

STATELESSNESS AND CULTURAL SECURITY

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Abstract

There are over 10 million stateless people in the world. This includes those who have no formal status and others unable to exercise their rights or prove their nationality. Until recently, this topic had been ignored by all but a handful of legal experts and social scientists who referred back to Hannah Arendt's writings on the origins of Nazism and Stalinism, -- specifically European problems from over 60 years ago. While statelessness relates to the idea of cultural security, to date, the linkages between nationality status and cultural security have not been made explicit. This chapter seeks to address that omission. It identifies linkages in the requirements to protect human rights and cultural rights under international law and describes how the discourse on human security brings them together before reviewing the relevant literature. It concludes by presenting some illustrations to make the case to treat nationality as a corner-stone of cultural security.

Keywords

Stateless, citizenship, nationality, cultural security, human rights, cultural rights.

Introduction

Statelessness is a global problem affecting millions of people. Although it is usually discussed as a matter of human rights, the deprivation of nationality is most relevant to the theme of cultural security as presented in this book. Yet, the points of connection are not immediately obvious. Academics and commentators who have written on these matters tend to treat statelessness and cultural security as distinct and separate areas of law and policy. The theme of nationality tends to feature in the context of legal texts and citizenship studies where it is discussed alongside the relationship of individuals to the state; by contrast, the idea of cultural security is not a legally defined concept but one which has been examined through interpretative and anthropological investigations of the relationship between shared practices, human development and ways of living. Cultural practices are essential building blocks for the realisation of both communal and individual rights. As Sabine Alkire, one of the leading experts writing on capabilities approaches to development notes:

The vital core of human security may be thought of as a rudimentary set of human freedoms, or as some set of human rights. The vital core includes both political and civil liberties (related to 'negative freedoms'), and economic, social, and cultural abilities (related to 'positive freedoms') (2003: 6).

In this chapter, I suggest that nationality, the label of formal membership, informs our ideas of place, belonging and hence the personal and collective identities which give people a sense of security so they can lead productive lives. A central premise of this argument is that nationality should not simply be understood as a legal concept or exclusive matter of

human rights, but also a category substantively related to the personal freedoms, as discussed in other chapters of this book.

This chapter describes who are stateless, their local environment, the ways in which people become stateless, and the scale of the problem world-wide. It then examines the way in which statelessness is reported and provides some illustrations of the way in which nationality deprivation impacts on people's lives. It explores the legal provisions governing the rights of stateless people, including the UN statelessness conventions, before suggesting how statelessness bears on rights to culture and development. The article concludes by suggesting that the problem of statelessness should be considered not only as a matter of law but also human security.

Who are the stateless?

'Statelessness', describes people who are not considered nationals by any state. This includes those who do not have any formal attachment, *de jure stateless* persons, and those who cannot prevail upon the state for protection or in practice may not be able to obtain protection or prove their nationality, *de facto stateless persons*. Jacqueline Bhabha suggests that in addition to *de facto* statelessness, we should consider those who are *effectively stateless* and argues that these are distinct categories. According to her, *de facto* stateless people may have nationality but due to their immigration status often cannot turn to the state for protection; *effectively stateless* by contrast people may have both a nationality and immigration status but cannot prove that they have nationality (Bhabha 2011).

While all categories of stateless people enjoy human rights under international law they often face barriers that prevent them from accessing their rights. These include the denial of opportunities to: establish a legal residence, travel, work in the formal economy, send children to school, access basic health services, purchase or own property, vote, hold elected office, and enjoy the protection and security of a country (Blitz & Lynch 2011; Kingston & Morley 2014 ,Southwick & Lynch 2009).

In addition to the above barriers, the demand to prove one's status is of increasing importance, especially in a digitised world. Yet, it should be remembered that the births, marriages, and deaths of stateless people are frequently not certified and, as a result, many stateless persons lack even basic documentation which adds an extra burden when seeking redress through the courts or should one come in contact with the state, for example, the police. Elsewhere others have argued that significant numbers of stateless people face extortion from state and non-state agents as well as arbitrary taxation (Blitz 2009); and that even when statelessness is corrected in law, formerly stateless people may still suffer much societal discrimination which in turn affects the degree to which they may enjoy their cultural rights (Balaton-Chrimes et al. 2012). Thus, the administrative challenges associated with having an ambiguous status in law may deepen the deprivations experienced by stateless people.

