 1999 and all the inhabitants displaced to neighbouring



'Riverside' settlement in Berane, Montenegro, one of many formal and informal settlements set up around Montenegro to house ethnic Serbs and members of the Roma, Ashkalia and Egyptian minorities who fled their homes in neighbouring Kosovo in 1999 and 2000.

recognisable attitude towards Roma communities which considers them to be second-class citizens. The right of displaced Serbs or Albanians to return to their place of origin is not often questioned. The case shows the weakness of international principles when confronted with the stark realities of ethno-politics and a clear tendency to segregate the Roma.

In the meantime, the victims of arbitrary displacement remain in their camps with neither secure property rights nor clear future opportunities in either Kosovo or Montenegro.

Recommendations

Efforts to resolve the Kosovo Roma's lack of secure property rights have to date shown limited results, compounding an already pressing cause for concern: a stateless population, unable to return and unable to access basic economic, social and cultural rights. Lack of property documentation not only blocks their right to return and prevents them from enjoying their own possessions but can also make it more difficult to prove habitual residence and thus further stops them from exercising their right of citizenship in one of the Balkan's newly created states.

Putting an end to potential statelessness requires swift intervention on the part of the governmental authorities but international organisations and civil society leaders must also play a role.

- Strategies and action plans must heed the particular situation of the displaced Roma who cannot prove land entitlement and implement non-discriminatory land allocation or regularisation, spatial planning and housing schemes preferably in their place of origin.
- Civil registration programmes need to be accompanied by

awareness-raising programmes to ensure that displaced Roma know how to register their property.

- Legal counselling centres must be accessible to the displaced Roma communities. Procedures must be simplified and assistance provided in navigating bureaucratic and lengthy administrative processes.
- The international community must continue to work with the national judiciary to ensure greater transparency and accountability, especially in cases involving vulnerable Roma.
- Roma leaders must be engaged in reaching out to the displaced. If made aware of the implications of statelessness they are likely to be more proactive in seeking to resolve their situation.
- National laws and practices should be revised to avoid direct or indirect discrimination against displaced Roma communities in matters relating to obtaining citizenship.
- National and international institutions should protect the rights to return home and to housing and property restitution of Roma individuals, free of adverse discrimination.

Jose-Maria Arraiza (carraiza@yahoo.es) was an adviser on housing and property rights for the OSCE (www.osce.org). Linda Öhman (lindaohman@gmail.com) worked in Kosovo on human rights and is now with the OSCE/ODIHR.

The views in this article are personal and do not represent an official position of the OSCE.

1. This article refers to Roma, Ashkali and Egyptian communities under the single title of Roma.

2. <http://www.amnesty.org/en/library/asset/EUR66/001/2008/en/29999c36-6e1e-11dd-8e5e-43ea85d15a69/eur660012008eng.html>.

3. <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>.

4. For example the Pinheiro Principles, see <http://www.fmreview.org/FMRpdfs/FMR25/FMR2530.pdf>

5. Informal settlements are, as put by the 2004 Stability Pact Vienna Declaration on Informal Settlements, "human settlements, which for a variety of reasons do not meet requirements for legal recognition (and have been constructed without respecting formal procedures of legal ownership, transfer of ownership, as well as construction and urban planning regulations) ...".

6. Only six families out of the 70 displaced in Montenegro have agreed to their relocation to an isolated farming area in Srbobran/Srbobranë (Istog/Istok).

Montenegro.⁵ Attempts by the municipal authorities to regularise the land situation in the village in order to allow return and reconstruction to take place were blocked, ironically by actions of the UN administration which was concerned about the reaction of a nearby Serb Orthodox monastery to the return of its former Roma neighbours. Part of the former village was used in the interim as a muslim cemetery by the Municipality which then offered the displaced Roma the opportunity to settle in an isolated area nearby, where no neighbours would complain about having Roma families living in close proximity.⁶ This reflects a sadly

Stateless Roma in Macedonia

Joanne van Selm

Many Roma have faced discrimination and prejudice from both private groups and national governments.

The Roma are a minority population living primarily in Central and Eastern Europe, the Balkans and Western Anatolia who are often not well integrated into local society. For Roma, registering as citizens and obtaining documentation have been especially difficult.

Macedonia,¹ like other states which became independent following the break-ups of Yugoslavia, the Soviet Union and Czechoslovakia, had to decide who would be granted citizenship and has adapted legislation over time. The number of stateless Roma in Macedonia is difficult to ascertain. It includes some of the long-standing Roma population – 53,879 Roma were counted in the 2002 census but estimates of the true number range between 180,000 and 200,000 – and some 5,000 Roma

who fled Kosovo and Serbia in 1999 and have been unable to return.

There are four particular issues regarding access for stateless Roma to Macedonian citizenship: their eligibility under law; wider political concerns of the government; access to documents; and donor projects to reduce statelessness. Access to personal documentation and non-discrimination are centre-pieces of the 2005–2015 Decade of Roma Inclusion², and promoted by organisations active in the region such as the OSCE.

Eligibility and political concerns

The initial rules on eligibility set in 1991 gave all people registered in Macedonia one year to apply for citizenship. They had to meet certain criteria including their ability to be financially self-supporting and at least 15 years of uninterrupted legal residence in Macedonia. Regardless of ethnicity or which former Yugoslav republic they originated from, people could choose to become Macedonian in 1991 based on their long-term residence in the Republic.

People living in Macedonia who did not apply for citizenship within a year were viewed as foreigners and then had to go through the lengthy procedure set out in the 1992 law on naturalisation. In practice this was especially obstructive to members of ethnic minorities. Roma in particular fell

foul of the requirements to prove self-sufficiency and to produce documentation to demonstrate registration and residence even if they had been in Macedonia for the period stipulated (which many had not).

A 2002 temporary law lessened the strict criteria of the 1992 Law, giving greater access to citizenship for many members of ethnic minorities, particularly those who were stateless but were long-term residents of Macedonia. A 2004 amendment to the law reduced the period of residence required to eight years, and set it at six years for refugees and people recognised as being stateless.

Negotiations with the European Commission on visa facilitation and re-admission ('for persons residing without authorisation')³ have forced Macedonia to address the problem of stateless long-term residents. In confronting the issue, however, Macedonia is also forced to face the complexities of its geopolitical position, with its neighbours including Kosovo and Serbia, and all the undocumented population 'events' – including migrations, births, marriages and deaths – since 1991. There are fears that some measures taken with the aim of resolving statelessness could encourage population movements and make Macedonia attractive to people who might use fraudulent means to suggest longer-term residence than is actually true. This could potentially shift the fragile ethnic balance in the country, as well as lead to rises in tensions and organised crime.

Documentation

The absence of documentation demonstrating long-term residence is a major problem for the Roma. Even in those cases where births and marriages have been registered, individuals may never have obtained, or may have lost, the documents proving that registration. The reasons for non-registration and the absence of personal documents include lack of understanding about the importance and benefits of registration and the cost involved.

Felt-making workshop in Skopje for Roma refugees from Kosovo organised by UNHCR and the Macedonian Artisan Trade Association, part of a long-term UNHCR programme to give female refugees in FYR Macedonia the skills to support themselves and reduce their dependence on aid hand-outs.



There is also a reluctance to engage with local and national authorities who are usually prone to discriminate against Roma people.

A residence permit, for example, costs about €20, while birth registration costs €2.75 (€5.25 if done two months or more after the birth). While these amounts may not sound excessive, for unemployed individuals – and over 75% of Roma are estimated to be unemployed – in a country where the average wage is around €270 per month, this can be prohibitive. For all that, local NGOs and donors have noted that once people receive information about the benefits of registration, and especially if they need or want to give birth in a hospital for example, they want to be registered and to acquire the appropriate documents.

NGO programmes

While the problem of statelessness and non-registration persists, a number of donors, including USAID, the American Bar Association, the Swedish Helsinki Committee and UNHCR, are sponsoring, or have sponsored, a variety of programmes and projects run by Macedonian NGOs. These projects flourished during the period 2004-06, when Article 14 of the 2004 amendment to the Citizenship Law gave a two-year window of opportunity to some people to register themselves. 5,571 individuals had applied for naturalisation under this temporary programme, of whom 476 people lack 'effective citizenship' with their decision pending; 4,754 people have been granted citizenship; and 341 citizenship applications have been rejected. The American Bar Association trained staff from more than 100 NGOs to assist with registration and documentation for Roma applying for citizenship between 2004 and 2006.⁴

Donors are keen to ensure that Macedonian NGOs, which are typically very small and totally dependent on foreign funding, are not tempted to help keep the problem alive, for example through lack of clarity on numbers, making slow progress on individual cases

(in order to continue to receive funds for each individual assisted) or 'double-booking' clients (thereby receiving per capita funding from donors to cover the same individuals twice). Some donors are apparently concerned that such things are happening. If this is indeed the case, the donors themselves are surely also not blameless as there has, to date, been little or no donor coordination and little or no accountability. Whatever problems there may be, many individuals have clearly benefited from the projects, gaining documentation and access to rights including citizenship.

While projects between 2004 and 2006 focused on assisting with the submission of citizenship



World Refugee Day events in June 2008. 'Protection' sign made by Roma refugee youth currently accommodated in Suto Orizari municipality, former Yugoslav Republic of Macedonia.

applications, in 2008 they primarily sought to help in the actual provision of documents. For example, a Roma-run NGO, ARKA,⁵ is funded by the Swedish Helsinki Committee to help individuals obtain documents demonstrating their registration from authorities across the Balkans and sometimes from farther afield, for example where individuals were born in EU countries while their parents were (temporary) migrant workers. ARKA has teamed up with NGOs in Kosovo (Civil Rights Programme⁶) and Serbia (Praxis⁷). In 2006 ARKA assisted 803 individuals in obtaining documents. 25% of the documents were Certificates for Citizenship and just over 29% of them were Birth

Certificates. In several cases ARKA found that individual documentation problems were resolved by personal intervention with the authorities rather than through regular channels, not least due to variations between municipalities in the requirements and procedures for obtaining personal documents.

ARKA is an example of a Macedonian NGO conducting similar projects for several donors, not only the Swedish Helsinki Committee but also USAID's Institute for Sustainable Communities and until early 2008 ARKA was also part of a Legal Network funded by UNHCR to assist asylum seekers, refugees and mostly Roma people seeking naturalisation.

Donors in many sectors suggest that civil society in Macedonia is proficient in carrying out practical projects, such as these searches for documentation, but deficient in effective lobbying skills to encourage changes in government policies and laws, particularly at the national level. There needs to be greater domestic lobbying, as well as international pressure, in order to achieve success.

Joanne van Selm (jvanselm@gmail.com) is an independent researcher. This article was prepared under a contract with the Institute for Migration and Ethnic Studies at the University of Amsterdam. Particular thanks are due to Tilde Berggren of the Swedish Helsinki Committee (<http://shc.mediaonline.org/en/1>).

1. Macedonia's constitutional name is the Republic of Macedonia. A dispute with Greece concerning the use of this name means that although this name has been accepted by more than 120 countries, it is not officially used internationally. The former Yugoslav Republic of Macedonia' (or the FYROM) is used in international fora such as the UN. For the sake of simplicity, the country is referred to as 'Macedonia' here.

2. The Decade represents a political commitment by governments in Central and South-eastern Europe to improve the socio-economic status and social inclusion of Roma within a regional framework. It focuses on education, employment, health and housing, and commits governments to take into account the other core issues of poverty, discrimination and gender mainstreaming. <http://www.romadecade.org/>

3. See http://www.delmkd.ec.europa.eu/en/bilateral-relations/readmission%20agreement%201_33420071219en00070024.pdf

4. http://www.abanet.org/rol/programs/resource_human_rights.html#roma

5. <http://www.arka.org.mk>

6. <http://www.crpkosovo.org>

7. <http://www.praxis.org.yu>

Remember the forgotten, protect the unprotected

Gábor Gyulai

In addition to the efforts to prevent and reduce statelessness, states should also establish an identification and protection mechanism for stateless persons.

Stateless persons are victims of a serious human rights violation: they are deprived of the protective link between a state and its citizens. Yet statelessness is a forgotten issue in Europe, as in the rest of the world.

The obligation of states to protect stateless persons is unambiguously anchored in international law. However, in practice these instruments are often ineffective, or even unknown by officials whose job it should be to implement them. Training is therefore a key preliminary condition for improving protection standards.

In the EU context (where six member states¹ are not even party to the 1954 Convention), it might be possible to achieve a more effective implementation of relevant international instruments by bringing stateless protection under the scope of the common European asylum policy. Although currently there is little political will to move in this direction, at least one

member state (Hungary) is promoting this rather pioneering proposal² in its response to the European Commission's Green Paper on the Future Common European Asylum System.³ Should this initiative be successful, a Statelessness Directive could be drafted that would reunite the principles and create a legally binding obligation on member states to establish a protection regime for (non-refugee) stateless persons, based on already existing good practices.

2. Visibility

Stateless persons are often invisible and, unlike in the case of asylum

seekers, there are no reliable statistics about their number. The vast majority of EU member states do not have in place any specialised procedure to identify and protect stateless persons. Rather, potential statelessness is treated as a side-issue, within the framework of asylum and immigration procedures, which are usually inadequate for this purpose. Two EU member states (Spain and Hungary) have specific legislative provisions that explicitly regulate statelessness determination procedures and provide for a separate stateless status.

Experience shows that representing statelessness separately in statistics and legislation and defining a separate protection status help significantly to raise awareness about the magnitude of this phenomenon and to improve protection mechanisms by tailoring them to specific needs.

3. Identification

In most EU member states, statelessness is only dealt with as a secondary issue in asylum procedures, without any specific procedural guidance, and in some countries it is not considered at all. Spanish and Hungarian practices show that the creation of a separate, designated statelessness determination procedure, regulated by detailed legislative provisions, not only spectacularly raises protection standards but also facilitates the task of assessing who is stateless and who is not.

De facto stateless people often find themselves in a situation where their removal from the country is unenforceable, yet they do not qualify for any protection status. It is also in the interest of states to include *de facto* statelessness in their relevant identification mechanism, in order to avoid a state of legal limbo and the social risks this may entail. The identification of stateless persons can be easier than the process of refugee



Some 4,000 people in Slovenia do not have official status. Alija Berisha, seen holding his child, has been fighting in the courts to win legal residence.

Protection regimes are scarce and fail to provide appropriate and durable solutions. This article outlines a five-step model for European states to construct a rights-based protection mechanism for stateless persons.

1. Awareness raising

The legal obligation of states to protect stateless persons derives from direct sources (international instruments dealing explicitly with statelessness), indirect sources (international instruments that articulate the right to a nationality) and soft law (non-binding recommendations on statelessness).

status determination. Nevertheless, it requires special knowledge, and it is therefore important to establish a specialised and specifically trained unit within asylum authorities to conduct statelessness determinations.

It is evident that, in such a procedure, authorities cannot realistically verify whether a certain applicant is unable to claim nationality from any country in the world. Consequently, statelessness legislation should determine the range of countries in relation to which the applicant's citizenship should be tested (such as country of birth, of former residence and where family members live). A lower standard of proof should be applied when determining statelessness, for example by using the term 'substantiating' one's statelessness instead of 'proving' it (similarly to refugee status determination). In addition, the burden of proof should be shared between the applicant and state authorities. The applicant's main procedural obligation should be to cooperate with the authority, not to provide all necessary evidence.

