

Briefing

Ruma Mandal and Amanda Gray
International Law Programme | October 2014

Out of the Shadows: The Treatment of Statelessness under International Law

Summary

- The UN estimates that at least 10 million people are stateless, including communities excluded from citizenship for generations.
- Lacking a formal status, stateless persons are among the most vulnerable and marginalized.
- Protracted disputes over the citizenship status of communities can lead to conflict and refugee movements.
- Despite relatively low levels of participation, the UN treaties concerning statelessness continue to play a significant role.
- International human rights law adds to the protection of stateless persons and to the safeguards against statelessness, but the law is not being sufficiently observed. Further efforts to improve understanding and compliance with the existing legal framework are necessary, not new legal standards.
- In the UK, controversy has arisen over new powers to strip British citizens of their nationality even where this risks statelessness.



Introduction

It is the worst possible thing to happen to a human being. It means you are a non-entity, you don't exist, you're not provided for, you count for nothing.¹

That a person has a nationality is generally taken for granted. Yet at least 10 million people are estimated to be without nationality and, as a consequence, without a legal link to any country.² Lacking nationality, they are denied a formal identity and can find themselves excluded from society. Barred from education and employment opportunities, the stateless may also be prevented from owning property, marrying legally or even registering the birth of a child. Some may suffer prolonged detention simply because they are unable to prove who they are. Excluded from political participation, stateless persons are forced into the margins and at risk of exploitation.

This year marks the 60th anniversary of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention). This treaty, along with the later 1961 Convention on the Reduction of Statelessness (1961 Convention), has languished in relative obscurity since its adoption.³ Nationality issues triggered by the dissolution of the Soviet Union, Czechoslovakia and Yugoslavia in the 1990s led to a renewed focus on statelessness, including on the part of the UN High Commissioner for Refugees (UNHCR), the UN agency with a mandate for stateless persons.

This paper provides an overview of how international law treats situations of statelessness, both in guarding against statelessness and in protecting the rights of stateless persons.

The right to a nationality

International law traditionally afforded discretion to states in relation to their nationality practices,⁴ but this has been considerably restricted by developments in international human rights law. Article 15 of the Universal Declaration of Human Rights (UDHR) declares the right to a nationality and the right not to be arbitrarily deprived of

one's nationality.⁵ Subsequently, various prohibitions on discrimination in relation to nationality have emerged. The right to a nationality encompasses change and retention of nationality as well as its acquisition.⁶ Importantly, there is no corresponding obligation on a state to grant nationality or a right to receive a nationality of one's choice.⁷ However, as discussed further below, certain obligations to bestow or restore nationality have arisen as a consequence of developments in international human rights law and provisions found in the 1961 Convention.

Who is stateless, where and why?

Statelessness occurs in all regions and the causes are multiple. An individual may be born stateless or fall into that predicament later in life. Statelessness may arise inadvertently owing to the complexity of, or conflicts between, nationality laws, including gaps arising in cases of state succession. Statelessness can be the consequence of gender discrimination in nationality laws or of deliberate, discriminatory policies against particular communities.

Box 1: The global reach of statelessness

Countries with sizeable stateless populations include Myanmar (where around 800,000 people are stateless in the northern part of Rakhine state alone), Thailand, Côte d'Ivoire, Iraq, Syria and Latvia. In the Dominican Republic, tens of thousands of Dominicans of Haitian descent were rendered stateless in September 2013 following a decision of the constitutional court to treat them as non-nationals. In the Gulf, populations which were left out of citizenship laws at independence remain stateless and are known as *bidoon* ('without' in Arabic).

A 'stateless person' is defined in Article 1(1) of the 1954 Convention:

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

¹ Remarks by a Nubian elder in Kenya quoted in UNHCR, 'Media Backgrounder: Millions Are Stateless, Living in Legal Limbo', 2011, <http://www.unhcr.org/4e54ec469.html>.

² For latest UNHCR figures, see *Global Trends*, 2013, <http://www.unhcr.org/5399a14f9.html>, p. 31. Note the difficulties in compiling statistics on statelessness given limited data collection by governments. Some commentators question whether the UNHCR figures are too conservative.

