

NESS

STATELESS



A Guide to Teaching on Statelessness

Division of International Protection
Statelessness Unit
September 2010

60
YEARS



UNHCR

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The present guide was developed by Laura van Waas, Ph.D.; schematics in Annex 4 were developed by Santhosh Persaud with suggestions from Laura van Waas and Katherine Gilchrist.

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For more information, please contact:

Statelessness Unit
Division of International Protection
Case Postale 2500
1211 Geneva, Switzerland

This document along with further information on statelessness is available on UNHCR's Refworld website:

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

and UNHCR's homepage on statelessness:

<http://www.unhcr.org/statelessness>

Cover photo: A woman from the Urdu-speaking community in Bangladesh (often referred to as Biharis). The Urdu-speaking communities had not been recognized as nationals of Bangladesh after independence in 1971. This recently changed after a landmark judgement of the High Court in Dhaka in 2008 confirmed that they are in fact Bangladeshi citizens.

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Introduction

This guide is designed to help university instructors to integrate one or more units on statelessness into an existing course curriculum or to develop a comprehensive course on statelessness.

The individual units and full course are of interest to students following public international law, human rights (including minority rights, children's rights or women's rights) and refugee law. The material is suitable for both advanced undergraduate and graduate students. The topic may also be of interest to students of political science, international relations, gender studies, history, conflict studies, anthropology or related degree programmes. However, please note that the units provided here assume some prior knowledge of international law and a basic introduction may therefore be required for some students who are entirely unfamiliar with the international legal system¹.

Why teach about statelessness

Statelessness is a global issue affecting several million people worldwide, yet it is a subject that has long been neglected within university curricula. This is regrettable because teaching about statelessness:

- Equips students with an insight into a substantial and pressing international concern, which is gaining prominence on the agenda of States, international organisations and non-governmental organisations (NGOs)
- Provides opportunities for students to reflect on the effectiveness of the human rights system, in particular by exploring the friction between the obligations and the challenges of protecting the rights of non-nationals
- Allows students to appreciate the contemporary meaning of nationality, the mechanisms of acquisition and loss of nationality and the measures that are needed to ensure the prevention and reduction of statelessness as well as the protection of stateless persons
- Offers students a new perspective on specific issues, for example in the context of courses on forced displacement or refugee law, minority rights, children's rights or women's rights.

¹ UNHCR has published a self-study module on human rights which can provide such an overview: UNHCR, *Self-Study Module 5: Human Rights and Refugee Protection (Vol. I and II)*, 15 December 2006, Vol. I, available at: <http://www.unhcr.org/refworld/docid/466942032.html>
Vol. II, available at: <http://www.unhcr.org/refworld/docid/4669434c2.html>.

How to use this guide

This guide is comprised of **6 stand-alone units** which can be used as a basis for incorporating the topic of statelessness into an existing, related course, for example on human rights, gender or minorities. Each unit is equivalent to one class or seminar of approximately 90 to 120 minutes. Units A and B together form a general introduction to statelessness, discussing the topic from a broad human rights perspective, thereby forming a good starting-point for teaching on statelessness. Each of the subsequent units, C to F, also includes basic introductory materials on statelessness and can therefore be taught wholly independently. If more than one unit is selected,

please note that there will be some overlap between the materials.

In addition to these basic stand-alone units, a series of **12 more detailed units** are provided. These have been designed to provide input for a full course on statelessness. Each unit is equivalent to one class or seminar of approximately 90 to 120 minutes. It is suggested that for a comprehensive course on statelessness, all 12 units could be included, in the order in which they are presented. Time allowing, the course could be extended to include further classes or seminars in which the students explore one or more of the themes in greater detail through,

for instance, an in-depth exercise or case study (*annex 1*) or film materials (*annex 2*). Alternatively, if the time available is very limited, the course can be offered in a shortened form by focusing on the topics covered in those units identified as **core units** (eight in total, some of which can also be further compressed and combined as indicated below). Sample schedules for these various approaches are included in this guide (*annex 3*). Finally, a number of sample schematics and handouts are also included (*annex 4*), which are designed to help students to structure and retain the information presented.

An overview of stand-alone units for the incorporation of statelessness in related courses

Stand-alone units A + B

Statelessness explained (1 & 2)

Stand-alone unit C

Children, nationality and statelessness

Stand-alone unit D

Gender, nationality and statelessness

Stand-alone unit E

Minorities, nationality and statelessness

Stand-alone unit F

Statelessness, migration and forced displacement

An overview of units for developing a comprehensive course on statelessness

Note on core units: If a short course on statelessness is envisaged, using only the core units for input, further abbreviation can be achieved by condensing and combining several of the units. Thus units 1 and 2 could be combined in one class or seminar, as could units 7 and 8.