The historical record on statelessness

Although most studies consider statelessness a problem of modern politics - a consequence of the reorganisation of political relations around the idea of the nation-state - it is far from a new. Scholars have pointed to ancient antecedents which help to explain how barriers to

political and collective membership operated to disenfranchise and marginalise historic groups and individuals and how this connects to our understanding of citizenship. In the ancient city-states including in the Sumerian cities of Uruk and Ur and Egyptian city-states Thebes and Memphis and Phoenician cities Tyre and Sidon, non-citizens enjoyed a range of entitlements and civic restrictions, though they may not have been considered ‘stateless’ by academic historians and classicists. Other forms of membership, which illustrate variable forms of attachment to the ancient state include the place of slaves and captured former freemen in the ancient Greek states of Athens, Sparta, Thebes, and Corinth. For example, *helots* in Sparta did not enjoy voting rights and were treated as bonded labour, though they could buy their freedom. Similarly, in Ancient Rome, non-citizens enjoyed a range of statuses, though many were outside the polity altogether. The civic identities enjoyed by the above ancient peoples played a significant role in determining their sense of place in the political order and also which resources they might access - or not.

More relevant to this chapter, however, is the emergence of civic categories that most closely resemble some distinct nationalities and stateless groups today. In pre-Enlightenment Europe, religious minorities such as Jews and Roma/Romani groups were excluded from the modern, post-Westphalian state and might be considered to have been stateless in contrast to the previously ‘stateless nations’ that were absorbed into larger political units including the Aragonese, Basques, Catalans, and Galician who brought into Spain at the expense of their political identities of separate monarchic rule and histories of self-governance. Similarly, one might identify the Yoruba who are dispersed across Nigeria, Benin and Togo, the Uyghur people in the Xinjiang Uyghur Autonomous Region within the People’s Republic of China, and more controversially also Tibetans whose state, founded in 1913, was never recognised before China invaded in 1951. Their histories run counter to other groups that have

successfully militated for statehood, breaking free from multinational empires and federated structures, including Serbs, Croats, Slovenes, as well as those who had no initial geographical anchor, such as ‘Muslims’ in the former Yugoslavia, who over decades used their identity in support of their claims first for representation within the Socialist Federal Republic of Yugoslavia and later redefined as Bosniaks and Kosovars who found independence with the creation of Bosnia and Herzegovina and Kosovo in 1992 and 2008, respectively.

Statelessness was also a feature of inter-war life during the 20th Century when displacement both followed political restructuring and in many cases precipitated the redrawing of national maps. We note that during and shortly after the First World War, foreign-born citizens who had been naturalised were stripped of their citizenship by France, Belgium, Turkey and the Soviet Union. Racist laws have similarly been used to advance denationalisation campaigns, most famous of which are the Nuremberg Laws, which stripped Jews in Germany and Austria of their citizenship. After the Second World War and especially as a result of the period of decolonisation, millions of people were left stateless giving rise to many of the situations we see today in Africa and Asia in particular.

The presence of stateless groups and individuals has also featured in literary works and in film. For example, in her study of statelessness in America Linda Kerber (2005) recalls Edward Everett Hale’s 19th century novella *Man Without a County* where the main protagonist Philip Nolan renounces his citizenship during a trial for treason and is consequently banished to sea. Well before the statelessness conventions, stateless refugees like Hannah Arendt, Ernst Bloch, and Albert Einstein distinguished themselves in the Sciences and university sector and creative industries in host countries where they remained on precarious notice. More recently, Mehran Karimi Nasseri, an Iranian born man expelled

from Iran who arrived legally to Paris-Orly airport but was denied entry to France and lived for 18 years in the airport inspired books and films, including the 2004 Tom Hanks film, 'The Terminal'. Other fictional characters include the James Bond villain, 'le Chiffre', who is also described as stateless.

Statelessness today

While statelessness may take many forms, common to all is the practice of discrimination and inequality. For analytical purposes, we may distinguish between *direct discrimination* on the basis of nationality, which is formally recorded in law, and *structural discrimination* that may be indirect but nonetheless denies individuals the opportunity to benefit from citizenship. Today people may become stateless by: i) being denied and deprived of citizenship – often as punishment for supporting the losing side in wars of independence; ii) seeing their citizenship withdrawn after having been identified as a fifth column; iii) losing it during the process of state succession; iv) as a result of gender based discrimination where mothers are not allowed to pass on nationality to their children; v) as a result of conflict of laws between states; vi) or by not having had their births registered, as a result of administrative and other barriers which prevent people obtaining documents.

There are several explanations for the pervasiveness of the denial and deprivation of citizenship. As evidenced in the above discussion on the development of ethno-national categories, one of the central concerns for the prevention and reduction of statelessness is the degree to which race and ethnicity are prioritised over civic criteria in the design of exclusive nationality and citizenship laws. In practice, nationality policies built on the principle of blood origin (*jus sanguinis*) rather than birth on the territory (*jus soli*) have made the

incorporation of minorities, especially relatively recent migrants and the children of migrants, particularly difficult to achieve. In several parts of the world, from Cote d'Ivoire, to the former Soviet Union, to Germany and Italy, the principle of membership on the basis of blood origin has historically locked many minority groups out of the right to citizenship in their habitual state of residence, leaving them as foreigners or non-citizens.