³ As of 10 September 2014, 82 states are party to the 1954 Convention and 60 to the 1961 Convention, with 17 accessions to the former and 22 to the latter in the last three years.

⁴ See, for instance, International Court of Justice, *Nottebohm Case (Liechtenstein v. Guatemala): Second Phase*, 6 April 1955.

⁵ This right did not make its way into the International Covenant on Civil and Political Rights, except in Article 24(3) in the case of children. It is found, again with respect to children, in the Convention on the Rights of the Child and, with respect to disabled persons, in the Convention on the Rights of Persons with Disabilities, as well as in a number of regional instruments, e.g. the American Convention on Human Rights.

⁶ For example, Article 9 Convention on the Elimination of All Forms of Discrimination Against Women. See also UN Human Rights Council Resolution, A/HRC/20/L.9, 28 June 2012.

⁷ See International Law Commission, *Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)*, 3 April 1999, commentary to Article 1.

Article 2 sets out categories of people to whom the convention ‘shall not apply’, including persons enjoying rights equivalent to nationals and individuals who have committed war crimes or serious non-political crimes. The Article 1(1) definition arguably frames the concept of a stateless person for the purposes of international law generally, there being no other definition in a multilateral treaty.⁸

In spite of its apparent simplicity, issues have arisen with the interpretation of the definition,⁹ not least its apparent requirement that a negative be proven in relation to every country. This particular difficulty can be dealt with through applying an appropriate standard of proof. But there is an absence of case law to assist with interpreting the definition.¹⁰ Into this relative vacuum UNHCR has introduced a *Handbook on Protection of Stateless Persons* which looks, *inter alia*, at the scope of Article 1(1).¹¹

Recognition by governments of the benefits for social cohesion and political stability has seen a number of protracted statelessness situations resolved in the last decade.

Statelessness is often associated with refugees and the Article 1(1) definition indicates that the two categories are not mutually exclusive. Unlike refugees, however, stateless persons are not inherently in a migratory situation. Indeed, the majority have not moved across a border. Nevertheless, the extreme discrimination endured by the stateless has been identified as a significant source of refugee flows.

Recognition by governments of the benefits for social cohesion and political stability has seen a number of protracted statelessness situations resolved in the last decade. In Sri Lanka, the ‘Hill Tamils’, of predominantly Indian ancestry, were finally able to acquire Sri Lankan nationality thanks to legislative reform and a subsequent public awareness campaign.¹²

Protecting the rights of stateless persons

Box 2: Statelessness and marginalization

The Galjeel community of Somali origin has lived in Kenya since the 1930s and its members traditionally held Kenyan ID cards, voted in elections, owned businesses and enjoyed access to government services. However, measures introduced in 1989 to screen for irregular migrants resulted in many of this community losing their forms of identification and becoming stateless. They now suffer severe discrimination, with limited livelihood opportunities or education for their children.^a

^a See UNHCR, *Protecting the Rights of Stateless Persons*, 2014, <http://www.refworld.org/pdfid/4cad88292.pdf>.

With the human rights system grounded in the concept of universality, lack of nationality should not act as an automatic barrier to enjoyment of its guarantees.¹³ The reality is markedly different. In part, this is due to the practical difficulties of accessing rights without identity documents or proof of lawful residence in a country. In addition, certain key rights are reserved explicitly for nationals; notably the right of political participation and the right of entry and residence in a country. Moreover, the underlying principle of non-discrimination in international human rights law does not preclude any distinctions between citizens and others.¹⁴ Rather, differentiation is permissible so long as this furthers a legitimate objective and sits within the bounds of proportionality.

To what extent does the 1954 Convention (which includes guarantees in relation to education, healthcare and the right to work) add to the protection afforded stateless persons through human rights instruments? While many of the convention’s rights are also found in international human rights law, in some cases its standards are more generous.¹⁵ In addition, the convention contains a number of stateless-specific guarantees concerning identity and travel documents¹⁶ and, unlike certain provisions in human

⁸ The International Law Commission has asserted its customary law status; see page 49 of International Law Commission, *Articles on Diplomatic Protection with Commentaries*, 2006. Note the Council of Europe Convention on Avoidance of Statelessness in Relation to State Succession, which includes a definition of ‘statelessness’, essentially replicating the Article 1(1) definition in the 1954 Convention.