Unit 1 [core unit]

An introduction to nationality and statelessness around the world

Unit 2 [core unit]

State sovereignty, nationality and statelessness

Unit 3

Statelessness as an international legal concept and the challenge of identification

Unit 4 [core unit]

Preventing statelessness (1):
Conflicts of laws and statelessness among children

Unit 5 [core unit]

Preventing statelessness (2):
Nationality, discrimination and statelessness

Unit 6

Preventing statelessness (3):
Statelessness in the context of State succession

Unit 7 [core unit]

Reducing statelessness (1):
International law and the reduction of statelessness

Unit 8 [core unit]

Reducing statelessness (2):
Large-scale statelessness reduction campaigns

Unit 9 [core unit]

Protecting stateless persons (1):
Human rights law and the protection of stateless persons

Unit 10

Protecting stateless persons (2):
The 1954 Convention relating to the Status of Stateless Persons

Unit 11

Statelessness, migration and forced displacement

Unit 12 [core unit]

Tackling statelessness: Whose job is it and what prospects are there for the future?

The structure of this guide and the individual units

This guide begins by presenting the six stand-alone units, A to F, that are designed to be incorporated into existing, related courses. Thereafter, units 1 to 12 which together offer all of the input necessary for a comprehensive course on statelessness are presented. Each of the units includes the following information:

- A **summary** that contains an overall description of the aim and content of the unit
- Suggested **learning objectives** explaining what students could be expected to know, do or understand upon completion of the unit
- Relevant **readings and information sources** that can be used to design the session and from which a selection can be made when prescribing readings for the course (divided into (a) key readings and (b) additional readings and information sources).

At the end of this guide, the following additional tools are offered to help university instructors prepare to teach one or more units or a full course on statelessness:

- **Annex 1.** A selection of **suggested exercises and case studies** to provide ideas about how students can be encouraged to work with the materials to build their understanding of the subject matter
- **Annex 2.** References to a number of **films and other multimedia resources** that look at statelessness which can be used to help introduce particular subtopics or as the basis for further case studies or exercises
- **Annex 3.** Several **sample schedules** for a full course on statelessness to indicate how such a course could be designed to maximise the use of time while successfully conveying the key messages for each of the units
- **Annex 4.** **Sample schematics and handouts** to help students absorb the information presented

Further guidance

There are a number of additional tools that can be helpful in familiarising instructors with the question of statelessness and in introducing students to the issue. Here is a brief overview of some key materials and sources of further information:

- For an introductory text on the problem of statelessness and many of the topics covered in the individual units of this guide, including a selection of exercises to test comprehension, please refer to the forthcoming UNHCR's Self-study Module 6 on "Statelessness", available at www.unhcr.org/statelessness
- Further information on a framework of action to address statelessness issues is provided by the UNHCR Action to Address Statelessness: A Strategy Note, March 2010, available at <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>
- Up-to-date information, reports and news items on efforts made by the international community, including UNHCR and other actors, can be found on UNHCR's statelessness website at <http://www.unhcr.org/statelessness> and UNHCR's Refworld portal to information on statelessness <http://www.unhcr.org/refworld/statelessness.html>
- A global overview of the situation of statelessness is provided by Refugees International in K. Southwick, M. Lynch, *Nationality Rights for All. A progress report and global survey on statelessness*, Refugees International, Washington DC, March 2009, available at <http://www.unhcr.org/refworld/docid/49be193f2.html>
- A comprehensive study of the international legal framework relating to statelessness, arranged by theme, can be found in L. van Waas, *Nationality Matters. Statelessness under International Law*, Intersentia, 2008.
- A comparative study of several situations of statelessness and how they have moved towards resolution is offered in B. Blitz, M. Lynch (eds.) *Statelessness and the benefits of citizenship: A comparative study*, Research Project for the Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, 2009.
- A report on discrimination and the human rights protection of stateless persons with a particular emphasis on the issue of detention is provided by the Equal Rights Trust (ERT), *Unravelling Anomaly – Detention, Discrimination and the Protection Needs of Stateless Persons*, London, July 2010, available at <http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>
- A number of regional studies on nationality have been published and provide an excellent background for looking into the issue of statelessness around the world, for instance:
 - * B. Manby, *Citizenship Law in Africa*, Africa Governance Monitoring and Advocacy Project (AfriMAP), Open Society Justice Initiative, New York, 2009.
 - * B. Manby, *Struggles for Citizenship in Africa*, Zed Books, London, 2009.
 - * G.P. Parolin, *Citizenship in the Arab World. Kin, Religion and Nation-State*, IMISCOE Research, Amsterdam University Press, 2009.
 - * K. Swan Sik, *Nationality and international law in Asian perspective*, Martinus Nijhoff Publishers, Dordrecht, 1990.
 - * R. Bauböck et al., *Acquisition and Loss of Nationality – Policies and Trends in 15 European Countries* (Vol. 1 and 2), Amsterdam University Press, 2006 (see also at <http://www.imiscoe.org/natacl>).
 - * R. Bauböck et al., *Citizenship Policies in the New Europe*, Amsterdam University Press, 2009.
- A number of organisations offer web-portals for accessing further studies and information on statelessness. These include:
 - * UNHCR.....<http://www.unhcr.org/statelessness>
 - * Council of Europe website on activities in the area of nationality.....<http://www.coe.int/nationality>
 - * Refugees International.....<http://www.refugeesinternational.org>
 - * Open Society Justice Initiative.....<http://www.justiceinitiative.org>
 - * Equal Rights Trust detention of stateless persons project.....<http://www.equalrightstrust.org/stateless%20persons/index.htm>
 - * International Observatory on Statelessness.....<http://www.nationalityforall.org/>
 - * European Union Democracy Observatory on Citizenship.....<http://eudc-citizenship.eu/>
 - * Citizenship Rights in Africa Initiative.....<http://www.citizenshiprightsinafrica.org/>
 - * Citizenship Legislation Online.....<http://www.legislationline.org/topics/topic2>