In addition to geographical ties to specific localities, we note that during periods of national homogenisation ethnic membership is often associated with loyalty to the wider state. This practice is not limited to the reconfiguration following the First World War as described above but has been a major factor in the denial and granting of citizenship to minorities in newly established, often post-colonial or transitional states throughout the second half of the Twentieth Century. For example the Bidun in Kuwait, the Rohingya of Myanmar, and the Banyamulenge of present day Democratic Republic of Congo all have been denied citizenship or saw it withdrawn by law on account of their alleged lack of loyalty and attachment to the respective states where they live. A related point is the withdrawal of citizenship during nationalistic surges and cross-border conflict which may have a racist dimension.

Contemporary forms of stateless

There is growing information on groups of stateless people and greater contextual knowledge about their situation as a result of mapping studies and academic research projects.¹ The ways

¹ See for example: UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Iceland, December 2014, available at: <http://www.refworld.org/docid/54c775dd4.html> ; UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Finland, November 2014, available at: <http://www.refworld.org/docid/546da8744.html>; UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Malta, August 2014, available at: <http://www.refworld.org/docid/546dae5d4.html> , UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Belgium, October 2012, available at: <http://www.refworld.org/docid/5100f4b22.html>; UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in The United Kingdom, 22 November 2011, available at:

in which groups covered in these studies have experienced political alienation and other forms of deprivation is illustrative of the diversity and complexity of the phenomenon of statelessness. Below is an illustration of contemporary forms of statelessness, some of which have been partially resolved through legal reform that has corrected previous discriminatory provisions.

Bangladesh

For many years, Bangladesh has hosted several stateless populations, including the Urdu-speaking minority (also known as the Biharis or “stranded Pakistanis”), Rohingya refugees, and individuals of Indian origin. For nearly 40 years, at least 200,000 and as many as 500,000 Urdu speakers lived in urban camps throughout Bangladesh, where they suffered discrimination, demographic stress, poor conditions, and lack of basic amenities. They were a Muslim minority living in the majority Hindu regions (including Bihar) in pre-independence India. With the breakup of India in 1947, a large group fled to East Pakistan and became a linguistic minority among the majority Bengali speaking inhabitants. They were full citizens of Pakistan until 1971, when the Bengali majority in East Pakistan pushed for secession from the Pakistani state, giving birth to an independent Bangladesh. During Bangladesh’s struggle for independence, the Bihari sided with West Pakistan. They were abandoned by Pakistan upon Bangladesh’s independence, as Pakistan argued that a mass influx of this minority would destabilize an already fragile and culturally mixed population. Bangladesh, on the other hand, scorned them for supporting the enemy. With neither country offering citizenship, the Urdu-speaking minority became citizens of nowhere. In May 2008, the Bangladesh High Court held that any Urdu speaker born in Bangladesh, or whose father or grandfather was born in Bangladesh, and who was a permanent resident in 1971 or who has permanently

<http://www.refworld.org/docid/4ecb6a192.html>; UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in the Netherlands, November 2011, available at: <http://www.refworld.org/docid/4eef65da2.html>

resided in Bangladesh since 1971 is a citizen “by operation of law.” This essentially confirmed the citizenship of most members of the community.

Kenya

The number of stateless people in Kenya is not known, though certain groups are at risk. Under Kenya’s Registration of Persons Act, citizens 18 or over must register with the National Registration Bureau and obtain a national identification (ID) card. Failure to do so is a crime. Groups with historical or ethnic ties to other countries face higher burdens of proof in the registration process, and security concerns have also created obstacles. The Nubians, a group originating in Sudan but residing in Kenya for over a century, along with the Somalis of Kenya (such as the Galjeel community), and the coastal Arabs have all experienced discriminatory policies that have led to statelessness. Some evidence suggests that discriminatory registration procedures are waning, at least with respect to Nubians. In 2003 and 2006, the Nubian community filed complaints with the Kenya High Court and then with the African Court on Human and People’s Rights. Although neither case has reached a resolution, Nubians report greater ease in being able to obtain national IDs. In the early 1990s, the total number of Somalis in Kenya was estimated at hundreds of thousands, but the number has steadily declined. Citizenship of Somali nationals is not always recognized by the government, especially in disputed border areas. In addition, women cannot pass nationality to their children born abroad. Children of unknown origin or who might otherwise be stateless, including some orphans and street children, are not automatically granted Kenyan nationality. Refugees cannot naturalize, increasing the risk of statelessness over time.