⁹ This paper does not examine the concept of the ‘*de facto*’ stateless.

¹⁰ But see *Secretary of State for the Home Department (Appellant) v Al-Jedda (Respondent)*, United Kingdom Supreme Court, 9 October 2013, which, in considering domestic powers to strip individuals of nationality, looked at whether the possibility of acquiring another nationality meant that an individual could not be stateless according to the 1954 Convention.

¹¹ UNHCR, *Handbook on Protection of Stateless Persons*, 2014. The *Handbook* was informed by expert meetings: see UNHCR, *Expert Meeting – The Concept of Stateless Persons under International Law (Prato Conclusions)*, 2010, <http://www.refworld.org/docid/4ca1ae002.html>, and *Expert Meeting – Statelessness Determination Procedures and the Status of Stateless Persons (Geneva Conclusions)*, 2010, <http://www.refworld.org/docid/4d9022762.html>.

¹² See UNHCR, *UNHCR’s Activities in the Field of Statelessness: Progress Report*, 2005, para 21, <http://www.unhcr.org/42a553922.html>.

¹³ See, for example, UN Economic and Social Council, *Final Report of the Special Rapporteur to the Sub-Commission on Prevention of Discrimination, The Rights of Non-Citizens*, E.CN.4/Sub.2/2003/23, 2003, <http://www.refworld.org/docid/3f46114c4.html>.

¹⁴ See, for example, Article 2(3) of the International Covenant on Civil and Political Rights.

¹⁵ See Laura van Waas, *Nationality Matters, Statelessness under International Law* (Intersentia, 2008); also, Part Three of the UNHCR *Handbook*.

¹⁶ For example, international human rights law does not explicitly set out a right to a passport. However, Article 28 of the convention places a clear obligation on states to provide stateless persons lawfully in their territory with a travel document, the validity of which is to be respected by other parties to the treaty.

rights treaties, its provisions cannot be derogated from in times of public emergency.

Nevertheless, human rights standards play a significant and complementary role. First, many states, particularly in regions where statelessness is prevalent, are not parties to the 1954 Convention. Secondly, many of the convention's rights are qualified by the nature of the individual's presence in the country, to the extent that related provisions in international human rights law treaties may be more helpful.¹⁷ Finally, the convention itself is silent on a number of critical issues. These include access to procedures for establishing an individual's statelessness, right of residence, obligation to bestow nationality and protection against arbitrary detention.

If not afforded the opportunity to remain in any country for a reasonable period of time, how are stateless persons to enjoy in any real sense their human rights and benefit from a secure legal status?

In the absence of mechanisms for identifying stateless persons it is difficult to see how states can fulfil their obligations under the 1954 Convention. Although no provision is made for this in the treaty, a number of countries have introduced such mechanisms, in some cases combined with asylum procedures.¹⁸

While the convention is aimed at improving the status of stateless persons, it does not oblige states to provide them with residence or nationality.¹⁹ Nor does it prohibit return to the country of origin or the imposition of penalties for illegal entry.²⁰ Collectively, this seems to perpetuate the inherent insecurity of statelessness. Mitigation does not lie in the convention's ban on expulsion; this provision is confined to those 'lawfully in' the state and is open to reservations.²¹ Removal will often be impossible anyway – without a country of nationality what state would be prepared to admit

the individual in question? Nevertheless, if not afforded the opportunity to remain in any country for a reasonable period of time, how are stateless persons to enjoy in any real sense their human rights and benefit from a secure legal status? While it may be too ambitious to construe an implicit right of (temporary?) residence from the convention's provisions, the spirit of the convention and practical considerations justify a generous approach to the question of residence.²² This is reflected in the practice of a significant number of states which provide persons recognized as stateless in their territory with permission to stay for periods of up to five years, often on a renewable basis.²³