4. Protection status

One of the key objectives of the future Common European Asylum System is the achievement of a uniform legal and social status for refugees and beneficiaries of subsidiary protection. A few EU countries make specific provision in law for the category of stateless person but even in these countries the rights attached to the status are lesser than those granted to refugees (notwithstanding that the two relevant Conventions contain a practically identical list of minimum obligations and recommendations for higher standards). However, in some member states, stateless persons may have access to complementary forms of protection, such as 'tolerated stay' or a humanitarian residence permit. Non-removability will be the ground for protection and not statelessness per se – which falls far short of the benchmarks set by the 1954 Convention.

When formulating a protection status for stateless persons, the following should be kept in mind:

- Refugees and stateless persons have similar protection needs, as both categories lack valid

and effective state protection. Applying this logic and reflecting the great similarities between the two relevant Conventions, there is no reason for the legal and social status of stateless persons to differ from that of refugees.

- Statelessness is a long-lasting phenomenon: once a nationality is lost it is unlikely to be recovered within a reasonable timescale. While refugees often have a reasonable hope of eventually returning to their country of origin, stateless forced migrants rarely have a chance to obtain the citizenship of their former country of residence. The legal and social characteristics of the stateless status should consequently ensure long-term viability in the host country. Integration should be encouraged through, for example, facilitated access to the labour market, social benefits, public education and integration programmes. Offering a second-class protection status (based solely on humanitarian or non-removability grounds) may easily lead to social exclusion as well as to undesirable secondary movements between different host countries.

5. A durable solution

In the case of stateless persons only one durable solution exists: acquiring a new nationality. Criteria for naturalisation vary across European countries. While EU member states have generally adopted specific legal provisions to avoid statelessness at birth or to prevent it later in life, they appear to be reluctant to set significantly preferential naturalisation rules for stateless persons, even though the 1997 Council of Europe Convention on Nationality clearly requires states to facilitate the access to citizenship for stateless persons who are lawfully and habitually residing on their territory.⁴

The reduction of statelessness has repeatedly been recognised as in the common interest of the international community. In light of both this and the persistent nature of statelessness, states should adopt a more open approach when determining specific rules concerning the acquisition of their citizenship by stateless persons,

such as a notably shorter time of required residence before application.

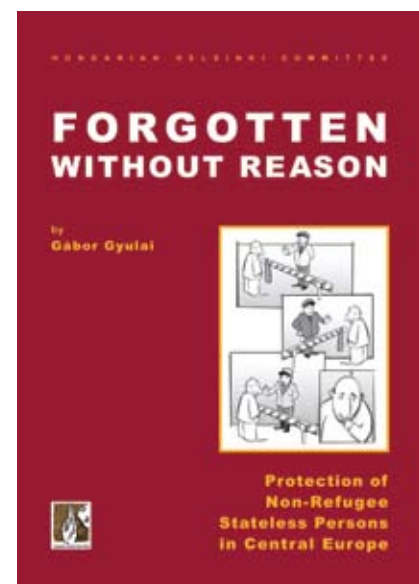
The way forward?

In order to establish an effective European protection regime for stateless persons, significant efforts will have to be made to raise awareness and improve knowledge about legal obligations and current examples of good practice. After five decades of neglect of this issue, it is time for all EU member states to support the Hungarian government's proposal to integrate statelessness protection in the European Union, recognising that significant improvements and harmonisation on the issue of statelessness are indispensable complementary elements of creating a rights-based Common European Asylum System.

Gábor Gyulai (gabor.gyulai@helsinki.hu) works as programme coordinator and trainer at the Hungarian Helsinki Committee (<http://www.helsinki.hu>).

1. Bulgaria, Cyprus, Estonia, Malta, Poland and Portugal.
2. http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/contributions/member_states/hungary_en.pdf, p11.
3. http://ec.europa.eu/justice_home/news/intro/doc/com_2007_301_en.pdf (last accessed 20 September 2008).
4. 1997 Council of Europe Convention on Nationality, Article 4 (4) (g)

See also: G. Gyulai, 'Forgotten without Reason: Protection of Non-Refugee Stateless Persons in Central Europe', Hungarian Helsinki Committee, 2007 <http://www.unhcr.org/refworld/publisher,HHC,,,497475802,0.html>



Statelessness and the right to citizenship

Matthew J Gibney

The key claim that animates most discussions of statelessness is the principle that everyone should have the right to citizenship somewhere.

In a world where all human beings must live on the territory of one nation state or another, this is a fundamental principle of justice. Having a nationality is a gateway to other rights; it is not without justification that Hannah Arendt viewed the stateless as lacking the very “right to have rights”. Without citizenship or nationality somewhere a person lacks many fundamental rights, including perhaps most fundamentally the right to a place in the world where one’s opinions are significant and one’s actions effective.¹

For any individual to possess a genuine right to citizenship there must be a state with a corresponding duty to provide it. The stateless typically are not free-floating, deracinated individuals, moving aimlessly around the globe. They are usually people settled in particular societies, albeit lacking legal recognition of and appropriate protection for their status as residents. The primary injustice the stateless experience, then, is not that they cannot find a state to grant them citizenship but that the state which should grant them citizenship will, for various reasons, not do so.

On what basis should an individual have the right to claim citizenship in a specific state? Or, turning the issue around, to whom are states obliged to provide citizenship? I will approach this issue as a matter of morality rather than as an issue of international or municipal law. The value of a moral account is that it aspires to shed light on how the law might be reformed to better reflect our (sometimes implicit) conceptions of what is just.

If the question of who should be entitled to citizenship has obvious implications for both *de facto* and *de jure* stateless people, it is also germane

to what might be called ‘precarious residents’, the many millions of non-citizens, such as undocumented migrants, who live in states in which they have no right to stay. While not lacking in nationality altogether, the day-to-day lives of these men, women and children are often characterised by an inability to draw upon state protection to guarantee even their basic rights. The possibility of deportation and lack of formal status deprive them of effective political and social standing in the societies in which they work and live.

Moral problems with current practice

Some 98% of the world’s population acquired the citizenship they currently hold either by taking on the citizenship of one or both of their parents or by acquiring the citizenship of the state in which they were born. While almost all states also have procedures – that vary widely between states – for the acquisition of citizenship through naturalisation, considered globally it is where and to whom one is born that are overwhelmingly the determinants of the citizenship one will hold for the duration of one’s life.

The way states currently distribute citizenship is morally problematic from a number of different angles. First and obviously, variations amongst states in their use and interpretation of principles for acquiring citizenship, as well as provisions on the loss of citizenship, can lead to statelessness. Problems in demonstrating parentage or place of birth and conflicts of laws between states can put people in the situation

that no state recognises them as a citizen. Strict *jus sanguinis* laws, moreover, may pass on statelessness to the children of stateless people.

Second, assigning citizenship by birth also leads to huge inequalities in people’s life-chances on the basis of luck. If one is born a citizen of Sweden, one has won first prize in the lottery of life: a life expectancy of 78 with cradle-to-grave care in a stable and prosperous state. If, by contrast, one is born in Liberia, one is unlikely to live beyond 48 years of age, due to the hazards of a society that has been wracked by intense civil conflict. Given the restrictive immigration controls operated by wealthy countries and limited avenues for citizenship through naturalisation, it is hard to disagree with Joseph Carens that “citizenship in the modern world is a lot like feudal status in the medieval world. It is assigned at birth; for the most part it is not subject to change by the individual’s will and efforts; and it has a major impact upon a person’s life-chances.”²

Third, the principles of *jus soli* and *jus sanguinis* ignore other important moral claims to citizenship. Consider the case of Robert Jovicic, whom

the Australian government deported to Serbia in 2004. Jovicic was a non-citizen permanent resident of Australia who had over many years been repeatedly convicted of crimes related to

drug use. In many respects, he was an exemplar for the government’s policy of deporting foreign citizens convicted of criminal offences. But his deportation caused a huge public outcry, ultimately forcing the government to facilitate his return. What was the source of the outcry? Jovicic had lived in Australia for some 36 years prior to his deportation.

the plight of the stateless provides powerful practical and moral reasons for asking searching questions about citizenship

He had arrived in Australia with his parents when he was two years old; he did not speak or understand Serbian or have any social network in Serbia. In the words of the opposition immigration spokesperson, “Even though ... [Jovicic] has not been a good member of our community, he is undeniably Australia’s responsibility.”

This suggests that our conceptions of who is morally a ‘member’ of a state may not be exhausted by birthright and discretionary naturalisation principles. The view that Jovicic was morally Australian seemed to derive from his years of continuous residence in Australia and therefore, notwithstanding his official nationality, Serbia could not really be considered his state. These years of residence even overrode his being a pretty lousy member of the Australian community. Jovicic, one might say, was an Australian citizen by *jus domicili*, by virtue of the reality of residence.

The case of Jovicic is far from an isolated one. Many states accept that different standards of treatment and rights are owed to long-term resident non-citizens. The states of the European Union, for example, have recently agreed a Directive outlining a special status for such people.

State obligations to grant citizenship

How can we make sense of this principle of *jus domicili*? Recent political thought offers three different ways of understanding its moral basis.

In a view which emphasises the idea of choice, like cosmopolitan liberalism, membership should be available to anyone who chooses to live in a particular state. This approach would recognise the moral right of people to reside wherever they wish. On the face of it, the principle of choice seems destructive of the very idea of citizenship: open borders globally would appear to take away from citizenship its legal role as the basis for differentiating between the rights of people. But this is deceptive. The principle of choice is consistent with forms of cosmopolitan federalism that attempt to retain different rights for citizens and non-citizens. In the US, for example, as a federal state, citizens (and legally

admitted non-citizens) may move freely around the country and yet the country’s 50 states have residency requirements that must be met before an individual can access certain local benefits. It is possible to imagine a similar arrangement at the global level. Free movement internationally could exist alongside a requirement of residency in a particular state in order to claim the full rights of citizenship, including the right to vote.

A second principle is that of subjection. In this account, common to both traditional liberal and radical democratic approaches, all people living under – or subject to – the laws of a particular state should be members of that state. The key idea here is that any state that rules over a group of people is legitimate only if the people consent to its rule, and decisions are only legitimate if those affected by them are consulted and involved in the decision-making process. This idea has long been a feature of liberal and democratic thought. A state that refuses to offer rights of political participation to all those under its rule is thus not a democracy but a tyranny. Everyone living in the territorial boundaries of the state should be able to access citizenship and its corresponding rights. In a legitimate democratic regime, membership should follow the contours of power rather than the happenstance of birth.

A third and final principle is that of societal membership. State membership should, in this view, held by some communitarians, include everyone with a significant stake in the development and direction of a particular state. The societal membership principle tends to highlight men and women’s roles as social and economic agents. The test of membership is the depth of one’s social and economic roots into a particular political community, tying an individual’s well-being to the common good.³ The idea of societal membership is implicit in most practical calls to regularise unlawfully resident immigrants or long-term asylum seekers: many amnesty programmes are informed by the idea that the state should recognise that migrants settled in the state over a period of years deserve formal status, particularly if they have not committed crimes. This

principle demands an alignment between the reality of people’s social existence and their legal status.

Each of these accounts of membership takes us beyond the principles of nationality based on birthright and discretionary naturalisation. But in some respects, these principles also offer competing answers. The idea of subjection, for example, seems more inclusive than societal membership, as its basis for inclusion seems to apply the moment a non-citizen sets foot in the territory of the state.

Outstanding questions

Other issues remain outstanding. If non-citizens have an entitlement to citizenship, what are their obligations? Should the fact of unlawful entry to a state make any difference to the state’s duty to grant citizenship? Finally, if citizenship is determined by societal membership or subjection, should lack of residence in the state, for example an extended period spent in another state, result in the loss of citizenship?

In practice, the responses of states to citizenship questions will be shaped as much (if not more) by the dynamics of politics, understandings of national interest and concerns about migration control as by conceptions of justice. But by demonstrating the problems with current arrangements, the plight of the stateless provides powerful practical and moral reasons for asking searching questions about citizenship. These questions are likely to grow in importance in the years ahead.

Matthew Gibney (matthew.gibney@qeh.ox.ac.uk) is University Reader in Politics and Forced Migration at the Refugee Studies Centre (<http://www.rsc.ox.ac.uk>) of the Oxford Department of International Development, University of Oxford.

1. Hannah Arendt, *The Origins of Totalitarianism*, p296-297

2. Joseph H Carens ‘Migration and Morality’ in B Barry and R Goodin (eds.), *Free Movement* (Harvester Wheatsheaf, 1992), p26.

3. Bauböck, Rainer (2005) ‘Changing Meanings and Practices of Citizenship’, *PS: Political Science and Politics*, Vol 28, No. 4, pp. 667-669



UNHCR and individual refugee status determination

Richard Stainsby

Determination of refugee status is a critical first step in meeting the protection needs of those requiring international protection and is one of UNHCR's core functions.

Refugees may be recognised as such either on a group basis (*prima facie*) or individually. The vast majority of the world's refugees are recognised by way of a *prima facie* group determination, based on an evaluation of the situation in the country of origin which gave rise to their leaving. This article, however, focuses on individual refugee status determination (RSD).

Individual RSD is used primarily in situations of mixed flows, when it is necessary to distinguish refugees from other migrants. It may be carried out by states and/or UNHCR. It is preferable, however, that RSD be conducted by states as it is governments which are responsible for ensuring that refugees on their territory are treated in accordance with international standards, subject to supervision by UNHCR as required by its protection mandate. 102 of the 146 states signatories to the 1951 Convention and 1967 Protocol have established national procedures.

Where states have not yet acceded to the international refugee instruments or have not yet established effective national procedures, UNHCR may have to step in and undertake individual RSD. Through conducting RSD, UNHCR can determine whether asylum seekers qualify for international protection.

In 2007, UNHCR was involved in refugee status determination in 68 countries. Over 90% of the RSD work in terms of applications received and decisions rendered was carried out in 15 countries; the largest operations were in Kenya, Malaysia, Turkey, Somalia, Egypt and Yemen. Between 2003 and 2006, applications to UNHCR increased by 48%. In 2007, UNHCR received 75,690 applications (12% of global asylum applications) and rendered 51,200 decisions.

The growth in UNHCR's role in conducting RSD has brought with it a number of challenges, some faced by states and some unique to UNHCR. The first is to ensure adequate and appropriate staffing. UNHCR has 140 staff devoted full-time to RSD, and another 150 part-time. The ratio of staff to the number of asylum applications received by UNHCR is far less than in most national systems in Europe or North America, for example. In addition, half of the 140 full-time staff are on short-term contracts which, in view of the resulting high turnover, has a negative impact on efficiency and increases training demands. Expert RSD supervision is also required in all of these operations. Having staff spread across the globe

makes consistency – and provision of training – a challenge. There are also issues of ensuring that decisions are made in a timely manner plus concerns about staff security, integrity of the system and burnout. Finally, while in some countries the attitudes towards asylum seekers and refugees are very positive, in others the protection environment can be quite negative, rendering UNHCR's RSD work even more challenging.

In view of these obstacles and limited resources, UNHCR has made and continues to make efforts to strengthen and improve RSD under its mandate, and to strive for high quality 'first-instance' decisions¹ – ie to ensure the early identification of those in need of international protection, as well as of those who do not need or deserve it.