Sri Lanka

In the nineteenth century, British colonialists brought Tamils from India to work on tea and rubber plantations. After independence in 1947, this group was effectively denied Sri Lankan citizenship. Between the 1950s and 1980s, India and Sri Lanka concluded various agreements to facilitate the return of some Tamils to India and the acquisition of Sri Lankan citizenship for others. India, however, was extremely slow to process the citizenship applications and by 1982, India declared that the previous agreements were no longer binding. Repatriations to India ceased in 1984. Sri Lanka passed a law in 1988 granting citizenship to persons of Indian origin who had not previously applied for Indian citizenship. The law excluded over 500,000 Tamils. UNHCR estimates that in 2003, around 300,000 Hill Tamils were still stateless in Sri Lanka. The 2003 Grant of Citizenship to Persons of Indian Origin Act gave citizenship to persons of Indian origin residing in Sri Lanka since October 1964 and their descendants, essentially ending the problem of statelessness in Sri Lanka. Persons remaining in Sri Lanka who held Indian passports had to sign a declaration expressing their desire to voluntarily obtain Sri Lankan citizenship and renounce their right to Indian citizenship. The government has since taken steps to provide documentation to the Hill Tamils though the U.S. Department of State, stated recently that as many as 70,000 Hill Tamils may remain without adequate documentation of their Sri Lankan citizenship.

Myanmar and the Dominican Republic

Two groups of stateless people which continue to garner international attention are the Rohingya of Burma and ethnic Haitians in the Dominican Republic. In the case of the Rohingya, hundreds of thousands were expelled from Burma in the 1960s by the military-socialist regime of General Ne Win during the Burmese Way to Socialism nationalisation programme. Subsequent expulsions include the murderous ethnic cleansing campaign

Operation Dragon King (Naga Min), which drove more than two hundred thousand Rohingya into Bangladesh in 1978, where an estimated ten thousand died from starvation and disease. Since 2012 there has been extensive inter-communal violence in Rakine state in Myanmar where Rohingya have seen villages and homes burned, hundreds killed and many more detained by the police.

The source of the latest tragedy lies in the disenfranchisement of the Rohingya in Burma by a 1982 Citizenship Law which legalised their exclusion. Denied citizenship inside Burma, further discriminatory policies and an increasingly brutal regime, precipitated a series of refugee crises. In 1991, the Burmese army expelled more than 250,000 Rohingya, destroying villages and buildings on its way, and forcing them into towns in southern Bangladesh, primarily around Teknaf and Cox's Bazaar. Three decades later, the Bangladeshi response has hardened and the previous government was accused of withholding food aid, frustrating NGO access to camps, and with the exception of a small minority of Rohingya, generally refusing to recognise their rights as refugees. They remain vulnerable to the whim of the government which has presided over inter-ethnic violence amidst claims that the Rohingya have been subject to crimes against humanity and ethnic cleansing.²

In the case of the Dominican Republic, the plight of ethnic Haitians has been especially painful. Denied the right to register births, they have been subject to both individual and group expulsions. In September 2013, the long-running discrimination against Dominicans of Haitian descent took a turn for the worse when the country's Constitutional Court ruled that anyone born since 1929 to foreign parents who could not prove their regular migration status, had been wrongly registered as Dominican. Human rights monitors estimate that the

² See Solomon, Feliz (2016), 'Burma Is Pursuing 'Ethnic Cleansing' of Rohingya Muslims, U.N. Official Says'. Time Magazine, available at: <http://time.com/4582157/burma-myanmar-rohingya-bangladesh-arakan-ethnic-cleansing-suu-kyi/>

decision affects more than 250,000 people who are liable to lose their Dominican nationality, become stateless, and are vulnerable to expulsion. This decision attracted much international condemnation and, in response, the government prepared special legislation which included other discriminatory requirements such as strict linguistic criteria, including competence in both written and spoken Spanish.

New forms of statelessness

In addition to the above, we may describe some new and anticipated forms of statelessness as a result of environmental-induced displacement which is separating people from their homelands but without the protection that is afforded to refugees. We note that the loss of land and the shifting of formal boundaries as result of climate change may result in the reduction of natural and political resources at their disposal which in turn may undermine their economic base and give rise to contests over these resources as well as the exercise of state power (Kelman & West, 2009). Most at risk are those living in low-lying islands. For these local populations, the loss of territory may be even more devastating and entail the destruction of critical natural, social, economic and cultural resources. The prospect of losing territory as a result of rising sea levels may take on existential proportions (Kelman, 2010). The previous UN High Commissioner for Refugees suggested that the populations of the Maldives and Vanuatu may eventually be considered *de facto stateless* as a result of the physical destruction of their national habitat (United Nations High Commission for Refugees, 2009). This statement echoes a small body of writing on environmental displacement which affirms the stateless-like situation of those forced out due to climatic and other pressures (see Blitz 2011b).