The position of stateless persons who are habitually and long-term resident in a country, including those who were born there, is distinct. It has been argued that they are in their 'own country' for the purposes of Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR) and thus have a right to return and, consequently, remain there.²⁴ On this basis, at the very least they should be granted permanent residence. Indeed, conferral (or restoration) of nationality has been advocated as more consistent with Article 12(4) ICCPR. Statelessness determination procedures would appear to be inappropriate in these cases, with access to simple mechanisms for conferral of nationality called for instead.²⁵

Stateless persons are routinely subject to detention as a consequence of their lack of legal status and identity documentation. In many cases prolonged detention accompanies fruitless attempts by the authorities to find a country willing to admit the individual in question. Despite the silence of the 1954 Convention on this matter, states have acknowledged concerns about the risk of detention.²⁶ The general prohibition on arbitrary detention in Article 9(1) ICCPR is relevant. Arbitrariness is not evident where the detention is necessary, reasonable and proportionate.²⁷ This would seem to rule out routine detention of stateless persons, particularly if prolonged and not subject to regular review.²⁸

¹⁷ With a number of provisions only applying to stateless persons 'lawfully in', 'lawfully staying in' or with 'habitual residence' in the country.

¹⁸ The UK introduced a statelessness determination procedure in April 2013. Other examples include France, Georgia, Hungary, Italy, Spain, Mexico and the Philippines. See European Network on Statelessness, *Determination and the Protection Status of Stateless Persons*, 2013.

¹⁹ Article 32 calls on states to facilitate naturalization. Note that the 1961 Convention, discussed further below, places no general obligation on states to bestow nationality on stateless persons. However, it makes provision for the acquisition of nationality for children born stateless and provides safeguards to prevent statelessness as a consequence of loss or deprivation of nationality.

²⁰ Contrast with 1951 Convention on the Status of Refugees (Refugees Convention).

²¹ Compare Article 33 of the Refugees Convention (prohibition on *non-refoulement*) to which reservations are not allowed (save for a limited exception in Article 33(2)).

²² See UNHCR *Handbook*, para 147.

²³ See *Determination and the Protection Status of Stateless Persons*, note 18 above.

²⁴ See, for example, *Geneva Conclusions*, note 11 above, at para 26. Article 12(4) ICCPR states that 'No one shall be arbitrarily deprived of the right to enter his own country.' The UN Human Rights Committee (HRC) has interpreted 'own country' as extending beyond nationals to other people with 'special ties', including long-term residents who are stateless and have been arbitrarily deprived of the right to acquire that state's nationality. In addition, the HRC has stated that Article 12(4) includes the right to remain in one's 'own country'. See HRC, *General Comment No. 27 (Article 12, Freedom of Movement)*, 1999, CCPR/C/21/Rev.1/Add.9.

²⁵ See UNHCR *Handbook*, para 65.

²⁶ See paragraph (w) of UNHCR Executive Committee Conclusion No. 106 (LVII) of 2006, which calls on states not to detain persons on the sole basis of their being stateless.

²⁷ See, for example, HRC, *Danyal Shafiq v Australia* (Communication No. 1324/2004), 2006.

²⁸ See, recently, European Court of Human Rights, *Kim v. Russia* (Application No. 44260/13), Judgment of 17 July 2014.

Prevention and reduction of statelessness

The 1961 Convention remains the only global legal instrument with the aim of preventing and reducing statelessness.²⁹ It does so, for example, by establishing rules for the grant of nationality at birth (Articles 1–4), making loss³⁰ or renunciation of nationality conditional upon an individual having, or having assurance of acquiring, another nationality (Articles 5–7), and prohibiting deprivation of nationality if this would result in statelessness (Article 8). The convention does, however, allow for limited (but significant) exceptions to these obligations and prohibitions.³¹ Its provisions have been supplemented by the subsequent development of international human rights law in relation to nationality.