Improving UNHCR's RSD operations

A number of initiatives have been taken to ensure quality, efficiency and consistency in UNHCR's RSD operations. These include the publication in 2003 of Procedural Standards for Refugee Status Determination under UNHCR's Mandate² (designed to harmonise procedures globally) and a comprehensive training programme for all staff responsible for conducting or supervising RSD; in 2008, this course was provided in six regions of the world.

Efforts have also been made, in line with the commitments made in the Agenda for Protection,³ to ensure adequate staffing in RSD operations. We provide substantive advice from UNHCR headquarters to the field and have issued Eligibility Guidelines relating to different 'caseloads' of asylum seekers.⁴ These guidelines, along with legal, policy and country-of-origin (COI) information from relevant and reliable sources, are disseminated globally through UNHCR's Refworld.⁵ UNHCR recently launched a Community of Practice of RSD Supervisors and Officers to consolidate legal advice and to provide a forum for peer-to-peer discussion and exchange of best practices. Regional RSD officers have been posted in five regions of the world to help improve quality, consistency and productivity, as well as to work on capacity building with governments. Finally, regional meetings have been held to deal with inconsistent approaches to similar cases.

Like states, UNHCR occasionally faces sudden increases in the number of asylum applications to specific offices. This has required UNHCR to develop strong case-management techniques which are shared as best practices among offices. Furthermore, UNHCR has instituted an RSD Deployment Scheme under which experienced RSD consultants and UN Volunteers can be deployed to offices facing a dramatic and sudden upsurge in applications. In 2008, 15 operations were assisted through this scheme.

UNHCR has also developed strategic partnerships with governments with many years of experience in

RSD. Experts from the Immigration and Refugee Board of Canada have provided training to staff in selected UNHCR offices, and staff from the Office Français de Protection des Réfugiés et Apatrides (French Office for the Protection of Refugees and Stateless People, OFPRA)⁶ have been deployed to assist in processing cases. In partnership with the International Association of Refugee Law Judges,⁷ UNHCR has been able to involve judges in countries with developing asylum systems in helping to further build capacity.

This brings us full circle. While UNHCR strives to conduct RSD to the highest standards, it also continues its efforts to encourage states to take up this quintessential government function, with appropriate UNHCR participation.

Richard Stainsby (STAINSBY@unhcr.org) is Chief, Status Determination and Protection Information Section, Division of International Protection Services, UNHCR (<http://www.unhcr.org>), Geneva. The views expressed in this article are those of the author and do not necessarily represent those of the UN or UNHCR.

1. The term 'first instance' means the first decision, as opposed to decisions at appeal level. It describes the first stage of the RSD process.
2. Online at <http://www.unhcr.org/publ/PUBL/4316f0c02.html>
3. UNHCR, *Agenda for Protection*, October 2003. 3rd edition. Online at: <http://www.unhcr.org/refworld/docid/4714a1bf2.html>
4. See for example those issued for Iraqi asylum seekers, online at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/twmain?docid=46deb05557>
5. <http://www.refworld.org>
6. <http://www.ofpra.gouv.fr>
7. <http://www.iarlj.org>

Refugee status determination: three challenges

Martin Jones

Refugee status determination (RSD), which is vital to the protection of so many asylum seekers worldwide, is at best an imperfect, haphazard and challenging process. It merits greater attention and appropriate reform.

Asylum seekers are subject to a variety of procedures examining their individual reasons for being outside their country of origin, and thus determining their status as refugees. Even within states, procedures can vary based upon location, country of origin and personal history. Despite recent efforts to harmonise RSD procedures, notably in the European Union, there is still no single model for RSD and there remains a troubling variation in outcomes in similar cases. For example, the acceptance rates for Iraqi refugees in European states governed by the EU's RSD standards varied between 0% in Greece and 81% in Sweden.

Studies of outcomes in RSD processes have linked recognition rates to a variety of seemingly extraneous factors, including government ideology, country of asylum demographics and the number of refugees already in the country of asylum.¹ Recent studies in Canada and the US have shown that the identity of the decision maker in RSD is often the most significant influence on the outcome.² Recognition rates have also been linked to refugee movements, with higher recognition rates prompting future population movements. At best, RSD is an imperfect, haphazard and challenging process. Even factoring in successes upon appeals and grants of 'complementary protection'³, in 2007 a majority of (55%) of asylum seekers worldwide were refused protection.

The high rejection rates and consequent threat of forced removal from the country of asylum make

these issues of vital concern to asylum seekers and to the international community. Although there are many issues to debate relating to RSD, there are three broad, inter-related issues that cut across national jurisdictions. These are: access to counsel, the increasing transnationality of RSD and current governance of the international refugee regime.

Access to counsel

In setting out a framework for RSD, the Executive Committee of UNHCR has recommended that "the applicant should be given the necessary facilities, including the services of a competent interpreter" and be allowed "to contact a representative of UNHCR." Both of these recommendations help to ensure an outcome that is based on a full understanding of the facts of the case and on international law. However, the Executive Committee's conclusions about international protection are conspicuously silent on one issue: the access of asylum seekers to legal advice.

Access to a representative of UNHCR cannot be a substitute for the provision of or access to independent legal counsel. This is especially true in the approximately 80 jurisdictions in which UNHCR serves as a decision maker. Statistics on RSD indicate that self-representation rarely, if ever, serves the interests of the individual.⁴ Fortunately, the provision of independent legal advice to asylum seekers has recently spread beyond the 'global north' where such services are well established (though subject to budget cutbacks). The Southern Refugee Legal Aid Network (SRLAN)⁵ was founded in 2007 in order to facilitate representation of asylum seekers in the 'global south'. A growing number of legal aid organisations now exist in the South, providing representation to a significant number of asylum seekers, though the overwhelming majority remain without access to counsel.

In the South, refugee legal aid has typically grown out of refugee advocacy organisations (unlike in the North where refugee legal aid is more commonly an outgrowth of well-established legal aid programmes for indigent criminal defendants). The different origins of legal aid in the South present a series of unique challenges, including the frequently expatriate nature of staff and the lack of formal legal qualifications and training of representatives. The SRLAN's first project was to develop standards for professional conduct (the Nairobi Code of February 2007); it is also in the process of developing common training materials for refugee legal aid organisations.

Transnationality of RSD

Refugee law is inherently transnational in subject matter insofar as the focus of the inquiry undertaken in one country is on events in and laws of another country – the country of origin.⁶ However, refugee law also reflects a more dynamic form of transnationalism, whereby norms developed and elaborated in one jurisdiction are transferred to another jurisdiction so that courts in one country seek guidance from the jurisprudences of other countries.

This means that advocates must now keep up to date on developments in not just a single jurisdiction but many. This problem is not an abstraction but presents itself every day when a client from County A applies to counsel in Country B (who received legal training in Country C) hoping for resettlement to Country D. Sadly, legal education currently provides too little training in refugee law let alone with respect to its transnationality.

Governance

This final issue is one of more general concern to the entire refugee regime. The governance of refugee law currently resides with UNHCR under Article 35 of the Refugee Convention and, in turn, effectively with the 76 states which are members of its Executive Committee (and which provide almost all of the voluntary contributions which fund UNHCR's operations). At present UNHCR must both develop refugee law, attempt to secure its application by states and apply it in its own RSD operations. In such a situation, the independence of its interpretations of the Refugee Convention in its RSD decisions cannot be guaranteed. This is exacerbated by the fact that UNHCR generally does not provide written reasons for its decisions in RSD nor does it always disclose all of the evidence upon which it bases its decisions; furthermore, the UNHCR policy-making process is all too often opaque. While UNHCR is working to address these deficiencies (and alternative practices do exist, such as that described by Rachel Levitan in this issue of FMR), the fact that such practices can persist at all is indicative of the problem of having an international agency with legal immunity making such decisions.

The international refugee regime requires reform. That in turn requires dialogue – and dialogue requires partners. Trained refugee counsel, aware of and educated about their transnational position and subject matter, can be one important partner. However, what is vital to the process is the inclusion of the voice of refugees themselves. They are the most important partner – and the most important party in all RSD proceedings.

Martin Jones (martindavidjones@gmail.com) is a visiting scholar at the Melbourne Law School of the University of Melbourne and is Director of Research and Training for the Southern Refugee Legal Aid Network.

1. Mary-Anne Kate 'The provision of protection to asylum-seekers in destination countries', *New Issues in Refugee Research Working Paper No 114*, UNHCR Geneva, May 2005. <http://www.unhcr.org/research/RESEARCH/42846e7f2.pdf>
2. Sean Rehaag 'Troubling Patterns in Canadian Refugee Adjudication', *Ottawa Law Review* Vol 39, 2008; Andrew I Schoenholtz, Philip G Schrag & Jaya Ramji-Nogales 'Refugee Roulette: Disparities in Asylum Adjudication', *Stanford Law Review* Vol 61, 295-412, 2007, online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=983946.
3. 'Complementary protection' applies to those in need of protection who do not fit the strict criteria for the grant of refugee status, including individuals whose *refoulement* is barred due to a risk of torture or other severe human rights violations.
4. One study found that refugees who were represented during UNHCR RSD had twice the recognition rate as non-represented refugees. Mike Kagan 'Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt', *Journal of Refugee Studies* 19:1, March 2006.
5. See <http://www.fahamu.org/srlan/> and http://www.rsdwatch.org/index_files/Page2171.htm
6. One crucial element of RSD is the analysis of the extent to which the government of the country of origin is unable or unwilling to offer protection to the applicant; the laws of the country of origin may provide insight into the availability of protection.



Rosettenville Refugee Reception Office, Johannesburg.

Refugee status determination in southern Africa

Michael S Gallagher

Lack of access to legal counsel and lengthy delays in procedures continue to undermine refugee status determination procedures in southern Africa.

From 2002 to 2007 the number of refugees, asylum seekers and other persons of concern in the ten countries which constitute the geographical south of Africa has steadily declined. Voluntary repatriation to Angola, the Grand Lac countries and the Democratic Republic of Congo accounted for most of this decline. Moreover, as conditions of stability returned to former refugee producing countries in the region, there was a concomitant drop in the number of new asylum seekers.

In many of the countries in the region this has resulted in a sharp decline in the need for refugee status determination (RSD) procedures. However, two countries in the region – Angola and South Africa – continue to experience significant numbers of new asylum seekers each year. Angola received 1,471 new applications in 2007 while South Africa received 45,637, representing over 80% of all asylum applications in the region. Both countries have a significant backlog of pending asylum applications. Unlike regions in eastern and northern Africa where RSD is conducted by UNHCR, each of the countries in the region – with the exception of Swaziland where refugee status is determined jointly by the government and UNHCR – conducts its own RSD.

Legal limbo

Angola and South Africa present different models of refugee status determination but share two common traits. The first is that access to legal representation at the initial phases of the application process is severely limited, if not non-existent. The second, which may be partially a consequence of the first, is that asylum seekers in each country need to wait years before receiving a decision on their applications. In each country they exist in a quasi-legal limbo which leaves them prey to exploitation by nationals as well as by police and other government officials.

In Angola the asylum seeker completes an application for asylum and is subsequently interviewed by an immigration officer, receiving a receipt for the application which permits them to remain in Angola pending adjudication. Immigration then conducts some inquiry into the application and eventually issues a report. Crucially, asylum applicants are not represented at the initial determination; although some may receive assistance in filling in the application, they are not represented by counsel at the interview.

In theory the immigration report should be completed within 180 days – the duration of the validity of the

asylum seeker's receipt. The receipts are renewable, and generally it takes more than a year between the time of the initial interview and the completion of the report.

The report and the application are examined by COREDA, the Angolan Refugee Committee, comprising delegates from several Angolan ministries. A delegate from UNHCR attends these status determination meetings, with observer status. If the application is denied the asylum seeker has twenty days in which to lodge an appeal. The appeal, however, is heard by COREDA again and not by an independent appeals tribunal. Recently UNHCR has begun a pilot project which provides legal assistance to appellants as well as assistance in preparation of the initial application. If the appeal is denied, the unsuccessful asylum seeker is given six months to leave Angola. Similar status determination procedures are found in Zambia, Malawi and Zimbabwe. As in Angola, representation by counsel is almost unheard of in these procedures.

The process for refugee status determination in South Africa is quite different. The power to recognise a refugee is entirely delegated to the Department of Home Affairs. South Africa's Refugees Act of 1998 stipulates that the Department's status determination officers "may consult with and invite a UNHCR representative to furnish information on specified matters" but there is no provision for UNHCR observer status in the procedure apart from that which can be inferred from UNHCR's general supervisory role with respect to the Convention. There is no provision for legal representation of the asylum seeker at this stage of the procedure. If an application is rejected as 'manifestly unfounded', it must be reviewed by the Standing Committee, a separate body set up by the Refugees Act. An application that is rejected as 'unfounded' rather than 'manifestly unfounded' may be appealed to the Appeal Board. Asylum seekers have a right to have legal assistance for their hearing before the appeals board but at their own expense.

In theory, the process of recognition of refugee status in South Africa should occur rapidly. In practice, asylum seekers may wait for months before being able even to start the process of status determination by completing the asylum application with a refugee reception officer. It may be years before the application is actually heard by a status determination officer. At the end of 2007, the backlog of cases in South Africa exceeded 170,000.

In southern Africa some legal aid assistance is now being provided by independent bodies, including the Legal Resource Foundation in Zambia¹ and the University of Capetown's legal clinic² in South Africa, both of which are founding members of the Southern Refugee Legal Aid Network (SRLAN).³ Far more is needed. The provision of independent legal aid to asylum seekers

in southern Africa needs to be addressed across the whole region if asylum seekers are to get a fair hearing whatever the process in the different countries.

Michael S Gallagher SJ (mgallaghersj@gmail.com) is Geneva Representative for the Jesuit Refugee Service (<http://www.jrs.net>). Until recently he was Regional Advocacy Officer for the Jesuit Refugee Service Southern African Region.

1. <http://www.lrf.org.zm>

2. <http://www.uct.ac.za/faculties/law/research/lawclinic/>

3. See <http://www.fahamu.org/srlan/> and http://www.rsdwatch.org/index_files/Page2171.htm

Asylum seeker statistics

The number of asylum seekers in industrialised countries increased in 2008 for the second year running, according to provisional statistics compiled by UNHCR. The increase can partly be attributed to higher numbers of asylum applications by citizens of Afghanistan, Somalia and other countries experiencing turmoil or conflict. Although the number of Iraqi asylum seekers declined by 10% in 2008, Iraqis continued to be the largest nationality seeking asylum in the industrialised world.

The report, *Asylum Levels and Trends in Industrialized Countries, 2008*, compiled by UNHCR's Field Information and Coordination Support Section, can be found on UNHCR's website at: www.unhcr.org/statistics

Refugee protection in Turkey

Rachel Levitan

The provision of independent legal representation for asylum seekers in Turkey is proving a vital component in improving refugee status determination procedures.

Every year, thousands of people from over 40 countries come to Turkey seeking asylum. However, since Turkey imposes a 'geographic limitation' on the 1951 Refugee Convention, refugees from countries outside Europe are not eligible to receive international protection from the Turkish government. Instead, they must turn to UNHCR for protection. Refugees must also apply for 'temporary asylum' from the Turkish authorities for permission to remain in Turkey while UNHCR evaluates their claims. During that period, they are required to live in one of 30 'satellite cities' throughout Turkey, and need police permission to travel outside the city. When their cases are decided, either they are granted refugee status and resettled in another country (such as the US, Canada or Australia) or their application is denied and they must leave Turkey.

