

Statelessness: A Human rights Issue at the Heart of Churches' Calling Contribution by Rev. Dr. h. c. Cornelia Füllkrug-Weitzel, President Bread for the World

Introduction

Statelessness is a topic that is hardly talked about in Germany. The majority of people might not even have come across the issue if there had not been a recent discussion triggered by the discovery of the racist and right extreme, so called "Reichsbürger" movement, rejecting the democratic republican state and expressing this through their strong but unfulfilled demand of "turning in their nationality".

The fact that one is willing to disclaim nationality clearly reflects the lack of understanding and appreciation of the privileges enshrined in it.

We are born, live and die as citizens of a nation state. Nationality is part of the identity of a person. Being stateless actually means being without rights, without freedom. It is the fate of about 10 million people globally.¹

Basically statelessness is observed in only two different contexts, the first consisting of countries that host stateless persons who are predominantly, if not exclusively, migrants or of migrant background; and the second consisting of countries that have in situ stateless populations. Hence, for a person to be "stateless" it is not relevant where he or she is located. Statelessness occurs in both migration and non-migration contexts. A stateless person may never have crossed an international border, having lived in the same country for his or her entire life.

Causes of statelessness

There are many causes of statelessness, which will be discussed upon more profoundly in the course of this regional conference:

- Gender discriminatory nationality laws;
- discriminatory law and policy on other grounds including race, ethnicity, religion and disability;
- conflicts of nationality laws;
- state succession which often result in the discriminatory treatment of minority groups;
- poor and discriminatory administrative practices in determining nationality and issuing documentation;
- and the inheritance of statelessness from previous generations.

¹ By the end of October 2016 there were 21.826 stateless persons registered in Germany. In Europe there are estimated to be around 600.000 stateless in total.

In many of these circumstances, statelessness is the result of the denial of nationality. In most, discrimination is a key element.²

Just few examples of where statelessness occurs

Statelessness is often the product of policies that aim to exclude people deemed to be outsiders, notwithstanding their deep ties to a particular country. For example, more than one million people in Myanmar's Rakhine state are stateless on the basis of the current citizenship law, which provides that only members of certain ethnic groups are eligible for citizenship.

Another example poses Syria. The Middle East and North Africa (MENA) region hosts over 5 million Syrian refugees, while another 6.3 million are internally displaced within Syria.³

Conflict and displacement on this scale are placing children at significant risks of statelessness. Under Syrian law and practice, a child acquires nationality at birth on the basis of having a Syrian father.⁴ It is of particular concern, therefore, that the conflict has left over a fourth of all Syrian refugee families with no fathers to attest to these children's nationality.⁵

UNHCR estimates that over the last seven years, approximately 120,000 children have been born to Syrian refugees in Lebanon alone. Around 78 per cent do not have their birth registered with the competent authority (the Foreigners' Registry), and over 50,000 children under five years do not have a birth certificate registered with the Lebanese local registry office. But in fact, birth registration and nationality are essential to protect individual rights. Registration with the Foreigners' Registry and documentation of nationality will also be essential for eventual returns of refugees to Syria.⁶

² In 26 countries around the world, women do not enjoy the same right to confer nationality to their children as men. Where a woman cannot pass on her nationality to her child, one important route for the child to acquire nationality is closed. If the child also cannot acquire nationality through the father – for instance because he is stateless, unknown or unwilling or unable to take any action that may be needed to transmit his nationality – the child will be left stateless (unless there is the possibility of acquiring nationality in the country of birth). The unequal nationality rights of women thereby have an impact on the position of children and the enjoyment of the child's right to a nationality. In particular if the child is left stateless, this can bring difficulties for the whole family, including in the enjoyment of socio-economic rights and family life. In fact, research has shown that gender discrimination in nationality laws can tear families apart. It is also important to note that gender inequality can also manifest itself in a woman's right to transmit nationality to her spouse, as well as her ability to retain her nationality e.g. in the event her husband is deprived of his.