The scale and scope of statelessness

The UNHCR estimates that there may be as many as 10 million stateless people in the world (UNHCR 2017), though some suggest the number could be much higher and note the danger of new stateless populations emerging from the global refugee crises which has seen 65.5 million people forcibly displaced (both internally and as refugees). Yet, in spite of improved reporting by the UNHCR, we still do not have an accurate picture, nor do we have comprehensive estimates that include the various types of stateless people described above, including those in need to international protection as a result of environmental displacement.

In the latest UNHCR report *Global Trends - Forced Displacement in 2016*³ the agency notes that the estimates are provisional and acknowledges limitations with their data:

UNHCR estimated that at least 10 million people were stateless or at risk of statelessness in 2016. However, data captured by governments and reported to UNHCR were limited to 3.2 million stateless individuals in 75 countries (UNHCR 2017:2).

Although the UNHCR has made the identification of stateless people a priority key of its 2014 Global Action Plan⁴ and has included this aim under Action 10 of UNHCR's Global Action Plan to End Statelessness and the guiding framework to achieve the goals of

³ See UNHCR (2017), *Global Trends: Forced Displacement in 2016* available at: http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/06/2016_Global_Trends_WEB-embargoed.pdf

⁴ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>

UNHCR's #IBelong Campaign⁵ focus on improving quantitative and qualitative data on statelessness, there are significant gaps in coverage. UNHCR's statistics tend to under-represent the population of stateless people which are limited to those under its mandate and those principally identified as de jure stateless. These caveats have produced some rather unconvincing statistics. For example the 2017 UNHCR Global Trends Report on the situation in 2016 concluded that there were:

- 4 stateless person in Brazil -- a country of more than 207.8 million
- 11 stateless people in Colombia -- a country which has experienced significant internal displacement and has a large indigenous population.
- 19 stateless people in Egypt -- a country which has experienced considerable unrest we well as inflows of migrants and refugees from neighbouring African and Middle Eastern states.
- 64 stateless people in the United Kingdom -- a country which has not removed tens of thousands of refused asylum seekers and over-stayers and where between 2009 and 2016 there were between 2,500 and 3,500 migrants in immigration detention at any one time.⁶

One major issue relates to the sources of data used by the UNHCR. The UNHCR relies on national statistics, including national censuses, which are problematic because, first they often exclude stateless populations and second, even once stateless people are included, must

⁵ See <http://www.unhcr.org/ibelong>

⁶ See www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/

be read as part of a longitudinal analysis of population trends in order to arrive at a more accurate picture since the population of stateless people changes as a result of identification practices, legislative reform and conversely illiberal practices in states where nationality rights are under threat. In addition, the UNHCR data mainly focus on de jure stateless populations not the more ambiguous and harder to reach groups of de facto stateless people (UNHCR 2017: 48).

Further we note that there is also little discussion about the nature of statelessness and how that may impact on the wider discussion about access to rights. Although the European region has been the most extensively studied, the definitions used by the UNHCR exclude large numbers of people who are effectively without international protection and could be considered to be stateless for example many in immigration detention – even if not covered by their mandate. Similarly, the UNHCR includes those who have a privileged status, unlike the vast majority of stateless people. For example, the UNHCR’s estimates for Latvia include 242,736 people which refers overwhelmingly to Russian speakers in Latvia. Members of this community enjoy a secure legal status and a wide range of rights, including many on a par with nationals of the state, but do not hold the right to vote or stand for election. Their situation therefore differs significantly from stateless people in other regions and hence we should be wary of comparing groups purely on the basis of the nationality status.

Legal frameworks

Under the 1954 Convention, individuals who have not received nationality automatically nor through an individual decision under the operation of any state’s laws, are known as

de jure stateless persons. There are also countless others who cannot call upon their rights to nationality for their protection and are *de facto* or effectively stateless persons. We note that under international law, *de facto* stateless persons are not covered by the provisions of the 1954 Convention, even though the Final Act of the Convention includes a non-binding recommendation that calls upon states to ‘consider sympathetically’ the possibility of according *de facto* stateless persons the treatment which the Convention offers to *de jure* stateless people.

Yet, in practice, many states have not heeded the recommendations provided by the framers of the Convention and there is considerable evidence of far-reaching consequences that result from the failure to treat situations of *de facto* and effective stateless seriously. One particularly relevant example where prolonged situations of statelessness may have inter-generational effects is in the case of children who are denied access to secondary school and university, which in turn bears on their abilities to participate in cultural activities.