The parallel UNHCR and government asylum procedures are complex, and many applicants wait for months or years for their applications to be processed. While they wait, their difficult and dangerous conditions push many to risk their lives in an attempt to enter Europe illegally. Those who are detained while trying to leave the country are particularly vulnerable to *refoulement*¹ because of significant barriers to legal assistance.

While lawyers should in theory have access to the migrant detention facilities where refugees are held (known as 'foreigners' guesthouses'), not enough of them have training in refugee law or experience advocating for refugees. Moreover, the very limited state legal aid system does not cover legal assistance to refugees. Thus, the handful of qualified refugee lawyers either have to charge fees that most refugees cannot afford or they have to work for free – which inevitably limits the time and effort they can invest. Moreover, few Turkish lawyers are fluent in languages spoken by refugees and there is a dearth of available interpreters. As a result, few refugees

held in detention ever get access to any kind of legal assistance. To compound matters, NGOs are generally barred from entering detention facilities altogether. Even UNHCR must often wait weeks for permission to enter detention facilities to interview asylum seekers. Neither UNHCR nor local NGOs are given access to asylum seekers held in 'transit zones' in Turkey's airports.

Despite a government commitment to bring domestic asylum policy into compliance with European standards, Turkish legislators and policymakers have so far shown little willingness to implement a comprehensive asylum law that would be consistent with international standards. While plans move forward for the establishment of seven 'reception centres' for asylum seekers (a project funded by the European Commission and supported by Dutch and British government partners), progress has been very slow. In the meantime, instances of *refoulement* continue at an alarming rate and periodic riots erupt in the 'foreigners' guesthouses' in protest at indefinite detention and substandard conditions.

Legal aid

In 2004, Helsinki Citizens' Assembly - Turkey (HCA) established its Refugee Legal Aid Program to provide free legal assistance to refugees. Two years later the programme expanded and was renamed the Refugee Advocacy and Support Program (RASP). RASP continues to provide legal assistance to refugees (including those in detention) on both UNHCR and government asylum procedures. It also provides mental health counselling, conducts public legal education and training for local NGOs and lawyers, monitors government practice and engages in legal advocacy.² In 2009, RASP is initiating a three-year refugee law training and mentoring programme for lawyers across the country.

HCA's legal services for UNHCR procedures include: preparing refugees for and representing them during interviews; conducting country of origin research; drafting legal submissions and testimonies; communicating with UNHCR regarding clients' immediate protection concerns; and advocating for vulnerable clients.

In a September 2007 report evaluating UNHCR Turkey's compliance with UNHCR's 2005 RSD Procedural Standards³, RASP identified areas where UNHCR was in full compliance with the Standards, including access to legal counsel and the right to be interviewed and to appeal. However, it also highlighted deficiencies, the most significant of which were waiting periods as long as a year until the first RSD interview, up to two years or more until the first instance decision is issued, and similar delays in the evaluation of appeals and in re-opening requests. Other important gaps identified include intimidating questioning techniques by some interviewers, the failure to identify victims of torture consistently, and the lack of regularly available, trained interpreters.

Legal representation helps fill these gaps in a number of ways. After meeting with a legal advisor, refugees are often able to describe their experiences to UNHCR interviewers more coherently. During the UNHCR interview, legal representatives can help identify and clarify misunderstandings between the interviewer or the interpreter and the refugee. They can also identify and even prevent intimidating questioning by the interviewer. By identifying miscommunications during the first instance interviews, legal advocates can help eliminate the need for appeals.

Legal representatives can also help identify vulnerable refugees early on and can refer traumatised asylum seekers for psychiatric and medical evaluation, as well as provide medical reports in support of claims for refugee status. More generally, legal representation increases UNHCR's efficiency through the provision of regular, informal monitoring of its RSD system.⁴

HCA also plays a role in the appeal of rejected refugee claims. Generally, UNHCR sends rejected refugees a standard letter with a check mark next to the reason why refugee status was not granted. These letters typically do not give the applicant sufficient information to understand why his or her case was rejected or to prepare a meaningful appeal. Acknowledging this, in September 2006 UNHCR Turkey agreed to share with HCA copies of the more detailed internal UNHCR Assessment Forms for HCA's clients.

Knowing detailed reasons for rejection gives refugees a critical tool in assessing whether an appeal would be appropriate and, if so, what issues must be addressed. However, while this information gives them some of the understanding they need, it is not always sufficient, especially in more complex cases, and HCA, together with its SLRAN partners, is encouraging UNHCR to

release the full files (including interview transcripts) to refugee applicants or, at least, to refugee-assisting NGOs.

HCA and UNHCR Turkey cooperate to protect the rights of refugees throughout the Turkish 'temporary asylum' procedure. Most critically, the two organisations work closely to prevent instances of *refoulement* by seeking urgent interim measures from the European Court of Human Rights under Rule 39 of the Rules of Court. Through instances of cooperation such as this, together they hope to bring the government's practices in line with Turkey's international obligations to uphold refugees' basic human rights.

Rachel Levitan (rachel@hyd.org.tr) works in the Refugee Advocacy and Support Program of Helsinki Citizens' Assembly-Turkey (<http://www.hyd.org.tr>). HCA is an active founding member of the Southern Refugee Legal Aid Network (SLRAN).

1. The forced return of a person to a country where he or she faces persecution
2. See HCA 2008 report on detention conditions at <http://www.hyd.org.tr/?pid=610>. In 2009 HCA will publish reports on the situation of unaccompanied minor asylum seekers and on LGBT (lesbian, gay, bisexual and transgender) asylum seekers in Turkey.
3. <http://www.hyd.org.tr/?pid=554>
4. HCA's summary of the benefits of legal aid to refugees, UNHCR staff and the status determination procedure as a whole is online at <http://www.hyd.org.tr/?pid=711>



Asylum seekers in Turkey.

An institutional gap for disaster IDPs

Roberta Cohen

Climate change is expected to sharply increase the number and severity of natural disasters, displacing millions on all continents. The international community needs to recognise ‘disaster IDPs’ – and establish new institutional arrangements to protect their human rights.

When the Guiding Principles on Internal Displacement were drafted in the 1990s, there was little consensus over whether they should include the rights of people uprooted by natural disasters. Those opposed argued that only persons fleeing persecution and violence should be considered IDPs – in other words, persons who would qualify as refugees if they crossed a border. But the majority favoured including those uprooted by natural disasters because in responding to disasters, governments often discriminate against or neglect certain groups on political or ethnic grounds or overlook their human rights in other ways.

Nonetheless, not all experts, governments, international organisations and NGOs endorsed this broad formulation and even today many try to sidestep it. A report of experts to the UK government in 2005 recommended that the IDP concept be limited to persons displaced by violence because the causes and remedies of conflict-induced and disaster-induced displacement were different, making it “confusing” to include both in the IDP definition.¹ Some governments have also shied away from calling persons uprooted by natural disasters IDPs. In Aceh, Indonesia, the government preferred labelling those uprooted by the tsunami “homeless”, presumably to distinguish them from the more politicised “conflict IDPs” to whom the government had barred access.² In the US, government officials settled on every possible description of those uprooted by Hurricane Katrina except IDPs. They described them as “refugees”, “evacuees” and, finally, “disaster victims”, because IDPs in their view were people displaced by conflict

elsewhere. Nor does the Internal Displacement Monitoring Centre (IDMC) include people uprooted by disasters in its statistics, although it clearly acknowledges that such people are IDPs. Not dissimilarly, UNHCR made clear in 2005 that while it would serve as the lead agency for the protection of “conflict IDPs” in the UN’s new cluster approach, its role would not extend to those uprooted by disaster except “in extraordinary circumstances.”³

To be sure, there are many differences between IDPs displaced by conflict and by disaster but one of the consequences of separating out disaster IDPs is that they are often perceived as not having human rights and protection problems. Experience, however, shows that persons uprooted by natural disasters require not only humanitarian assistance but protection of their human rights. The 2004 tsunami in Asia brought into focus the protection concerns of those displaced, including:

- sexual and gender-based violence
- discrimination in access to assistance on ethnic, caste and religious grounds
- recruitment of children into fighting forces
- lack of safety in areas of displacement and return areas
- inequities in dealing with property and compensation.

After visiting the region, Walter Kälin, Representative of the UN Secretary-General on the Human Rights of IDPs, concluded that persons forced to flee their homes share many common

types of vulnerability regardless of the reasons for their displacement and that “it is no less important in the context of natural disasters than it is in cases of displacement by conflict to examine and address situations of displacement through a ‘protection lens.’”

Kälin developed Operational Guidelines for Human Rights and Natural Disasters which the Inter-Agency Standing Committee adopted in 2006. Noting that the longer a displacement situation lasts, the greater the risk of violations, they call for non-discrimination in access to aid and respect for the full range of human rights of those affected and they identify measures such as evacuations, relocations, steps to curb gender-based violence and protection against landmines to increase the security of affected populations.

A 2007 UN General Assembly resolution reinforced this approach by recognising that those displaced by natural disasters are IDPs with human rights and protection needs.

Institutional arrangements

At the national level, institutional arrangements for protecting the human rights of disaster IDPs are weak. While primary responsibility to assist and protect disaster IDPs lies with the state, many governments do not have the capacity or willingness to carry out these responsibilities. In Pakistan, for example, after the 2005 earthquake, the government argued against applying international principles of protection to IDPs since they were not formally refugees and put pressure on them to leave camps without making adequate preparations for their returns. In the US, rescue, evacuation and reconstruction plans in the Gulf Coast were found to disadvantage poor people, in particular African-Americans. The UN Human Rights Committee, which monitors state compliance with the International Covenant on Civil and Political

Rights, had to call upon the US to ensure that the rights of the poor and in particular African-Americans are “fully taken into consideration” in reconstruction plans.⁴

Laws and policies are needed to protect against human rights abuse in disaster response. National human rights commissions can assist governments in drafting these documents and can monitor the extent to which the rights of disaster victims are protected. After the Indian Ocean tsunami, the Sri Lankan National Human Rights Commission took up hundreds if not thousands of cases of persons with human rights problems while India’s Commission sent out special rapporteurs to look into the human rights concerns of those affected by disasters in Orissa and Gujarat. The commissions, however, need increased resources, staff and training. With greater capacity, they could serve as models for commissions in Africa and the Americas, which have not yet engaged in monitoring and advocating for disaster victims.

Local NGOs can help mobilise national awareness of IDP rights in disasters. In the US, NGOs have called upon the government to recognise disaster victims as IDPs and protect them in line with the Guiding Principles. In Sri Lanka, NGOs brought to light the disparity in treatment between those uprooted by the tsunami and those uprooted by civil strife – leading to remedial action.

At the regional level, the Association of Southeast Asian Nations (ASEAN), in response to Cyclone Nargis in Burma, became actively involved in diplomatic initiatives to open up access to survivors. But it did not engage in advocacy efforts for the rights of those being forcibly evicted from temporary shelters or pushed back into ruined villages without supplies. A more proactive rights-based approach will have to be developed by this and other regional organisations.

At the international level, the Representative of the UN Secretary-General on the Human Rights of IDPs has added IDPs uprooted by disasters to the concerns of his mandate. The UN Human Rights Council confirmed this new role in 2007 and Kälin has been visiting different parts of

the world to examine how best “to promote the protection of human rights of IDPs in the context of natural disasters.” However, he is but a single individual with limited resources and staff, whose mandate also covers the 26 million persons uprooted by conflict. If he is to be truly effective, the UN must come up with the human and material resources to enable him to undertake this new role.

Most importantly, the UN’s operational agencies need to become more actively involved. At present there is no agency assigned to the protection of disaster IDPs. The Resident or Humanitarian Coordinator in the field is supposed to consult with UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and UNHCR when a natural or human-made disaster occurs in order to determine which body will take the lead responsibility for protection.

In most cases UNICEF has assumed the lead but its protection role is limited. It has received high marks in child protection, tracing families, helping separated children and preventing their exploitation in disasters. But other vulnerable groups, such as the elderly, the disabled, ethnic or religious minorities, or those with HIV/AIDS, have not received as strong a focus. In the Mozambique floods, evaluators found that the plight of the elderly without families was often overlooked as were women, although there were many initiatives centred on children.⁵ UNICEF itself has acknowledged the narrowness of its protection focus and did an in-house study to determine the kind of resources, personnel and training it would need to take on a broader protection role. Staff within the agency, however, fear that its child protection role could become diluted in a broader protection perspective. Yet if UNICEF is to successfully serve as a protection lead for UN agencies and NGOs in disasters, it will need to cover the entire IDP population.

Other agencies should also consider becoming involved. UNHCR made known in 2005 that it would not involve itself with ‘disaster IDPs’ except in extraordinary circumstances but, given its experience and skills in protection, it should re-examine its own capacity for playing a more

active role, especially when natural disasters strike areas of conflict where UNHCR is already on the ground and engaged with IDPs. UNHCR was indeed involved after the tsunami and the Pakistan earthquake but more usually stands on the sidelines as the international community mobilises to deal with disasters. Similarly, OHCHR needs to explore how it could become more relevant to disaster protection through the deployment of human rights monitors, the undertaking of advocacy and the setting up systematic training programmes for national and local authorities on integrating human rights in disaster management. Finally, the UN Emergency Relief Coordinator should ensure that field coordinators make protection an automatic part of emergency response and, when need be, assign protection responsibilities in disasters.

The UN needs to ensure that the new field manual on how to promote human rights in disasters⁶ is widely disseminated so that the human rights of IDPs become an integral part of the programmes of all UN agencies, NGOs and governments. Recognition that people displaced by disasters need protection of their human rights is long overdue. So are effective institutional arrangements.

Roberta Cohen (RCOHEN@brookings.edu) is Senior Adviser, Brookings-Bern Project on Internal Displacement (<http://www.brookings.edu>) and Senior Associate, Georgetown University Institute for the Study of International Migration

The author is grateful to Mike Jobbins for his research assistance and to Claudine Haenni for her useful comments.

1. See Castles, S & Van Hear, N 2005, ‘Developing DFID’s Policy Approach to Refugees and Internally Displaced Persons’, Refugee Studies Centre, p12. <http://tiny.cc/DFIDPolicy>.

2. Couldrey, M & Morris, T, ‘Post-tsunami protection concerns in Aceh’, *Forced Migration Review*, July 2005 <http://www.fmreview.org/FMRpdfs/Tsunami/12.pdf>

3. UNHCR, *Internally Displaced People: Questions and Answers*, September 2007 <http://www.unhcr.org/basics/BASICS/405ef8c64.pdf>.

4. UN document CCPR/C/USA/CO/3/Rev.1, para. 26 <http://tiny.cc/UNCivilPolitical>.

5. See, for example, Inter Agency Standing Committee, Inter-Agency real-time evaluation of the response to the February 2007 floods and cyclone in Mozambique, May 2007 <http://tiny.cc/MozambiqueRTE>.

6. *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, Brookings-Bern Project on Internal Displacement, April 2008 <http://tiny.cc/NaturalDisasters>.