³ <http://data.unhcr.org/syrianrefugees/regional.php>

⁴ Syria's nationality law establishes that "anyone born inside or outside of the country to a Syrian father" is a citizen of the country at birth. Article 3, *Legislative Decree 276 - Nationality Law [Syrian Arab Republic]*, *Legislative Decree 276*, 24 November 1969, available at: <http://www.refworld.org/docid/4d81e7b12.html>. In principle, the law establishes an exception permitting a Syrian mother to confer nationality to a child in cases where the identity of the father is not legally established, and also features a provision to grant nationality to children born in the country who do not acquire another nationality at birth by virtue of their parentage. In practice, however, these provisions remain unutilized and children in these circumstances are not able to acquire Syrian nationality.

⁵ UN High Commissioner for Refugees (UNHCR), *Woman Alone: The fight for survival by Syria's refugee women*, 2 July 2014, available at: <http://www.refworld.org/docid/53be84aa4.html>. Syrian refugee women are increasingly taking sole responsibility for their families after their husbands are killed, captured, or otherwise separated from them during the conflict.

⁶ <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA-HumanitarianBulletin-Issue28-31july2017.pdf>

An estimated 1 million stateless persons live in West Africa, which is also home to a large population of persons at risk of statelessness. Its main causes are gaps in nationality laws, arbitrary deprivation of nationality, processes relating to state succession and restrictive administrative practices, for example in the issuance of documents that prove nationality. Those most affected by statelessness include nomadic pastoralists, populations divided by arbitrary colonial borders or affected by more recent transfers of sovereignty, and those displaced by conflict. Vulnerable children are always at additional risk.

The weakness of civil registration systems in West Africa means that questions of proof can be highly discretionary: In Liberia, only 4 percent of births are registered; the rate is 24 percent in Guinea-Bissau, and less than 50 percent in Niger and Nigeria.

Fees, official and unofficial, for nationality documents prevent many people from obtaining proof of a status they should in theory hold. The highly discretionary and inaccessible nature of naturalization means it is near-impossible to acquire nationality based on long-term residence.

What is the right to nationality?

The right to a nationality is well established under international law, and the existence of statelessness can be viewed as the most extreme violation of this right.

The right to a nationality is a fundamental human right. It implies the right of each individual to acquire, change and retain a nationality.

International human rights law provides that the right of States to decide who their nationals are is not absolute and, in particular, States must comply with their human rights obligations concerning the granting and loss of nationality.

The right to a nationality is recognized in a series of international legal instruments⁷ and regulated in the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons and the Convention relating to the Status of Refugees, too.

In contrast, a "stateless person" is someone who is not considered a national by any state under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons). In this sense, nationality refers to the legal bond between a person and a state. This bond can best be considered a form of official membership which confers upon the national certain rights (like the right to live in the country or participate in elections) as well as duties.

A person who is stateless lacks this membership and will be seen and treated as a foreigner by every country in the world. ("de jure statelessness" - there is also the concept of "de facto statelessness". It is most often invoked to describe a situation in which a person holds a nationality but this nationality is in some way ineffective.).⁸

⁷ including the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁸ -To determine whether a person is considered as a national by a state under the operation of its law, requires a careful analysis of how a state applies its nationality laws in practice, in that individual's case. In some cases, an objective analysis of the law would lead to the conclusion that the person is a national, but the state may not in practice follow the letter of the law, so the analysis must be based on how the competent authorities interpret the law. To determine that a person is not considered as a national by any state does not require

Human rights violations resulting of the violation of the right to nationality

In addition to violations of their right to a nationality, stateless persons are subject to several other human rights violations. They face challenges in all areas of life. The lack of any nationality closes down opportunities to access other rights and services. Stateless persons may struggle to access education, healthcare, labour and property markets. They may also experience difficulties in obtaining key documents (birth, marriage, death certificates, driving licenses, passports), such that many stateless persons have no proof that they exist and no means to identify themselves in day-to-day interactions.