Rights to culture are also enumerated in several legal instruments in terms of positive freedoms. For example, the Universal Declaration on Human Rights (UDHR), adopted by the UN General Assembly in 1948 affirms the right to benefits of science and culture in Article 27. The International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 13, also spells out the right to participate in cultural life and the right to benefits from science and culture in Article 15. The International Covenant on Civil and Political Rights, adopted at the same time as the ICESCR, recognises and protects a number of core economic, social and cultural rights, including and the right of ethnic, religious or linguistic minorities to engage in their culture, practice their religion and use their language in Article 27.

There are a number of major international human rights instruments which also contain relevant provisions relating to cultural rights, though these are not expressed in the language of personal development or self-actualisation but generally in terms of prohibited actions. For example, the Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination on the basis of racial or ethnic origin in relation to a number of economic, social and cultural rights. The Convention on the Rights of the Child (CRC), one of the most extensive instruments, recognises and protects many of the economic, social and cultural rights included in the ICESCR in relation to children, though these are described in more instrumental terms. The CRC specifically mentions the rights to health (Article 24), social security (Article 25) and the right to an adequate standard of living (Article 27), alongside the rights to education (Article 28), and the right to protection from economic exploitation (Article 32). Taken together, then this body of international law provides greater protection than relying on the Statelessness conventions alone. Other instruments also clarify the *positive* freedoms enjoyed by individuals which include the right to culture. We note that the Convention on the Elimination of All Forms of Discrimination Against Women affirms a range of economic, social and cultural rights to women as do the Conventions of the International Labour Organisation (ILO) which protect work related economic, social and cultural rights.

More relevant, the relationship between human rights, cultural rights and self-actualisation appears in a smaller body of international law which has grown out of specific regional instruments. We note in particular that the theme of culture and its bearing on personhood is found in the 1981 African Charter which recognises the right to development as a definitive individual and collective right and highlights the relationship between rights and personal identity. Specifically, Article 22(1) provides that: ‘All peoples shall have the right to their

economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.’ The ‘right to development’, which affirms this connection, was later included in the 1986 UN Declaration on the Right to Development, adopted by United Nations General Assembly resolution 41/128 and . The Right to development was reaffirmed at the 1993 World Conference on Human Rights in Vienna and codified in the Vienna Declaration and Programme of Action. Thus while the relationship between nationality and cultural rights is far from explicit in international law, there are nonetheless some key points of connections stemming from the overarching rights framework.

The existence of stateless populations challenges many tenets of international law and undermines the discourse of universal human rights that has developed over the past seventy years including the right to nationality. Article 15 of the Universal Declaration of Human Rights (UDHR) provides that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” Surprisingly, international legal studies and academic writings on the subject of statelessness have paid little attention to the issue of cultural rights, except where they trip over into other areas of discrimination, or more specifically are part of a broader campaign of persecution, for example in the case of the Rohingya in Myanmar. We should, however, note that the protection of and preservation of one’s own culture is enshrined in many legal instruments which include stateless people.

Further to an energetic campaign by UNHCR, a growing number of states have ratified both stateless conventions. We note in particular UNHCR’s *Ibelong* campaign, which aims to

collect 10 million signatures to press for an ending of statelessness by 2024⁷ through ten actions including:

- 1) resolving existing major situations of statelessness, defined as non-refugee statelessness situations;
- 2) ensuring that no child is born stateless by ensuring that all states have a provision in their nationality law to grant nationality to children born in their territory as well as to all children of unknown origin found in their territory; and to children born to nationals abroad who are unable to acquire another nationality.
- 3) removing gender discrimination from nationality laws;
- 4) preventing the denial, loss or deprivation of nationality on discriminatory grounds;
- 5) preventing statelessness in cases of state succession;
- 6) granting protection status to stateless migrants and facilitate their naturalization;
- 7) ensuring birth registration for the prevention of statelessness;
- 8) issuing nationality documentation to those with entitlement to it;
- 9) acceding to the UN Statelessness Conventions of 1954 and 1961; and
- 10) improving quantitative and qualitative data on stateless populations

Yet, in spite of UNHCR's progress, the denial and deprivation of nationality raises several important questions for the protection of cultural rights, not least because in practice, the non-enforcement of human rights protections leaves stateless people vulnerable to many sources of abuse, which in turn undermine their enjoyment of their cultural rights.

⁷To date the *Ibelong* campaign has attracted 89,983 signatures.

Advocacy and the new literature on statelessness

Over the past ten years, UN agencies, international organisations and NGOs have paid particular attention to the practice of denying and revoking rights to citizenship and the related problem of linking minority rights, namely the rights to enjoy and practice one's culture, language, or religion, to citizenship status. The UN General Assembly adopted a resolution about nationality (UNGA 2013), and the UN Secretary General issued reports in 2011 and in 2013, as well as a Guidance note on Racial Discrimination (UNSC 2013). The Council of Europe has similarly been active (Council of Europe 2013), holding events and issuing its own reports, as has the European Union (EU 2013).