Unmet refugee needs: Colombian refugees in Ecuador

Marie-Hélène Verney

A recent needs assessment has allowed UNHCR to identify and start to meet significant protection and assistance needs among Colombian refugees in Ecuador.

The long drawn-out internal armed conflict in Colombia has uprooted millions of people over the years. The crisis is largely one of internal displacement, with about three million IDPs in Colombia – out of a total population of 42 million. In 2008 alone, a quarter of a million Colombians were internally displaced.

The dynamics of the conflict have changed in the past few years, shifting its intensity towards the borders of the country. Partly as a result of this, more Colombians have been seeking refuge in neighbouring countries, notably Venezuela and Ecuador. Along the Pacific Coast, the department of Nariño – where all the major armed groups are present and active – has the worst

countries, and in many ways the region is a model for local integration. There are no camps; the refugees all live among the Ecuadorian population and are allowed access to health care, education and employment. Yet lack of development, difficult security conditions and increasing numbers represent serious challenges to Ecuador's capacity to adequately protect and meet the needs of refugees.

Assessing needs

With its excellent refugee legal framework and national commitment, yet unmet needs, Ecuador was a natural candidate to become one of eight pilot countries in UNHCR's Global Needs Assessment project (GNA). This initiative, piloted in

difficult to plan. The first step in defining the refugees' needs was to get the systematic input of refugees and local communities through a series of participatory assessments. While the concept of participation is easy to grasp, it is often hard to put into practice. Many of the refugees in Ecuador live in remote jungle locations that are very difficult to reach. From the local UNHCR office in Lago Agrio – a small town just a few kilometres from the border – it can take two days of travelling by small boat along the Amazon to reach some of these communities. Many of the participatory assessments were conducted in small river settlements, talking to the whole community and listening to smaller groups to map out the specific needs of women, young people or the elderly.

Lack of documentation came out as the top refugee concern, limiting access to material assistance, education, the workforce and even protection. Under-registration is partly due to people not coming forward to register, some because they are not aware of their right to ask for asylum, others because they are too scared to come forward. Some people know their rights but have no means of reaching the nearest registration office and depend on UNHCR visits to be able to make asylum claims.

UNHCR's 2008 survey showed that there are 130,000 unregistered people living in a 'refugee-like situation' in Ecuador, more than six times the number of recognised refugees. Indigenous people and Afro-Colombians are the most likely to lack documentation, while single women and girls are especially at risk and prone to exploitation and abuse. Lack of registration means no state services and extreme vulnerability. Irregular armed groups are very suspicious of anyone without documentation, because this is seen as an attempt to disguise one's identity (because of belonging to 'the other side'). There have been many cases of people being



rate of displacement, armed fighting and selective killings in the country. Further to the east, in the Amazonian region, Putumayo Department also suffers high levels of instability and violence.

Ecuador has maintained a consistent policy of open borders, even at times of extreme tension between the two

countries and launched in early 2009, aims to map out the real needs of refugees, locate the gaps and identify a common way forward for refugees, states and other partners [see box on p61].

Most of the refugees are un-registered and their location uncertain, making assistance programmes extremely

UNHCR mission on the Putumayo River to reach isolated communities.

killed for not being able to produce ID cards. Other practices include tying people without ID card to a tree until someone comes and testifies to their identity. Furthermore, both the army and the police also tend to be suspicious of undocumented people.

"I am sick and unable to work for now. The refugee ID card has been a blessing for us; we can show it to the police and they see that we are legal in this country."

Colombian refugee in Ecuador

Since 2002, UNHCR has worked with Colombia's National Registry Office to bring documentation to high-risk areas – conflict zones with communities at high risk of displacement. More than 500,000 Colombians have received ID cards, or at least birth certificates, through this campaign. In 2007, the campaign focused on indigenous communities. In some regions, fewer than 30% of the population had any form of identification.

The region's low levels of development, as well as difficulties of access, impede the delivery of basic services for refugees and local population alike. Security is another concern, especially in border areas where conditions are tense due to extensive criminality and trafficking. There has been a tendency to associate Colombians with some of this instability and refugees are suffering. Half of them said they lack confidence in the police and judicial system while some complained of harassment, arbitrary detention and sexual violence.

The way forward

With this information, UNHCR organised a National Consultation in Quito, bringing together government ministers, refugees and local representatives from all over the country, as well as NGOs and representatives of civil society and the international community. More than 100 people took part in the two-day meeting, focusing on six issues identified in the gap analysis: the legal protection framework; strengthening of the institutions with responsibility for refugee issues; enforcement of refugee rights; integration and access to services for refugees and host

communities; the creation of a culture of peace; and regional initiatives to enhance refugee protection.

The Consultation ended with the participants' commitment to a two-year plan of action and an announcement by the government of Ecuador of a new Policy on Refugee Protection. This includes practical measures for quicker and fairer registration, with a large-scale enhanced registration exercise to start in the next few months. This should benefit between 50,000 and 60,000 people and will start along the northern border with mobile registration brigades made up of government employees and accompanied by UNHCR. The brigades will visit communities all over the region to receive and process asylum claims. The exercise, a huge challenge in capacity building and logistics, is designed to help refugees to access basic rights and services and improve the planning of assistance programmes.

Meanwhile, UNHCR's strategy is to help both refugees and local communities meet their urgent basic needs, with projects like the River Health Boat in the Amazon region. Since August 2008, this floating clinic,



equipped with basic equipment and medicines, has been going back and forth between 28 small settlements along the Putumayo and San Miguel rivers, where malaria and other tropical diseases are endemic. The clinic brings urgent medical care to people who have no other access to health care. Through this and other projects, UNHCR continues to work with its partners to find practical solutions focused on local integration, the most realistic option for the majority of Colombian refugees who fear returning to Colombia while violence continues there.

This Quechua indigenous woman crossed the border to take refuge in Ecuador where UNHCR got her documented and gave her a kit to build a small house.

Marie-Hélène Verney (VERNEY@unhcr.org) is Senior Regional Information Officer for UNHCR Colombia.

Global Needs Assessment

Eight countries were part of the first phase of UNHCR's Global Needs Assessment: Cameroon, Ecuador, Georgia, Rwanda, Tanzania, Thailand, Yemen and Zambia. The assessment exercise focused on the unmet needs of refugees, IDPs, returnees, asylum seekers and stateless people. The aim was to outline the total needs, the costs of meeting them and the consequences of any gaps. The GNA is designed to be a blueprint for planning, decision making and action with governments, partners, refugees and people of concern.

The results of the pilot GNA, published in the report *Refugee Realities* (online at <http://www.unhcr.org/protect/PROTECTION/48ef09a62.pdf>), revealed a sobering reality of substantial and disturbing gaps in protection, including basic needs such as shelter, health, education, food security, sanitation and measures to prevent sexual violence. It showed that a startling 30% of needs were unmet in the pilot countries – a third of them in basic and essential services. UNHCR is already actively involved in these sectors but not to the levels required.

Results showed a clear need to improve and ensure access to asylum systems with better reception facilities and procedures, registration, documentation and border monitoring. Training and technical support are also needed to increase the capacity of governments to adequately respond to people of concern. Women and children require better protection with improved prevention and response measures for sexual abuse and violence, as well as strengthened child protection programmes.

See <http://www.unhcr.org/cgi-bin/texis/vtx/GNA>

More information on the GNA in Ecuador is at <http://www.unhcr.org/cgi-bin/texis/vtx/GNA?page=ecu>

Europe-Africa cooperation in Mali

Louis Michel

The EU is working with the Malian government to improve information provision about migration to Europe.

In 2008, Europe witnessed a significant increase in the number of migrants and refugees arriving on its Mediterranean shores, a turn-around from previously declining numbers. Some 30,000 people were reported to have reached Italy by the end of October 2008, compared to 19,900 during the whole of 2007. Figures from Malta also confirm this trend, with 2,600 arriving on the island in the first nine months of 2008 compared with 1,800 throughout 2007. These were the lucky ones. Countless men, women and children have lost their lives on this journey.

The reasons why people leave their home countries and embark on a long and dangerous journey towards the north are varied. Forced displacement due to armed conflicts and political instability, the prospect of better economic conditions as well as human-induced environmental change and natural disasters are the main causes of migratory movements. Increasingly we find there is a real 'migrant mix'. Refugees, migrant workers and asylum seekers, to each of whom different immigration policies apply, travel alongside each other using the same illegal routes to enter Europe.

Many illegal migration flows originate in countries of sub-Saharan Africa and lead through North Africa to the European Union. On their way to Europe many migrants may be stranded in transit countries, with no realistic prospect of return. While the trafficking and smuggling of human beings is a visible element of illegal migration, the flight of human capital ('brain drain') caused by recruitment policies of developed countries is an equally serious element of legal flows.

Information centre in Mali

The EU decided to respond to this complex phenomenon by establishing a two-way dialogue

with the countries of origin or transit, exploring enhanced legal cooperation and offering better development assistance. As part of an increased focus on the links between external relations, development and migration, the EU opened a pilot 'centre for information and management of migration' – CIGEM – in Mali in October 2008.

Mali is the ideal location to launch such a pilot project. The sub-Saharan region is becoming increasingly aware of the potential benefits of migration for development such as the significant cash flowing to home countries from the diaspora. Mali is the second largest country in West Africa. Its central position and vast, permeable borders make it a country of origin, transit and destination of migratory flows. Out of a population of 12 million people, an estimated

4 million Malians are migrants. 3.5 million of these reside in West Africa and only 200,000 in Europe.

The aim of the centre in Mali is to provide potential migrants with a wide range of information and assistance. For example, it provides information on the dangers involved of using illegal migration routes controlled by unscrupulous profiteers; information on certain legal migration opportunities to Europe and elsewhere; and information on opportunities in Mali itself for vocational training and employment. The centre also helps the Malian authorities negotiate labour migration agreements with individual EU member states and other third countries.

In its first month, the centre received 302 visitors, of whom 261 (approximately 86%) were identified as potential migrants, 22 (7%) as voluntary returnees and 19 (6%) as



Mali's government adopted the UN Millennium Development Goal, set in 2000, to increase primary school enrolment for all and basic education for young adults by 2015 but there are not enough classrooms or secondary school teachers to accommodate the swelling enrolment.

involuntary returnees. 150 visitors (49%) had no formal education or only primary school education, 65 (21%) had secondary school education and higher, while the remaining 87 (28%) attended secondary school without having obtained a diploma. The majority of visitors expressed the wish to go abroad to find better job opportunities and economic stability, though they did not rule out the option of staying in the country if they could find interesting employment or vocational training.

This centre is a modest yet significant shift in Europe-Africa cooperation in dealing with this phenomenon in a positive way. It breaks the traditional mould of focusing exclusively on border control and return and offers a real alternative to a doctrine of repressive, security-led measures to tackle migration.

No coercive, repressive or security measures will ever manage to stop a human being taking his or her chances at achieving a better

life. Migration is not a criminal phenomenon. It has been with us since the dawn of time. Great civilisations have always been those that have embraced migration and ultimately benefited from the exchange of information and talent.

Louis Michel is European Commissioner for Development and Humanitarian Aid (<http://ec.europa.eu/echo/>). For more information, please email Marie-Pierre.JOUGLAIN@ec.europa.eu.

Towards an EU-wide regularisation scheme

Alexandra Strang

The Council of Europe estimated in late 2007 that there are as many as 5.5 million irregular migrants residing in the EU. From both a human rights and a good governance perspective, this situation is crying out for change.

The EU immigration framework is presently based on the idea that there are two types of irregular migrants: persecuted refugees (legal) and economic immigrants (illegal). This presumption informs a policy that aggravates stigmatisation and criminalisation of refugees and migrants alike. In reality, both 'types' of migrant usually originate from countries characterised by chronic poverty, violent conflict, political instability and socio-economic deprivation which generate both refugee-producing conditions as well as other modes of (*de facto*) forced migration to places of greater political and economic stability.

In this way, the actual differences between the 'push' factors of persecution as anticipated by the 1951 Convention and the 'push' factors of the daily struggle with a life lacking in economic opportunity are often minor.

There are of course significant economic and demographic interests at stake for Europe in the immigration debate but what is needed, above all, is a human rights approach to policy reform. The security-oriented approach to countering irregular

migration cannot and does not succeed in halting undocumented entry into the EU, because those who risk their life to travel to Europe do so not on a whim but in order to satisfy basic human needs such as physical security and the opportunity to secure a livelihood that will support themselves and their dependents. These are needs that will be pursued one way or another, regardless of obstacles, dangers and institutional discouragement.

The existing legal framework, however, proscribes the stay of migrants who are not considered – by domestic asylum procedures – to be in need of international protection. This will not deter the more determined migrants but will rather force them to the margins of society, giving rise to a range of human rights challenges linked with social exclusion.

An argument for regularisation

At present, rather than permitting the flow from migrant supply to employment demand, migration policies have tended towards greater restriction of migration movement. Undocumented migrants who are without work face considerable risk and difficulty in relocating to

another area or country with greater employment prospects. These people often live in substandard and precarious circumstances but stay put if at all possible because this poses the least threat of arrest and expulsion.

Whereas in normal migration flows the worker would follow the work, the Dublin II Regulation¹ and other EU rules operate precisely to limit this movement. There is much ongoing debate about easing the Dublin II provisions, largely in the context of how best to alleviate the pressures they place on states located on the eastern and southern frontiers of the EU. However, Dublin II rules prohibiting freedom of movement create social problems everywhere – not just in frontier states – because people are, to a considerable extent, 'stuck' wherever it is they first arrive, and end up doing anything they can to make ends meet. In such conditions, they become vulnerable to abuse and exploitation.

Policy improvements to administer labour migration while avoiding an outcome of internal EU immobility would benefit countries of first arrival, countries that require migrant labour and migrants themselves.

Without regularisation, there is no possibility for administrative controls or registration of social support needs; without an administrative 'identity' and social rights, there can

Spanish coastguard intercepts a traditional fishing boat laden with migrants off the island of Tenerife in the Canaries. These boats can carry up to 150 people and take three weeks to reach the Canaries from ports in West Africa.



UNHCR/A. Rodríguez

be no inclusion in the host society. It may be extremely difficult for migrants in this situation to find spaces to interact normally with the host society; eventually, they may become uninterested in doing so. A human rights approach could see regularisation as a way of affording migrants an important stake in the society in which they live and work.

At present, the asylum 'channel' is often the only procedure available to irregular migrants wishing to regularise their stay in the host country, yet many migrants will be unable to sustain a claim under the 1951 Refugee Convention. Those who come irregularly to Europe from developing countries will have made a substantial investment in their migration relative to their resources and are therefore unlikely to be

dissuaded from staying and finding work on account of a negative asylum result. It is clear, therefore, that major immigration policy reform is needed in order to adapt itself to the changing dynamics of mobility and migration.

Simple expulsion from Europe as a strategy for responding to irregular migration has proven not only ineffective and costly but also highly contentious from a human rights point of view. Seeking to maintain the crude distinction between (lawful) Convention refugees and (unlawful) irregular migrants is no longer administratively practical, nor does it reflect reality. A holistic re-appraisal of EU migration policy must recognise that European migration will continue so long as the 'push' and 'pull' conditions caused by global economic inequalities are

present and that important principles of justice are served by providing migrants an identity and a role within a society that requires their labour.