Arbitrary deprivation of nationality

While various resolutions of the UN Human Rights Council indicate the emergence of a prohibition on arbitrary deprivation of nationality in international human rights law, based on Article 15 of the UDHR, guidance on its content in international jurisprudence appears to be lacking.³² Bearing in mind the treatment of arbitrariness in other areas of human rights law, considerations of legitimate objective, proportionality and due process would appear to be engaged.³³ The presence of discrimination has featured in the relevant resolutions of the UN Human Rights Council and in regional case law.³⁴ Such criteria would need to be assessed even where there is reliance on the permitted exceptions in the 1961 Convention. As such, international human rights law may have narrowed the scope of the convention's exceptions. Given the severe consequences of statelessness, proportionality may be hard to establish.³⁵ Some have gone further to assert that deprivation of nationality leading to statelessness is by definition disproportionate and thus arbitrary. However, the limited jurisprudence, relevant UN resolutions and state practice (in respect of legislative provisions) do not indicate that such an absolutist position has been reached.

The extent to which international law permits deprivation of nationality featured in controversy early in 2014 surrounding the amendment of nationality legislation in the UK. When it became a party to the 1961 Convention, the UK declared its intention to retain its existing powers to deprive an individual of nationality even if this resulted in statelessness. Such a declaration was permitted on the basis of Article 8(3) of the 1961 Convention.³⁶ Subsequently, the relevant domestic law was tightened so that deprivation of nationality in these circumstances could only take place if this did not result in statelessness. Amendments to the British Nationality Act (BNA) in 2014 mean that the Home Secretary is now able to deprive an individual of nationality where this is in the public good because of conduct seriously prejudicial to the UK *even if this may lead to statelessness*. This power is, however, confined to naturalized citizens. Compromises made to the government's proposals during the passage of the bill mean that this power must be reviewed periodically and can only be used where the Home Secretary has 'reasonable grounds for believing' that the person is able to acquire another nationality. At the time of writing, it remains to be seen if this power will be used against British jihadis suspected of fighting with Islamic State and other extremist groups, and whether more extensive powers will be sought.³⁷

Will the new power in the BNA stand up in international law? The UK is relying on the declaration made at the time of becoming a party to the 1961 Convention. However, critics have questioned whether this declaration continues to have effect as the UK later relinquished the very power it sought to retain through that act. If the declaration is no longer valid, the convention prevents the UK from depriving an individual of his or her nationality on the grounds of the public good where this results in statelessness, the possibility of acquiring another nationality being irrelevant. The new power to deprive may also raise issues in relation to the prohibition on arbitrary deprivation of nationality – is the objective of

²⁹ At a regional level, see the European Convention on the Avoidance of Statelessness in Relation to State Succession and the European Convention on Nationality. More generally, International Law Commission, *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*, 1999, Article 4.

³⁰ The terminology 'loss' and 'deprivation' is used according to the convention, 'loss' referring to automatic events and 'deprivation' to acts initiated by the state. This distinction may not always be clear. See UN Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, para 3, <http://www.refworld.org/docid/52f8d19a4.html>.

³¹ For example, exceptions in relation to preventing 'loss' are found in Articles 7(4) and (5), while circumstances in which deprivation may occur are set out in subparagraphs (2), (3) and (4) of Article 8.

³² Note, though, that a prohibition on arbitrary deprivation is explicitly found in the UN Convention on the Rights of Persons with Disabilities, the American Convention on Human Rights and the Arab Charter of Human Rights. Reference to such a principle of international law derived from Article 15 UDHR has been recognized by regional courts – for example, the European Court of Justice in *Rottman v Freistaat Bayern*, 2 March 2010; the Inter-American Court of Human Rights in *Caso de las Niñas Yean y Bosico v Republica Dominicana*, 2005, paras 139–41.

³³ See UN Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, note 30 above.

³⁴ See Resolution 20/5 of 16 July 2012; *Caso de las Niñas Yean y Bosico v Republica Dominicana*, note 32 above.

³⁵ See UNHCR, *Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ('Tunis Conclusions')*, 2013, <http://www.refworld.org/pdfid/533a754b4.pdf>.

³⁶ See note 31 above. Article 8(3) is concerned with acts of disloyalty and conduct seriously prejudicial to the vital interests of the state. It can only be relied on if such powers exist under the state's domestic law at the time of accession. Very few states have retained such powers when acceding to the convention.