Further the UNHCR now routinely provides reports and recommendations for the Universal Periodic Review on many countries and continues to work with other agencies and NGOs on the topic of statelessness (UNHCR 2013). The agency's Global Appeals and Global Reports from 2012 have outlined enduring problems of statelessness, some of which have been reiterated in mapping studies of Central Asia, the Netherlands, the United Kingdom, Belgium and Canada. UNHCR has since produced a number of important documents including guides on measuring statelessness (UNHCR 2011), travel documents (UNHCR 2013), educational tools (UNHCR 2010), as well as a dedicated chapter on statelessness in the 2012 State of the World's Refugees (UNHCR 2012). In 2012 UNHCR published a set of guidelines on doctrinal issues including the definition of a stateless person, determination procedures, and legal status stateless individuals granted at the national level. The agency has also hosted regional roundtables in the Middle East and in Asia and has produced articles on uncharted issues areas, including the status of refugee babies in Thailand and an article about statelessness and climate change.

Yet, in spite of this interest has not been mainstreamed and we note that stateless people are inconsistently recorded in UN publications. For example, while they appear in UNHCR's reports on gender discrimination, and HIV testing policy, and in UNICEF's important *Caring for Child Survivors of Sexual Abuse: Guidelines for health and psychosocial service providers in humanitarian settings*, surprisingly, the *2014 Overview of UNHCR's global programmes and partnerships* refers only to refugees and other persons of concern, never directly mentioning stateless people. Likewise, as a category, stateless people are absent from UNHCR's *Principles and Guidance for Referral Health Care* and UNHCR's *Ensuring Access to Health Care: Operational Guidance on Refugee Protection and Solutions in Urban Areas* only mentions stateless people in the opening section. Similarly, there is a cursory reference to stateless people in the addendum report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (UN Human Rights Council 2011).

Although the UN's record is mixed, the interest in statelessness is evident in the work of donor governments and NGOs. The US government, UNHCR's largest donor, has developed reporting systems on statelessness, now included on its website and in the country reports of some 70 states. It has also invested in research with a view to understanding the root causes of statelessness to identify best practices. These reports offer a potential baseline for policy reporting, monitoring and evaluation. The State Department's Bureau of Population, Refugees and Migration (PRM) has also sought to connect statelessness to other relevant policy areas, drawing in other audiences, for example by including statelessness in the US Trafficking in Persons report each year since 2011 (US State Department 2013). In addition, Amnesty International now routinely includes information about statelessness in country

reports (2014) and several NGOs have generated relevant publications, including the Open Society Institute's global litigation report (OSI 2013) and the European Network on Statelessness' many publications on status determination and children.

Making the case for cultural security

There is little comparative literature on the plight of stateless people. Most important has been the work of Hannah Arendt who introduced statelessness in *The Origins of Totalitarianism*. In her account, statelessness occupies a central place in her account of the processes she claims gave rise to Nazism and Stalinism but unlike the terms set out in the 1954 and 1961 UN Conventions, statelessness is a distinctly modern phenomenon. One particularly controversial feature of her discussion of statelessness is her belief that it is synonymous with a condition of rightlessness, a claim rejected by the UNHCR which has consistently maintained that stateless people enjoy human rights.

Arendt's exposition of statelessness is chronicled in her chapter, the 'Decline of the Nation State and the end of the rights of man' where she explains the condition of statelessness in the context of three losses: the loss of home, the loss of state protection, and the loss of a place in the world. These deprivations facilitate the unfolding tragedy of destruction and genocide. It is above all the absence of government -- the only viable source of protection which signals their doom. The presence of stateless people leads Arendt to claim that human rights, supposedly universal, have no meaning unless they can be anchored to an effective source of protection and for her the only option is the state.

Interestingly, in Arendt's account, she understates hegemonic structures including the role of racism in colonialism and the expansion of the slave trade, both of which could open the door to further discussion around culture. Rather, she builds a picture drawn from a Marxist liturgy, where she deploys the well-trodden distinction between the bourgeois (seen as materialistic and indifferent to politics) and the citizen but diverts in her discussion of the masses which have replaced classes and are the lumpen proletariat – the dregs -- in contrast to the organised mob. In this struggle, she claims Jews could have militated for their rights, asserting a positive political identity, as other national groups did, rather than retreat into a contemptible materialism. In this discussion, however, she does not consider cultural participation to be a form of political engagement, though it was certainly a feature of pre-war life for Jews and other victims of Nazism.