A reformulation of immigration policy that proceeds towards regularisation could go a long way in delivering on the human rights principles that the EU embodies, and would bring migration policy ever closer to the principles of freedom, security and justice on which the Union is based.

Discussions in Brussels concerning possible modalities for a common regularisation strategy regarding long-staying migrants have persisted in fits and starts for years, in a context of political unease and institutional ambivalence. It is clear that real leadership and vision at the Brussels level are required to push forward a comprehensive strategy to address the human rights situation of Europe's undocumented migrants; a response that is committed to achieving a more just and compassionate society through a fairer access to status regularisation in Europe.

Alexandra Strang (alexmh05@yahoo.com) worked with UNHCR and is involved with several French NGOs concerned with refugees and migrants living in an irregular situation in Europe.

1. See <http://europa.eu/scadplus/leg/en/lvb/l33153.htm> and ECRE report <http://tiny.cc/ECREDublinII>



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Return and re-admission in states' migration policies

Jean-Pierre Cassarino

The role of the state in protecting its citizens and in defending their rights and privileges has become closely intertwined with its capacity to secure its borders and regulate migration flows.

The need of states to control, count and predict migration flows has never been as strong as it is today. 'Return' stands high in the hierarchy of priorities in the current top-down management of international migration, because it has been narrowly defined as a single act, that of leaving the territory of a destination country. In other words, return is not viewed as a stage in the migration cycle. This vision of return has become an integral part of the instruments aimed at dealing with the issue of unauthorised migration and protecting the integrity of the immigration and asylum systems in most destination countries. It then justifies the security-oriented methods and means of implementation.

At a national level, an array of measures, laws and infrastructures has been established to serve this security-oriented approach. Detention centres, fingerprinting identification systems, expulsion quotas and laws on preventative custody are just a few examples. At an international level, cooperation over re-admissions with undemocratic regimes in neighbouring countries has been justified in official discourses as a necessary evil. The argument that 'we cannot do otherwise' leads to the use of solutions that are seen as a necessary evil, discarding any alternative interpretation of the issue at stake – and any alternative concrete solutions.

But we need to question why it is so and whether it could be otherwise. Why has the issue of return been primarily associated with security concerns in the short-sighted mechanisms that have been implemented so far by state agencies?

The first part of the answer may lie in the way these policies, which are primarily designed to secure the

effective departure of unauthorised migrants, are labelled. The terms 'expulsion' or 'removal' – rather than 'return' – would be far more consistent with the actual rationale for these policies. Such a terminological confusion was not part of the open and recurrent debates about return migration during the 1970s and 1980s. Return was not mixed with expulsion, let alone with re-admission, and migrants' motivations to return home, on a temporary or permanent basis, constituted at that time the main research interests of scholars across various disciplines.

Setting 'voluntary' against 'forced' return, although the frontier between them remains quite blurred in practice, has unquestionably influenced public discourses and policies on migration and return. Current policy measures have come to serve solutions aimed at securing the effective departure of unauthorised migrants and rejected asylum seekers.

A policy of containment

Today, the production of knowledge about migration issues has become crucial in political terms by straying away from the cause of the problem and subtly justifying a unique technical solution. The selective allocation of public funds to given research projects viewed by civil servants and the state bureaucracy as concretely useful to their actions is a direct off-shoot of the desire to produce and legitimise a form of top-down knowledge about migration in general and return in particular.

Security-oriented return policies, detention centres and re-admission agreements (the latter aimed at facilitating the identification, redocumentation and expulsion of detained migrants)¹ have been presented as necessary instruments for deterring and combating unauthorised

migration. Simultaneously, this turns the resilient disparities between countries of origin and destination (in terms of undemocratic governance, political instability, disastrous environmental conditions, under-employment and poverty) into secondary causes, although they prompt numerous migrants to leave and seek better living conditions abroad. The expulsion or re-admission of migrants from the territory of destination countries has been prioritised, regardless of whether the country of re-admission has the capacity to respect the fundamental rights and protect the dignity of re-admitted persons.

A step forward

Today, the implementation of circular migration schemes and mobility partnerships² is being planned in cooperation with the EU Member States. Circularity – the repeated to and fro movements of people between two places – will require the adoption of provisions aimed at sustaining the temporary return of circular migrants and at creating conditions to sustain their reintegration.

The extent to which both destination countries and countries of origin will concretely respond to these preconditions will determine the effectiveness and credibility of their actions. Reintegration, the process through which migrants take part in the social economic, cultural and political life of their country of origin, will become a core issue in future migration policies.

Jean-Pierre Cassarino (JPCassarino@EUI.eu) is scientific director of the 'Migration de retour au Maghreb' programme of the European University Institute <http://www.eui.eu/>.

Parts of this article draw on Jean-Pierre Cassarino (ed), 'Conditions of Modern Return Migrants', International Journal on Multicultural Societies, Vol 10, No 2, 2008, UNESCO

1. See <http://europa.eu/scadplus/leg/en/lvb/l33105.htm>

2. See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/197>

Iran: migrant smuggling and trafficking in persons

Nasim Sadat Hosseini-Divkolaye

Each year, thousands of people are moved illegally – often in dangerous or inhumane conditions – into, through and from Iran.

Trafficking in persons and migrant smuggling are only two forms of irregular migration; the term ‘trafficking’ describes movements of persons against their will, whereas ‘smuggling’ refers to voluntary movements of the migrants.¹ Due to the clandestine nature of irregular migration, it is difficult to estimate the number of persons being trafficked or smuggled and the illegal status of victims tends to prevent them reporting incidents to government authorities.

Trends and dynamics in Iran

Because of its geopolitical situation, Iran is a country of origin, destination and transit for traffickers and smugglers. Long shared borders with countries in crisis led to mass irregular immigration from Afghanistan and Iraq. During the last twenty years, 2.5 million Afghan and Iraqi immigrants have returned to their homes but there are still one million illegal Afghan immigrants in Iran who have either overstayed their legal stay or entered Iran illegally with the assistance of organised criminal smuggling groups.

Due to Iran’s particular location as a bridge between Asia, Europe and the Middle East, people are both trafficked into Iran from Afghanistan, and trafficked through Iran to the Arabian Peninsula and the southern Mediterranean region. Statistics indicate that trafficking of people both into and out of Iran is on the increase.

Recent newspaper reports, supported by the declarations of judicial and law enforcement officials, acknowledge the existence of organised criminal networks involved in the trafficking of narcotics, and small arms as well as people. In this context, of particular concern are reports of trafficking of children (Afghans, as well as Iranians) from Iran to the Persian Gulf Region

littoral states for both camel riding/racing and sexual exploitation, as well as from Iran to Pakistan and Afghanistan for drug trafficking. The data is indicative of weak border management as well as established human trafficking networks, particularly along the Afghan border with Iran and Pakistan.

Recent policy initiatives

In recent years, Iran has made progress in combatting migrant smuggling and trafficking in persons at national, regional and international levels.

- **Legislation:** In 2004, the Iranian Parliament ratified a law prohibiting trafficking of persons and other laws to punish both migrant smugglers and illegal migrants.
- **Prosecution:** Iran has increased its law enforcement efforts against trafficking and smuggling. A woman and her accomplice husband, for example, were arrested and convicted for trafficking young girls and women to work in a brothel in Qazvin, as were 20 members of a human trafficking ring in the city of Bileh Savar. During 2004, the Iranian Border Force arrested over 253 Pakistanis smuggled into Iran, some of them seemingly victims of trafficking. According to the local newspapers, in August 2007 police arrested a group including 15 Uzbek women and 10 Iranian men who were trafficking women for the purpose of sexual exploitation from central Asian countries to Arabian countries like UAE and Qatar through Iran. And in September 2005, domestic media reported the Tehran police chief as stating that eight human trafficking networks smuggling mostly Bangladeshis, Afghans

and Pakistanis had been broken up and their members arrested.

- **Protection:** The Iranian State Welfare Organization assists victims and those at risk of trafficking through mobile and fixed social emergency centres. These centres provide counselling, legal services and health care. The State Welfare Organization also manages temporary shelters for ‘troubled women’ and facilities for young runaway girls that are available to victims of trafficking as well.²
- **International initiatives:** While Iran has become party to several of the relevant Conventions, it has not signed some others. It has however signed separate Memoranda of Understanding with the International Organization of Migration and the International Labour Organization to enhance the capacity of its institutions in combatting human trafficking and on security cooperation with Turkey and Afghanistan focusing, among other things, on campaigns against human trafficking at bilateral and regional levels.

Have these policies been effective?

Despite the growing awareness and the increasing literature on this subject, available information in Iran about the magnitude of the problem remains limited. The lack of awareness about the differences between migrant smuggling and trafficking in persons, insufficient information about the causes of all forms of irregular migration and suspicions and reservations towards multilateral cooperation have hindered effective action against these crimes over the past decade in Iran.

Many countries punish unauthorised arrivals and do not offer protection for victims of trafficking but it is unfair when a victim is treated the same as a criminal offender. Detention and deportation should not be

applied for a victim of trafficking. Due to the lack of appropriate laws to respond to these crimes, there is evidence that most countries – including Iran – treat both victims and criminals in the same way. Iran's new law against human trafficking, in conjunction with the prohibition against the trafficking of children, has enhanced Iran's overall abilities to combat most forms of human trafficking but protection measures for trafficking victims are still weak. Iran therefore urgently needs to:

- implement existing laws and detection training programmes for law enforcement officers

- conduct information campaigns to educate potential victims about the risks and realities of irregular migration
- provide shelters for those captured in trafficking groups
- train border and law enforcement officers in the differences between the two crimes and how to distinguish victims from criminals.

Meanwhile, it is better to treat all illegal migrants as potential trafficking victims until investigations prove otherwise.

Nasim Sadat Hosseini-Divkolaye (na_hosseini@yahoo.com) is an MA graduate in International Law and is International Affairs Specialist at the Iranian Blood Transfusion Organization (<http://www.ibto.ir>).

1. According to the UN Protocol on Trafficking, trafficking is defined as '...the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of abduction, fraud, deception, coercion, or the abuse of power or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation...' and in the smuggling protocol, smuggling is defined as '...the procurement of the illegal entry into or illegal residence of a person in a State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit.'

See also FMR25 'People trafficking: upholding rights & understanding vulnerabilities', June 2006 at <http://www.fmreview.org/peopletrafficking.htm>
2. <http://www.behzisty.ir/>

Protection of civilians: conference and resources

On 22-24 September 2009 the Refugee Studies Centre, in collaboration with the Humanitarian Policy Group at the Overseas Development Institute, is organising an international conference on the theme of **Protecting People in Conflict and Crisis: Responding to the Challenges of a Changing World**. Venue: Oxford, UK.

The conference will convene a broad range of academic researchers, humanitarian practitioners, policy makers and civil society representatives to review the state of policy and practice in the broad field of humanitarian protection as we look forward into a potentially turbulent 21st Century.

Keynote lectures, plenary discussions and expert panel debates, paper sessions and practice updates will focus on:

- populations at risk: surviving and responding to protection threats
- concepts of protection
- the politics of protection
- protection, security and the roles of military and armed actors
- national and regional responsibilities to protect
- protection in practice

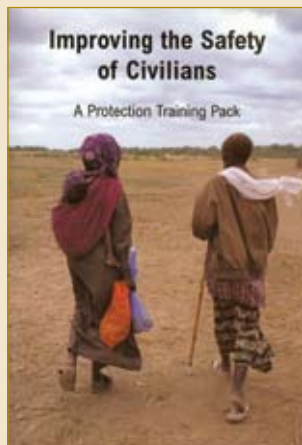
The full call for papers, plus information on submitting abstracts, is online at http://www.rsc.ox.ac.uk/conf_conferences_210909.html

New Oxfam publications on protection of civilians

Improving the Safety of Civilians: A Protection Training Pack

Sophia Swithern & Rachel Hastie. Dec 2008. 176pp. £19.95. Free online (English only) at <http://tiny.cc/OxfamProtectionPack>

This training pack is intended to help humanitarian workers to improve the safety of civilians being subjected to violence, coercion, or deliberate deprivation. The pack includes modules on: What is protection?; Planning a programme; Mainstreaming protection; Programming for protection.



The activity sessions within the modules cover topics as diverse as international standards for civilian protection, objective setting, indicators and monitoring, humanitarian negotiation, coordination and alliance building, reducing the risk of sexual violence and advocacy for humanitarian protection. Print version includes accompanying CD.

Designed for use by experienced facilitators, who have some knowledge of protection issues, to train emergency-response teams.

For a Safer Tomorrow: Protecting Civilians in a Multipolar World

Edmund Cairns. Sept 2008. 148pp. £12.95.

Available in English, Spanish and French.

Free online at <http://tiny.cc/OxfamSaferTomorrow>



Many people feel that there is little that can be done to prevent the brutal targeting of civilians that characterises modern warfare. This report, based on Oxfam International's experience in most of the world's conflicts, sets out an ambitious agenda to protect civilians through combining local, national, and regional action with far more consistent international support.

RAISE

Reproductive Health Access, Information and Services in Emergencies

Reproductive health-care provision in emergencies: preventing needless suffering

Maaïke van Min

The provision of comprehensive reproductive health supplies and services in all situations would help prevent many unnecessary deaths of women and babies.

July 2007, eastern Democratic Republic of Congo (DRC): A woman has been in labour for three days. The child is obstructed; the mother, in unbearable pain, has been trying to reach the main district hospital for the last 48 hours – on foot at first, and then by boat, the engine of which has broken down in the middle of the lake. The woman and other passengers are stuck, floating aimlessly. There are no toilets, no food and no fresh drinking water on board.

By sheer coincidence, a team of NGO medical staff, including a midwife, are on a motorboat going to one of

the health clinics accessible only by water. The passengers on the drifting boat flag down the motorboat, and the woman in labour is brought on board. The NGO midwife assesses the situation and immediately decides to head to the district hospital. The baby has long since died. The woman is alive, however, and a team in town is radioed to prepare a car at the port.

One hour later the motorboat arrives at the port. The woman in labour gets into the car and in hospital a mere 10 minutes later. The hospital is the reference hospital for a large area; it has been supported by an

international NGO for years, and is run by the Ministry of Health. Although the hospital is understaffed and has faulty electricity supplies at best, doctors are standing by to help the labouring woman – but there are no sterile surgical supplies, no anaesthetic or antibiotics, no IV bags or tubing. The woman died.

The hospital was accessible, doctors were available – so what went wrong?

The logistics of crisis

By their very nature, humanitarian crises render vital services and supplies inaccessible. In conflict areas, lack of security may be only the first of several major obstacles. For example, as the supply chain lengthens to circumvent dangerous areas, the cost of supplies and services increases. For these reasons, planning and coordinating the logistics of programme response are crucial.¹ Indeed, through such efforts as pre-positioning, strategic location of warehouses, chartering planes and improving on-the-ground collaboration, the humanitarian community has made progress in addressing logistics planning for needs such as food, water, shelter and some medical care.

Yet despite these efforts, comprehensive reproductive health (RH) services and supplies are not generally prioritised at the level of other key emergency medical interventions. Comprehensive RH care encompasses emergency obstetric care, including the provision of family planning methods; responses to gender-based violence; services to mitigate the effects of unsafe abortion; and the prevention and treatment



Logging RH supply needs in DRC



Woman and child, DRC.

of sexually transmitted infections, including HIV/AIDS. Every year, for lack of emergency obstetric care alone, more than 500,000 women die – including some 170,000 in situations of humanitarian emergency – and many more are permanently disabled. Lack of comprehensive RH care is also a major cause of neonatal deaths.