This makes legal international travel almost impossible and free movement within the State of residence can also be impaired. Stateless persons are vulnerable to arbitrary arrest and detention, even prolonged or indefinite detention, and often struggle to access the protection of the police or justice systems. Actually, the barriers stateless people face accessing justice and claiming their rights, makes statelessness a particularly difficult challenge to the universality and indivisibility of human rights.

Stateless persons can be subject to denial of land, attempts at deportation, even if there is no other State upon which they can call. Not acknowledged by any State, stateless persons are made easier targets for victimization and exploitation and might be seen as less deserving of compassion, protection and support. On an individual level stateless persons struggle with their identity and belonging, sentiments of hopelessness, anxiety and depression are common.

Resolution and prevention of Statelessness

In order to end statelessness States must introduce safeguards to prevent statelessness (by granting their nationality to persons who would otherwise be stateless and are either born in their territory or are born abroad to one of their nationals). States shall also prevent statelessness upon loss or deprivation of nationality.

In recent years countries around the world have been making a concerted effort to address the problem of statelessness. In 2014 the United Nations High Commissioner for Refugees announced the goal of eradicating statelessness by 2024.

This strong will to overcome statelessness is actually also reflected in target 9 of Sustainable Development Goal 16, which commits countries to provide legal identity for all, including birth registration, by 2030.

Birth registration is a fundamental tool for the prevention of statelessness, as it provides evidence of a child's parentage and place of birth—the facts used by States to grant nationality to children at birth.

Statelessness, once entrenched, is an often a complex issue to resolve. It is, ultimately, only a State that holds the power to recognize someone as its citizen, and examples from other regions

proving. Nationality is almost always granted based on certain factual links between a person and a state: either links through family or through territory. To work out whether a person is stateless, it is usually sufficient to look at whether they have the nationality of any of the places with which they have such links, i.e. country of birth, country of nationality of parents, country of habitual residence and country of nationality of spouse.

demonstrate that the resolution of statelessness can often take decades.⁹ In the midst of conflict and massive displacement, it may seem that any solutions or preventative measures would be even more difficult to realize.

The UNHCR led the Hashtag-i-Belong (#ibelong) campaign to end statelessness and its Global Action Plan has 10 action points, many of which relate to the human right to a nationality, identity and birth registration and consequently, to SDG 16.9.

Similarly, ongoing work on protecting the stateless relates to other human rights principles and SDGs related to education, health, work, equality, poverty etc.

Governments, humanitarian community, development actors as well as WCC and ecumenical partners have to join efforts to address statelessness

- identify and overcome obstacles to birth registration and acquisition of nationality
- raise awareness among those who are vulnerable to become stateless
- familiarize with procedures

Bread for the World partners in Togo for instance are promoting birth registration (EEPT - Eglise Evangélique Presbytérienne du Togo), partners in Central Asia do offer legal support to stateless people, they also advocate governments for possible amendments in nationality and personal status law (CAM – Platform Central Asia on the Move). We will learn from our Rumanian partner (AIDRom) about the challenges they face and how they address them within the next two days.

I am looking forward to engage with you in identifying concrete measures to meaningfully address and tackle statelessness in Europe.

Let us build on the churches call to exercise the ministry of hospitality for “strangers” as the basis of our advocacy for the protection of stateless persons and their basic and fundamental rights.

⁹ Other regions provide a number of examples where refugees have become stateless, waiting for decades to acquire a nationality. At the time of India's independence in 1947, an Urdu-speaking population was forcibly displaced from the State of Bihar to Bangladesh. When Bangladesh became independent in 1971, however, this population became stateless as neither the former nor the successor State considered them to be its nationals. The group remained in this predicament for nearly 40 years. Their situation was finally resolved by a 2008 Supreme Court decision recognizing them as Bangladeshi nationals. See: <http://www.unhcr.org/54ec22869.html>. Similarly, refugees from Tajikistan displaced to Kyrgyzstan in the early 1990s became stateless after the dissolution of the Soviet Union, a situation which was resolved some two decades later, when Kyrgyzstan facilitated the naturalization of 10,000 refugees between 2004 and 2007. see: <http://www.refworld.org/docid/54e75a244.html>.