The vast majority of writing on statelessness since Arendt has taken the form of descriptive reports and increasingly, analysis of legal aspects of statelessness as well as advocacy documents. That said, there are also some notable reports and articles that focus on human security and the rights of non-citizens which are nonetheless relevant to this chapter. For example, one of the most influential writers on human security, Amartya Sen, has drawn attention to the problems associated with the lack of citizenship for personal and social development. In the late 1990s, a number of scholars established a precursor to the contemporary discourse on statelessness, primarily about the rights of non-citizens who were not necessarily stateless, which included Sen and focused on issues of equality. A central theme of this literature was that political exclusion fosters inequality and hence, insecurity. In part as a result of this discourse, the UN asserted a causal connection between developmental concerns such as poverty and deprivation, the protection of human rights, and problems of governance—all of which directly relate to statelessness.

Most pertinent are the official reports and UN studies on issues of equality which predate the recent interest in statelessness as a discreet area of human rights. These technical and advocacy papers underscored how exclusion fosters inequality and hence raises questions of insecurity. Most notable among these publications are the 1994 UNDP Human Development Report and more influential 2003 Human Security Commission report entitled *Human Security Now: Protecting and Empowering People*. Through these reports the UN identified a causal connection between developmental concerns such as poverty and deprivation, the protection of human rights, and problems of governance -- all of which directly relate to statelessness. Further, the above reports were sharply influenced by the writings of Amartya Sen whose publications on the capabilities approach to development set the standard for further academic investigations of substantive notions of human security. In particular, we note the influence of *Development and Freedom* where Sen expressly draws attention to the problems associated with the lack of citizenship for personal and social development. Yet, aside from these reports and Sen's approach describe above, the relationship between statelessness and matters of culture must largely be inferred from related writings which do not touch on this topic explicitly.

The main points of connection may be found in contemporary writings in the context of alienage and treatment of non-citizens (Benhabib 2004, Brock and Brighthouse 2005, Carens 1999). Seyla Benhabib (2004) goes further than many other theorists in her condemnation of the denial of access to aliens, a concept which is open to both foreign non-citizens and de facto stateless persons, but with limited discussion of culture. Arguably, the primary contribution of scholars writing on citizenship has not been in defining the problem of statelessness and its relationship to culture but rather in pushing some of the boundaries of

liberal political theory and articulating challenges to realist constants of sovereignty, fixed notions of membership, and the conceptual division of state responsibility between domestic and external arenas.

More recently a handful of exceptions have linked Arendt's work to the failure of the human rights regime to provide for contemporary statelessness populations and have applied it to issues which are particularly emblematic of emergent 21st century problems such as the expansion of detention and the political rights of prisoners; the human rights challenges of removal, repatriation, and readmission of non-nationals in countries of origin; and the deprivation of citizenship of non-nationals (Bloom, Cole and Tonkiss 2017; Redclift 2013; Staples 2013). Within these discourses there is greater opportunity to explore the relationship between cultural expression and the removal of rights that results from oppressive practices such as detention and removal.

Conclusion

The above discussion charts the ways in which statelessness has entered policy debates and academic discussions independently of the question of cultural security. This should not be surprising. For both the UNHCR and many academics, statelessness was an afterthought - a residual problem which raises many thorny questions regarding the liberal pretensions of universal membership of a state, not to mention the degree to which one may call upon the human rights regime for protection, irrespective of one's civic status. Yet more than six decades after the introduction of the first statelessness convention and publication of Arendt's writings, it is no longer acceptable to consider statelessness to be an accident of history, too

complicated to be addressed. In recent years, the UNHCR has recognised the importance of statelessness and has committed resources to reduce and ultimately end this phenomenon.

While one may question the scale of the UNHCR's ambitions, the fact that statelessness has been mainstreamed across the agency is indicative of much progress.

There are still many challenges that must be addressed, including the way in which the UNHCR identifies and labels individuals as stateless. The current approach greatly underestimates the scale of those with insecure status who may fall into the category of de jure, de facto or effectively stateless persons. Equally, we note that for many years, there was little academic interest in the topic of statelessness (Blitz 2011a). While there has been a recent growth in academic writing over the past decade, which has converged with UNHCR's renewed interest in statelessness, until that point one needed to turn to specialised areas of international law or the literature on human security and treatment of non-citizens, especially in immigration studies, to identify linkages between nationality, identity, and culture.

Academics have touched on the issue of statelessness in their philosophical and sociological studies; interpretations of international law; examinations of regional conventions and treaty systems; research on children, gender issues and birth registration; and most recently, through their investigations of the effects of the war on terror, for individuals held in detention. There are also some excellent regional studies. One nonetheless needs to read this literature closely to identify its relevance for cultural security. The above discussion suggests that statelessness informs our understanding of cultural security by highlighting structures and processes which may disenfranchise, impoverish, and create conditions of oppression, including the deliberate withdrawal of rights to nationality. The lynchpin is the wider construct of human security

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