³⁷ See House of Commons Debates 1 September 2014 c.25–38.

the deprivation disproportionate to the harm that will be suffered by the individual concerned? The UK's obligations to other states to readmit its former nationals may also be relevant (if the power is used on those abroad) and various rights under the European Convention on Human Rights quite possibly engaged.³⁸

Ensuring nationality at birth

Children may be denied nationality at birth for numerous reasons. Children of migrants may find themselves ineligible under the nationality law in their country of birth and in their parents' country of origin. Others may suffer the consequences of gender discrimination in nationality legislation; women in 27 countries, predominantly in the Middle East and North Africa, are still denied the right to pass on their nationality to their children.³⁹

Box 3: Gender discrimination in nationality laws and statelessness at birth

Despite an equality provision in the Kuwaiti constitution, Kuwaiti nationality laws prohibit married women from conferring their nationality on their children or husband, with limited exceptions. Children of Kuwaiti mothers and stateless fathers are left stateless, perpetuating the plight of the Bidoon community.^a

^a Women's Refugee Commission and Tilburg University, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, 2013.

Articles 1–4 of the 1961 Convention contain critical safeguards against statelessness by facilitating the acquisition of nationality at birth. In particular, a party to the convention is required to grant nationality to any child born in its territory who would otherwise be stateless; also, to any child who would otherwise be stateless born in a non-contracting state where one parent is that state party's

national. However, the obligations under Articles 1–4 allow states some flexibility. The state can choose to make the acquisition of nationality automatic at birth or subject to receipt of an application. The application route permits states to make acquisition conditional on satisfaction of requirements set out in the treaty. These include prescribed periods of habitual residence and lack of serious criminal convictions.⁴⁰

Articles 1–4 must now be read in the light of international human rights law, in particular the Convention on the Rights of the Child (CRC), which enjoys near-universal ratification. Articles 7 and 8 of the CRC set out a child's right to acquire a nationality and preserve his or her identity (including nationality), and prohibits unlawful interference with the child's right to preserve his or her nationality. Notably, under Article 7(1) states must register children immediately after birth, an essential step in establishing nationality through birth on the territory or descent. Article 7(2) requires states to ensure implementation of the right to acquire a nationality in accordance with their obligations under relevant international instruments, in particular where the child would otherwise be stateless. The latter is an acknowledgment of the obligations set out in Article 1–4 of the 1961 Convention, including arguably the limitations to these commitments.

How does this sit with the CRC's requirement that the child's 'best interests' be a 'primary consideration' in all state actions?⁴¹ On one view, it can never be in a child's best interests to be left stateless.⁴² Alternatively, UNHCR has taken the 'best interests' principle to mean that children are not to be left stateless for an 'extended period'.⁴³ The principle requires 'primary', and not paramount, consideration to be given to the 'best interests' of the child. Other interests, such as those of the wider community, can be taken into account, with the child's interests taking higher priority in the balancing exercise.⁴⁴ As such, the 'best interests' principle may well restrict the freedom of states to invoke the conditions set out in the 1961 Convention even if it does not preclude such reliance outright.⁴⁵

³⁸ See, for example, Guy S. Goodwin-Gill, *Deprivation of Citizenship Resulting in Statelessness and its Implications in International Law: Opinion*, 12 March 2014, <https://www.documentcloud.org/documents/1086878-guy-s-goodwin-gill-legal-opinion-on-deprivation.html>.

³⁹ See UNHCR, *Background Note on Gender, Equality, Nationality Laws and Statelessness*, 2014. See also International Campaign to End Gender Discrimination in Nationality Laws, www.equalnationalityrights.org.

⁴⁰ See, for example, Articles 1(5) and 4(2).

⁴¹ Article 3(1).

⁴² See the African Committee of Experts on the Rights and Welfare of the Child, *Nubian Minors v. Kenya*, 22 March 2011, <http://www.opensocietyfoundations.org/sites/default/files/ACERWC-nubian-minors-decision-20110322.pdf>, paragraph 42; and Open Society Justice Initiative, *Addressing Children's Right to Nationality*, 2011, <http://www.opensocietyfoundations.org/publications/addressing-childrens-right-nationality>.