The ‘Three Delays’ model provides a framework explaining why women die in pregnancy.² The first delay is the time that the family or the community takes to recognise the need to seek medical intervention; the second is the delay experienced getting to the health facility; and the third delay occurs in getting appropriate care at the facility itself. In the case described at the beginning of this article, the patient was delayed in seeking care and in reaching the facility. Once she arrived at the hospital, skilled providers were available; yet without essential supplies and equipment they were unable to save her life.

Some humanitarian actors do have processes in place to facilitate the

availability of key RH supplies. For example, the United Nations Populations Fund (UNFPA) has developed an RH kit for emergencies, targeted for use in the initial phase of the emergency.³ But UNFPA must sometimes depend on other agencies to deliver these RH emergency kits, as transfers in-country may be lengthy, complex and/or prohibitively expensive. Without commitment from other humanitarian actors, RH supply and service provision often remains minimal or effectively unavailable.

Other key logistics players in humanitarian settings may not view RH supplies and services as priority interventions in humanitarian crises. For example, recipient governments may not include life-saving RH supplies in their logistics planning efforts. Some cheap and effective drugs

for the management of RH conditions are not currently registered for these uses on the World Health Organization (WHO) Essential Drugs List or not included by governments in their own essential drugs lists. And governments sometimes obstruct customs clearance for vital RH supplies or otherwise delay humanitarian response.

Overcoming challenges

Making the right RH supplies accessible at the onset of an emergency is paramount if humanitarian actors are serious about saving lives and treating the beneficiaries with the dignity they deserve. The challenges of getting RH supplies to emergency settings are great, and solutions must be devised at field, headquarters and government levels, including the need to:

- broaden governmental and WHO support: RH organisations must work with WHO and governments to ensure that appropriate medication and RH supplies are included on essential drug lists.
- coordinate with logistics actors: RH organisations must collaborate with other major humanitarian actors, especially those involved in first response and logistics efforts such as pre-positioning supplies. They must ensure that RH commodities become a standard item on early flights out to any emergency.
- engage with donors: humanitarian actors must work closely with major donors to emphasise the need for shifting from the Minimum Initial Service Package (MISP) for RH in crisis situations towards comprehensive RH care as quickly as possible. Although some key donors do understand the importance of logistics, many have yet to recognise the vital role of RH products and therefore fail to include them in the pre-positioning of humanitarian goods.
- expand current efforts to provide RH care: humanitarian actors who are currently making occasional or partial efforts to incorporate RH supplies into emergency response must be encouraged to prioritise these services and supplies.

The provision of comprehensive RH services in all situations would make it possible to prevent many unnecessary deaths. Humanitarian actors must work to ensure that this universal human right is approached with the same level of urgency and foresight as are other aspects of humanitarian crisis.

Maaïke van Min (Maaïke. vanmin@mariestopes-org.be) is an Advocacy Manager for the RAISE Initiative (<http://www.raiseinitiative.org>) in the Marie Stopes International Brussels office.

1. See FMR 18 ‘Delivering the goods: rethinking humanitarian logistics’, September 2003, <http://www.fmreview.org/FMRpdfs/FMR18/fmr18full.pdf>

2. Thaddeus, S and Maine, D ‘Too far to walk: maternal mortality in context’, *Social Science & Medicine* April 1994, 38(8):1091-110.

3. Visit www.unfpa.org/emergencies/manual/2.htm for an overview of content of the UNFPA RH emergency kit and a description of the Minimum Initial Service Package (MISP); MISP also available online at <http://misp.rhrc.org/>

On the money

Vicky Tennant and Franziska Troeger



Can cash grants support the voluntary repatriation and reintegration of refugees?

Recent years have seen a growing interest in the use of cash grants as a tool for humanitarian assistance and as a component of social protection programmes. After major emergencies such as the Indian Ocean tsunami and the Pakistan earthquake, cash-based interventions provided a flexible and cost-effective form of support.

A three-year research project carried out by the Humanitarian Policy Group concluded in early 2007 that “a strong body of evidence is starting to emerge to indicate that providing people with cash or vouchers works”.¹ Cash is often cheaper than in-kind assistance, provides more choice to beneficiaries who are empowered to determine their own needs, and is likely to have a multiplier effect owing to the injection of cash into the local economy.

While highlighting that cash should not be seen as a universal panacea, the study recommended that cash transfers need to be seen as “part of the toolbox of humanitarian response, as both a complement and in certain circumstances, an alternative, to in-kind assistance”. Significantly, many aid agencies and donors have now developed operational guidelines on the use of cash grants.

Cash transfers have formed part of UNHCR’s protection and assistance programmes for many years, primarily in urban refugee settings and in repatriation operations. A recent example of the former can be seen in Syria, where cash grants are distributed to vulnerable Iraqi refugees in Damascus using an ATM system. Cash grants have also been extensively used since the early 1990s in UNHCR operations supporting the voluntary repatriation and reintegration of refugees. More than 900,000 Afghan refugees returned home from Pakistan with cash assistance in 1990-93, as did 370,000 Cambodian refugees returning from Thailand in 1992-93 and 43,000 returning Guatemalan refugees in 1992-97. More recently,

some 4.4 million Afghan refugees have returned to Afghanistan since 2002 from Pakistan and Iran with cash assistance. At the beginning of the operation, returnees also received non-food items (NFIs) but it was found that the costs of procurement, warehousing and distribution were prohibitive and that in any case returnees tended to monetise the items to meet their immediate needs. Accordingly, NFIs were phased out and the level of the cash grant increased. It now consists of a transport component and a fixed amount per person for reintegration purposes.

A recent assessment confirmed that the primary impact of the cash grant in Afghanistan has been in providing families with disposable income to enable immediate reintegration costs to be met, with food, transport and shelter coming top of the list. However, in general it does not address longer-term reintegration needs, nor protection issues. Accordingly, UNHCR has also maintained an extensive reintegration programme inside Afghanistan.

Future developments

A workshop to review the use of cash grants in UNHCR voluntary repatriation operations, held in Geneva in 2008, concluded that the use of cash grants was indicative of a considerable shift from a standardised approach to demand-oriented assistance, and was a valuable tool for providing beneficiaries with more control over the use of assistance, and a sense of independence and dignity.² Participants nonetheless emphasised the importance of a comprehensive needs assessment, including a situational analysis, an assessment of household productive capacity and a rapid assessment of local markets. The need to supplement cash grants with other interventions was also emphasised.

Measures to ensure the safety of staff and partners involved in transporting and delivering cash also have to be put in place. However, security risks

are context-specific and cash does not necessarily entail more risks than in-kind assistance. A range of distribution mechanisms can be considered, including remittance companies, money traders, sub-contracted banks and local cooperatives, as well the use of new technologies such as mobile phone transactions.

Cash grants may also have a positive protection impact, and can play a role in the empowerment of women, provided that it is part of a broader approach to promote gender equity.

UNHCR is currently evaluating the impact of its cash grants of 50,000 Burundian francs per person for Burundian returnees from refugee camps in Tanzania introduced in mid-2007. This marked a significant increase in assistance under the programme, which has been ongoing since 2002. The evaluation should therefore enable a comparative assessment in progress towards reintegration made by returnees returning with cash grant assistance, and those without.

Vicky Tennant (tennant@unhcr.org) is a Senior Policy Officer in UNHCR’s Policy Development and Evaluation Service. Franziska Troeger (franziskatroeger@gmail.com) is a former UNHCR intern.

1. ‘Cash-based responses in emergencies’ Paul Harvey, HPG Report 24, January 2007, Humanitarian Policy Group, Overseas Development Institute, London 2007

2. The report is at <http://www.unhcr.org/research/RESEARCH/48ecb2e32.pdf>

Witchcraft, Displacement and Human Rights Network

<http://maheba.wordpress.com/>

Following the high levels of response to Jeff Crisp’s article on ‘Witchcraft and displacement’ in the last issue of FMR (<http://www.fmreview.org/FMRpdfs/FMR31/74.pdf>), the Policy Development and Evaluation Service in UNHCR has created an informal network where information about new developments, research and news related to witchcraft can be shared. If you are interested in participating please email Maria Riiskjaer at riiskjae@unhcr.org



Brookings-Bern Project on Internal Displacement

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Internal displacement and peacebuilding in Colombia

Elizabeth Ferris

The advances in laws related to IDPs have not addressed the relationship between internal displacement and peacebuilding in Colombia.

A seminar held in Bogotá in November 2008 brought together representatives of the Colombian government, IDP associations, civil society organisations, donors, UN agencies and academic researchers to explore the relationship between Colombia's protracted IDP situation and transitional justice processes currently underway. It was organised by the Brookings-Bern Project on Internal Displacement, the Swiss Federal Department of Foreign Affairs and the Pontificia Universidad Javeriana. Some of the themes which emerged in the discussions were:

Displacement and peacebuilding are connected. Sustainable peace in Colombia cannot be achieved unless and until the displacement of some three million displaced Colombians is brought to an end. Yet ending displacement depends on establishing peace and security in the country. Peacebuilding – even while people are still being displaced – is both a challenge and a necessity.

IDPs need to participate in the processes which affect their lives. Participants stressed the importance of developing and implementing mechanisms to ensure the involvement of IDPs not only in transitional justice and peacebuilding but also in decisions about humanitarian assistance and durable solutions. There are over 100 national associations of IDPs, of various kinds, but participants stressed the fact that these associations still face difficulties. For example, IDP associations are often urban-based while much of the displacement occurs in rural areas. The importance of securing the representation of women, both in

IDP associations and in consultative mechanisms, is particularly important yet remains a challenge. Additionally, a large number of IDP associations receive constant threats and several of their leaders have been murdered.

IDPs have been among the main victims of the conflict in Colombia and this should be recognised. It has often been very difficult for civilians to maintain their neutrality in a conflict where armed actors on all sides have systematically been urging them to participate in the hostilities. While IDPs are certainly not the only victims of the conflict, they have specific needs related to their loss of property, livelihoods and communities.

Relations between IDPs and other victims' groups have sometimes been strained. The longer displacement continues, the more conflict there will be between different victims' groups and the more conflict there will be over the amount of reparations. The sheer number of displaced people – between three and four million – also represents a significant technical challenge to developing a viable reparations system which is able to include IDPs.

Land is central both to achieving sustainable peace and to ending displacement but is a complicated issue in Colombia, given the intense concentration of land ownership in the hands of a few and the wide variety of relationships of people to the land. There have long been disputes over land in Colombia but the conflicts themselves are changing the patterns of land usage and productivity.



Finding durable solutions for IDPs is the most urgent (and most difficult) task facing the Colombian government. There is no consensus on what the durable solution should be and while most IDPs would like to return, many seem to have given up hope of doing so. Conditions in the countryside, particularly the lack of security, make large-scale returns impossible at the present time.

Progress on transitional justice both affects and is affected by durable solutions for IDPs. Yet, policies toward IDPs and for transitional justice are being implemented on parallel tracks. In some cases, IDPs are competing with other victims for attention. There is also resentment at the imbalance between resources available to perpetrators of crimes and to IDPs as victims. At the same time, there is fear that de-mobilised paramilitaries are joining new armed groups which in turn can displace people.

Elizabeth Ferris (eferris@brookings.edu) is Senior Fellow and Co-Director, Brookings-Bern Project on Internal Displacement (<http://www.brookings.edu/idp>). The full report of the meeting is available at: http://www.brookings.edu/reports/2009/0225_colombia.asp

The Embera people of northern Colombia suffer a very high rate of forced displacement that threatens their social and familial unity.

One last chance for Colombia's victims

Jacob Rothing and Richard Skretteberg



**NORWEGIAN
REFUGEE COUNCIL**

While the number of new IDPs in Colombia is expected to reach record levels, prevention policies are failing and reparation initiatives have been blocked.

This grim scenario has unfolded amidst a regrouping of paramilitary groups and disputes between the ELN¹ and the FARC², involving repeated attacks on civilians, sexual violence and child recruitment. Military efforts to control territory and eradicate coca crops have only exacerbated a dire situation and contributed to the massive displacement unfolding. Though there is little scope for optimism given the continuous infractions of international humanitarian law, state prevention policies could have a significant impact in reducing the risk to civilians.

New displacement is the best indicator for measuring the human impact of the Colombian conflict. The government registered 270,000 new IDPs in 2007. The NGO CODHES³ estimated that an equal number would be requiring registration in the first six months of 2008 alone. This huge number has attracted the special attention and concern of the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, John Holmes, and the Secretary-General's Representative on the Human Rights of Internally Displaced Persons, Walter Kälin, both of whom recently visited the country. In the words of Norwegian Refugee Council Secretary General Elizabeth Rasmussen, who recently travelled to some of the hardest hit regions of the Pacific Coast, "new displacement strikes at the most vulnerable groups: women, children and ethnic minorities. Civil society and government must unite to shield them and guarantee them access to humanitarian assistance."

The government's current strategy for protecting citizens has proved inadequate and urgently needs to be re-designed. While UNHCR has made some noteworthy

recommendations,⁴ a first step would be to pay closer attention to the Colombian Ombudsman's Office's Early Warning System, which detects situations of imminent risk to the civilian population and suggests ways to prevent attacks and abuses. The government also needs to find a way to avoid blurring the distinction between civilians and combatants and keep civilians away from hostilities.

Durable solutions to displacement are directly related to transitional law and negotiated solutions. Colombia's Justice and Peace Law of 2005 facilitated the demobilisation of some paramilitary troops and emphasised the importance of addressing victims' needs. It also sought to remove the incentives for land grabbing, which fuels the conflict.

Two important pro-victim initiatives were launched in 2008. Firstly, the president issued a decree which offered compensation to some victims of paramilitary and guerilla attacks.⁵ Secondly, through wide consultation with victims of guerrilla, state and paramilitary abuses alike, as well as through dialogue between civil society organisations and congress, an unprecedented Victim's Law was introduced promising reparation. But the presidential decree – which excluded state-commissioned crimes and property-related crimes – has yet to be implemented. And the Victim's Law was seriously weakened by a government alliance arguing for budgetary limitations and then blocked by a disappointed opposition.

Notwithstanding these failures, 2009 offers another chance to address the consequences of the violence. The National Restitution Plan which tackles the issue of restitution of stolen property and aims to facilitate large-scale returns will, in mid 2009, be voted on by the National

Reparation and Reconciliation Commission. Developed through dialogue between civil society organisations and state institutions with the support of UNHCR and NRC, the National Restitution Plan provides for durable solutions in keeping with the spirit of the paramilitary negotiations previously carried out by the Uribe government. Unless the Commission votes in favour of the current version, which includes many of the essential features of the Victim's Law, the government's commitment to policies providing for reparation will ring hollow and the notion of transitional justice in the midst of warfare will have foundered.

Jacob Rothing (jacob.rothing@nrc.org.co) is an advisor to the Norwegian Refugee Council in Colombia and Richard Skretteberg (richard.skretteberg@nrc.org.no) is a senior adviser in the Advocacy and Information Department with the Norwegian Refugee Council in Norway (http://www.nrc.no).