⁴³ UNHCR, *Guidelines on Statelessness No. 4, Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 2012, para 11, <http://www.refworld.org/docid/50d460c72.html>.

⁴⁴ See UN Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, para 1)*, CRC/C/GC/14, 29 May 2013, para 39.

⁴⁵ Except in countries subject to higher regional standards. Article 6(4) of the 1990 African Children's Charter places on parties an absolute obligation to ensure automatic acquisition of nationality at birth for any child born on their territory who would otherwise be stateless; a similar obligation would appear to flow from Article 20(2) of the 1969 American Convention on Human Rights.

Aside from the CRC, Article 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women is also of relevance. It guarantees equal treatment of women with men in relation to nationality. However, reservations can be, and have been, made to Article 9.

Conclusion

The 60th anniversary of the 1954 Convention presents a mixed, somewhat sobering, picture of progress made in addressing the causes of statelessness and ensuring security and dignity for stateless persons. Millions find themselves without an identity or a legal status in any country, and hence deprived of basic rights and opportunities. Considering the shared origins of the relevant treaties, the relative lack of attention paid to statelessness by the international community is striking in comparison to the resources directed at the situation of refugees.

Nevertheless, a substantial international legal framework exists, with international human rights law playing a complementary role to both of the UN statelessness treaties. Low levels of ratification of these two instruments call into question their impact and continued relevance. But writing them off is premature. In recent years, concerted advocacy by UNHCR and civil society has led to a marked increase in the willingness of states to accede to these conventions

and to commit to action on statelessness. While neither convention deals comprehensively with protection or prevention, they nevertheless provide a focal point for domestic and international initiatives. Moreover, both treaties contain provisions not found in international human rights law. Continuing efforts to expand participation of states in the UN statelessness treaties is justified.

Alongside this, the promotion of best practice in implementing international standards provides a pragmatic route for state engagement. Key areas include improved birth registration, reform of nationality laws and the establishment of procedures aimed at identifying stateless persons.

UNHCR's mandate for the stateless, while broad in nature, arguably falls short of a supervisory function for the UN statelessness treaties.⁴⁶ As such, the UN (and regional) human rights mechanisms can be used to increase the visibility of the stateless and hold individual states to account.

Action to address the plight of the stateless is clearly pressing from a human rights perspective. In large-scale and protracted statelessness situations, the affected state and the international community may well also consider the consequences in terms of social cohesion, stability and economic development of consigning entire communities to the Kafkaesque existence that is statelessness.

⁴⁶ Neither treaty has an equivalent to Article 35 of the Refugees Convention (obligation of parties to cooperate with UNHCR in its supervision of this convention), nor arrangements for supervisory committees as found in the core human rights treaties. That said, Article 33 of the 1954 Convention requires states to communicate to the UN Secretary-General legislation adopted to ensure compliance with that convention, while Article 11 of the 1961 Convention provides for a UN body to assist stateless persons with their claims under this treaty (a role allocated to UNHCR by successive General Assembly resolutions). In addition, UNHCR has been requested by its Executive Committee to provide technical advice to states to ensure consistent implementation of the 1954 Convention.

About the authors

Ruma Mandal is Senior Research Fellow in the International Law Programme at Chatham House.

Amanda Gray is Urban Displacement Policy Adviser at International Rescue Committee UK.

The views expressed in this publication are those of the authors and do not necessarily reflect the views of their respective organizations.

The support of the Oak Foundation is gratefully acknowledged.

Chatham House, the Royal Institute of International Affairs, is an independent policy institute based in London. Our mission is to help build a sustainably secure, prosperous and just world.

Chatham House does not express opinions of its own. The opinions expressed in this publication are the responsibility of the author(s).

© The Royal Institute of International Affairs, 2014

This material is offered free of charge for personal and non-commercial use, provided the source is acknowledged. For commercial or any other use, prior written permission must be obtained from the Royal Institute of International Affairs. In no case may this material be altered, sold or rented.

Cover image: Unregistered stateless Rohingya refugees from Myanmar at an unofficial camp in Bangladesh. © UNHCR /S. Kritsanavarin/November 2008

Typeset by Soapbox, www.soapbox.co.uk

Printed by CityPrint