1. Ejército de Liberación Nacional – Nacional Liberation Army

2. Fuerzas Armadas Revolucionarias de Colombia – Revolutionary Armed Forces of Colombia

3. www.codhes.org

4. Introducción y conclusiones. *Balace de la política pública de atención integral a la población desplazada por la violencia, 2004-2006* Available in Spanish at <http://www.acnur.org/biblioteca/pdf/4901.pdf>

5. Presidential Decree 1290 of 2008

The Norwegian Refugee Council (NRC) works to provide assistance and protection to refugees and displaced people in Africa, Asia, Europe and the Americas. www.nrc.no/engindex.htm

The Internal Displacement Monitoring Centre (IDMC) is part of NRC and is an international non-profit organisation that monitors internal displacement caused by conflicts.

www.internal-displacement.org

Contact : IDMC, 7-9 Chemin de Balaxert, 1219 Chatelaine, Geneva, Switzerland. Email: idmc@nrc.ch

Stateless former farm workers in Zimbabwe

Katinka Ridderbos

Several hundred thousand people of foreign ancestry who used to work on white-owned commercial farms in Zimbabwe are stateless, jobless and either displaced or at risk of displacement.

Xenophobic government policies designed to drive out farm owners and undermine the political opposition have left large numbers of farm workers with nowhere to go.

By 2000, Zimbabwe's President Mugabe and his ZANU-PF party were facing, for the first time since independence in 1980, significant political opposition. With a crucial presidential election coming up in 2002, ZANU-PF responded by announcing a fast-track land reform programme, which provided for the forcible acquisition of (mostly white-owned) commercial farms.

The government also brought in the Citizenship Amendment Act of 2001. This Act introduced a prohibition on dual citizenship, so that people with dual nationality would automatically lose their Zimbabwean citizenship unless they renounced their foreign citizenship. The Act's main aim was to disenfranchise the estimated 30,000 white Zimbabweans, many of whom held British passports and who were accused by ZANU-PF of using their dual citizenship to discredit the ZANU-PF regime abroad and of bankrolling the opposition Movement for Democratic Change (MDC). People who opposed – or were thought to oppose – ZANU-PF's rule were seen as enemies of the state who had no legitimate claim to Zimbabwean citizenship.

These measures affected not only white Zimbabweans but also hundreds of thousands of farm workers, including in particular the many farm workers who were of foreign descent. This was no accident; farm workers were perceived to be under the sway of their (white) employers, themselves seen as MDC supporters. As a result, farm workers were thought to be

as much of a threat to ZANU-PF as the white farmers themselves.

In January 2000, prior to the start of the fast-track land reform programme, an estimated two million farm workers, seasonal workers and their families lived and worked on the commercial farms.¹ Of these, an estimated one million people (200,000 farm workers and their families) are thought to have lost their homes and their jobs as a direct consequence of the land reform programme.

About 30% of the original two million farm workers and their families were of foreign descent. These were mostly second- or third-generation immigrants whose parents or grandparents had moved to Zimbabwe (or the former Rhodesia prior to independence in 1980) as migrant labourers from Malawi, Zambia or Mozambique. Prior to the introduction of the Citizenship Amendment Act, many of these 'foreign' farm workers had been entitled to Zimbabwean nationality under the country's Constitution and the Citizenship of Zimbabwe Act. Indeed, many of them had lived in Zimbabwe their entire lives and had no formal links with the countries of their ancestral origin.

Nevertheless, as a result mainly of bureaucratic obstacles and high levels of illiteracy among these 'foreign' farm workers, few had ever acquired Zimbabwean citizenship documents, or even any identity documents such as birth certificates. The Citizenship Amendment Act left many of them at risk of statelessness. While the Zimbabwean authorities treated them as if they were in possession of a second nationality, the countries of their supposed foreign citizenship did not in fact regard them as citizens. Other 'foreign' farm workers were



simply not aware that they had to renounce the foreign nationality to which they may have been entitled due to their foreign ancestry. Even if they knew, the administrative burdens of the process of renouncing it often posed too great an obstacle.

At the same time, because their ancestors came from outside Zimbabwe, when these workers lost their homes on the commercial farms they had no ancestral homes in Zimbabwe to which they could return. As a result, many farm workers of foreign descent are stuck: they continue to live on the farms where they used to be employed but, with their former employers having been driven off the land, they are essentially squatting in their own homes and are at constant risk of forcible displacement by the new farm owners. They are among the most vulnerable people in Zimbabwe today, without livelihoods, with little or no access to social services, and with no support structures to fall back on.

Katinka Ridderbos (katinka.ridderbos@nrc.ch) is Country Analyst (Sudan, Uganda and Zimbabwe) at IDMC (<http://www.internal-displacement.org>).

1. IDMC, 'The Many Faces of Displacement: IDPs in Zimbabwe', August 2008 www.internal-displacement.org/countries/Zimbabwe, p32.

40-page special FMR issue on 'Ten Years of the Guiding Principles on Internal Displacement' available in English, Arabic, French and Spanish. For hard copies, please email fmr@qeh.ox.ac.uk.



Online at: <http://www.fmreview.org/GuidingPrinciples10.htm>

Summary of results of FMR Reader Survey 2008

A readership survey form was distributed with FMR31 to all regular readers in all four languages - English, Arabic, French and Spanish. Each FMR language edition website also had a link to an electronic version of the survey.

The total number of responses (the printed and the electronic combined) was 244 in English (3.3% of regular readership), 12 in French (0.5%), 53 in Spanish (3.8%) and 67 in Arabic (3.1%). This is a slightly higher level of response than to the survey in 2004. The small number of French language responses was disappointing.

The Editors are very grateful to all the people who took the time and trouble to fill in this survey.

The profile of FMR readers

The largest constituencies for FMR belong to international agencies (UN, Red Cross/Red Crescent and international NGOs), academic institutions and local NGOs. A small but significant number of respondents work in government agencies.

The readership is very diverse within the hierarchies of all organisations represented, from students to professors, from project officers to executive directors, and so on.

Access to FMR

Both the online and the printed versions of all four languages are widely read. The most significant finding is that over 70% of respondents share their printed copies: slightly more than half share it with between two and five others, while slightly fewer than half share their copy with more than five others.

While we cannot know exactly from responses to the survey how many people read FMR, it is clear that the actual readership is many times the number that are printed and distributed,¹ especially if we add the large number who access it online.

Utilisation of FMR

Research and background reference were the most common reported uses, with material for advocacy and teaching the next most common. Some readers use FMR to help keep them up-to-date or for general interest but there are others who use its contents to support their proposal writing or programme development.

The survey also asked respondents to say whether they look back at previous issues and the majority do, with research being the most common reason for doing so. The claim that FMR has a long shelf-life is substantiated by these responses.

FMR's content and style

Responses overwhelmingly agreed or agreed strongly that FMR's range of subjects, themes, range of authors, balance between reflective and more practice-oriented articles, and design and production qualities are good.

Respondents were asked for their suggestions for themes to be covered in the future; some interesting ideas

emerged that we will take up in considering themes for future issues.

Respondents were also asked if they were interested in contributing articles to FMR. 150 people responded with their suggestions, indicating a high level of engagement.

FMR website

The FMR website (incorporating all four language websites) is widely used and for nearly half of the respondents it is their primary internet source of information on forced migration. The great majority find the FMR website easy to use, and there was general enthusiasm for the indexing of articles that is currently being made available on the site. There were a few additional suggestions for us to consider as the website continues to be developed.

The most common use for the website was research, although many people also use it to read FMR online. Of the currently more than 1,700 individuals who receive our occasional email 'alerts' (telling them when new issues or calls for articles are posted online), some 1,350 of them do not receive print copies but rely on the internet to access FMR.

Other comments

At the end of the survey there was an opportunity for 'other comments'. 101 people took up this opportunity, with the majority of comments being very positive and appreciative; to receive such compliments on the quality, value and usefulness of FMR is very encouraging.

Lessons

A survey such as this cannot show the impact of the magazine except anecdotally. That said, the answers to this survey encourage us to continue broadly along the same lines, seeking strategically important themes for the magazine; retaining a reasonable balance between the parts of the magazine devoted to the feature theme and to general articles; maintaining a wide range of authors; and striving to continue to appeal to a broad range of readers in geography, affiliation, level of seniority, and in terms of activity.

The investment in the website is obviously worthwhile, and the survey results indicate a number of ways for continuing to improve it, and encouragement to do so.

A few respondents encouraged us to seek more authors and to have more themes or articles from 'the South'. These comments show that our efforts along these lines need to be maintained and enhanced. It should help us that the survey also shows the willingness of our readership to engage and contribute to FMR.

The full report is available on the website at <http://www.fmreview.org/2008survey.pdf>

1. Print runs vary from one issue to another but they are approximately 12,000 in English, 3,000 in Arabic, 2,500 in French and 1,800 in Spanish.

Forthcoming RSC events, courses and conferences in 2009 (all held in Oxford)

21st annual Elizabeth Colson lecture Wednesday 20 May, 5pm

Venue: Magdalen College Auditorium,
Oxford OX1 4AU

'Fractures and Flows. Africa, Elizabeth Colson and
the Current Global Meltdown'

by Carolyn R Nordstrom, Professor of
Anthropology at the Kellogg Institute for
International Studies, Notre Dame University.

All welcome. For further information please
contact katherine.salahi@qeh.ox.ac.uk

Workshop: A non-negotiated solution to the Colombian conflict? The implications for sustainable peace and democracy

21–22 May

Organised jointly with the Department of Peace
Studies, University of Bradford.

Details at [http://www.rsc.ox.ac.uk/conf_](http://www.rsc.ox.ac.uk/conf_conferences_0908.html)
[conferences_0908.html](http://www.rsc.ox.ac.uk/conf_conferences_0908.html) For further information,
contact sean.loughna@qeh.ox.ac.uk

Workshop: Humanitarian action in Somalia: expanding humanitarian space

8–9 June

Details at [http://www.rsc.ox.ac.uk/conf_](http://www.rsc.ox.ac.uk/conf_conferences_0609.html)
[conferences_0609.html](http://www.rsc.ox.ac.uk/conf_conferences_0609.html) For more information,
contact simon.addison@qeh.ox.ac.uk

International Summer School in Forced Migration

6–24 July

Residential course at Wadham College and the
Oxford Department of International Development.

The RSC summer school offers an intensive,
interdisciplinary and participative approach to
the study of forced migration. It enables people
working with refugees and other forced migrants to
reflect critically on the forces and institutions that
dominate the world of the displaced. Closing date
for applications: 1 May.

See [http://www.rsc.ox.ac.uk/teaching_summer.](http://www.rsc.ox.ac.uk/teaching_summer.html)
[html](http://www.rsc.ox.ac.uk/teaching_summer.html) or contact katherine.salahi@qeh.ox.ac.uk

Conference: Protecting people in conflict and crisis: responding to the challenges of a changing world

22–24 September

Organised by the RSC in collaboration with the
Humanitarian Policy Group at the Overseas
Development Institute, this conference will convene
a broad range of academic researchers, humanitarian
practitioners, policymakers and civil society
representatives to review the state of policy and
practice in the broad field of humanitarian protection
For further information see page 67,
visit [http://www.rsc.ox.ac.uk/conf_](http://www.rsc.ox.ac.uk/conf_conferences_210909.html)
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or email simon.addison@qeh.ox.ac.uk

FMR International Advisory Board

Although the Board members' institutional affiliations are listed below, they serve in an individual capacity and do not necessarily represent their institutions.

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Thank you to all our donors in 2008-2009

FMR is wholly dependent on external funding to cover all of the project's costs, including staffing. Our expenditure in our last financial year (1.8.07-31.7.08) totalled approximately £340,000 / US\$495,000. We are deeply appreciative to all of the following donors both for their financial support and their enthusiastic collaboration over the last couple of years.

Brookings-Bern Project on Internal Displacement	GTZ/German Federal Ministry for Economic Co-operation and Development	Save the Children UK
Catholic Relief Services	International Rescue Committee	Spanish Agency of International Cooperation
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Danish Refugee Council	Open Society Justice Initiative	UNHCR
Department for International Development (DFID)	Oxfam GB	UNICEF
DFAIT Canada	Reproductive Health Access, Information and Services in Emergencies (RAISE) Initiative	US Department of State, Bureau of Population, Refugees, and Migration
DHL		Women's Refugee Commission
European Union		ZOA Refugee Care
Feinstein International Centre, Tufts University		

Letter from the field

The experience of refugees in Oru refugee camp, Nigeria.



A reader of FMR, Kehinde Okanlawon, in Ile Ife, Nigeria, recently wrote to the FMR Editors:

"FMR aroused my consciousness about issues relating to the reproductive health of refugees and I decided to go to the Oru refugee camp in Ogun State to volunteer as a peer educator and work in the area of health communication in the camp." Kehinde had read in FMR about the Minimum Initial Service Package (MISP) for Reproductive Health in Crisis Situations and is now MISP-certified. He and some fellow students have written about refugees in Oru:

Oru refugee camp has hosted refugees for about 20 years. For many years there was a regular supply of contraceptives, given free to refugees, but this stopped when the camp clinic closed in 2005. Condoms are still available in the camp but women have to visit hospitals in the host community five kilometres away to get contraception – which is not free of charge.

The importance of contraceptives in poor settings such as refugee camps cannot be over-emphasized. Contraceptive use can prevent unwanted pregnancies, unsafe abortions, complications during pregnancy and maternal mortality. The availability of contraceptives and their consistent use by refugees can enlarge the choices of women in the camp. It can help reduce teenage pregnancy which has been identified as a big problem in Oru camp. It can help adolescents postpone child-bearing and enable refugees to choose to have fewer, well spaced out and healthier children. Not least, in the face of the pandemic of STIs including HIV/AIDS, condoms can help prevent these diseases.

With poverty a stark reality in the camp, some parents encourage their daughters to engage in prostitution.

"My mother would tell me that I should not come back home without bringing food and money, knowing full well that I don't have a job or any source of livelihood. You are our only hope of survival, she would say. My mother obviously expects me to sell my body for money," said a 24-year-old female refugee.

Refugees – especially women and girls – need skills and economic opportunities that can provide a source of livelihood for them. For example, hairdressing skills have been instrumental in empowering some of them to make choices in their personal lives. Female students of the University in the host community come to have their hair braided and plaited in the camp and many refugee women earn a living from this. This has offered an alternative to abusive marriages for some, while it has helped others to gain greater respect and autonomy within their homes. "I came to this camp six years ago with my husband, who is now unable to work after becoming disabled during the war in Liberia," says a mother of three. "I can now earn enough to buy food and some other basic items for my family and pay medical bills."

This is extracted from a longer article entitled 'The experience of refugees in Oru refugee camp, Nigeria' co-written by: Kehinde Okanlawon (okanlawon_kehinde@yahoo.com), a student of Obafemi Awolowo University and volunteer peer educator on Reproductive Health Issues in Oru; Titilayo Ayotunde (networthlinks@yahoo.co.uk), a PhD candidate and researcher in Obafemi Awolowo University; Agbaje Opeyemi (demogbaje2008@yahoo.com), a student of Obafemi Awolowo University, and Mantue S Reeves (mspirit@yahoo.com), a Liberian refugee resident in Oru refugee camp for the last five years, a former volunteer for the Red Cross in the camp and currently a student of Obafemi Awolowo University.