If you would like further assistance in designing or teaching a course on statelessness, it may be worthwhile contacting one of the above-mentioned organisations or talking to persons or institutions within your own country who are engaged in the issue. They may be able to point you in the direction of additional materials, offer examples or cases that could be used to illustrate some of the issues that you will be discussing or suggest the names of possible guest speakers. If you are unsure of who to contact, please contact UNHCR's Statelessness Unit for specific advice (UNHCR, Statelessness Unit, Division of International Protection, Case Postale 2500, CH-1211 Geneva, Switzerland; email: HQPR03@unhcr.org).

Stand-Alone Units



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A Galjeel boy in Kenya playing in an abandoned school.

Stand-alone unit A

Statelessness explained, part 1 (of 2)

Summary

Together, units A and B comprise a stand-alone unit on statelessness, viewed from a broad human rights angle, which can be incorporated into any related course. This first unit looks at the concept of statelessness, how it comes about and what can be done to prevent it. The second unit focuses on ensuring the protection of the rights of stateless persons as well as investigating avenues for resolving cases of statelessness.

Unit A opens with an introduction to the concepts of nationality and statelessness. The scale and impact of the problem of statelessness worldwide is discussed and an overview is provided of the consequences of statelessness for individuals, communities and States. Discussion then moves to the origins of statelessness. Students are informed of the doctrines that exist for the attribution of nationality – *jus soli*, *jus sanguinis* and *jus domicilii* – and how the convergence of different approaches to nationality may lead to statelessness. The possibility of loss, renunciation or deprivation of nationality is also briefly introduced and students are shown how this may result in statelessness. A particular focus is placed on the creation of statelessness at birth and on discriminatory laws and practices that may lead to statelessness. The basic freedom of States to

grant and withdraw nationality according to their own rules and principles is explained, including the considerations of State sovereignty which underly this freedom. The right to a nationality, as enshrined in the Universal Declaration of Human Rights and numerous other instruments, is also presented. Students are asked to contemplate the tension between the freedom of States to regulate nationality and the growing body of international legal standards relating to the prevention of statelessness.

Focussing specifically on the problem of statelessness among children and of discrimination contributing to the creation or perpetuation of statelessness, students then look at a number of the main provisions of the 1961 Convention on the Reduction of Statelessness. Some background information on the 1961 Convention and its present standing within the overall body of international law is offered. In assessing the strengths and weaknesses of the 1961 Convention, among the points to consider are: the level of detail of the safeguards against statelessness versus the lack of guidance in determining when the Convention is applicable (such as in identifying a person as “otherwise stateless”); and the careful focus on safeguards against statelessness

that do not further impinge on the freedom of States to regulate nationality versus the failure to rule out the creation of statelessness in a number of circumstances.

In parallel to the review of the 1961 Convention, other relevant international norms are introduced. These include the many human rights provisions on the right of every child at birth to acquire a nationality and to be registered, most importantly in the almost universally ratified Convention on the Rights of the Child (CRC) as well as the relevant articles of the International Covenant on Civil and Political Rights (ICCPR). With regard to the avoidance of statelessness arising from discriminatory laws and practices, students discuss the relevant provisions of CEDAW (relating to gender discrimination in the enjoyment of the right to a nationality) and CERD (relating to racial discrimination in the enjoyment of the right to a nationality). Time allowing, regional human rights instruments and the European Convention on Nationality can also be discussed and/or the content and scope of particular provisions can be investigated in greater depth through consideration of a number of documents of relevant bodies such as the Committee on the Rights of the Child.

Learning objectives

- Describe the problem of statelessness, its scale and consequences.
- Explain how the existence of different doctrines for attributing nationality and the possibility of loss, renunciation or deprivation of nationality may lead to statelessness.
- Appreciate the tension that exists between the freedom of States to regulate nationality and the need to avoid statelessness / ensure the right to a nationality.
- Identify some of the strengths and weaknesses of international standards for the avoidance of statelessness, in particular regarding statelessness among children and statelessness resulting from discriminatory nationality laws.

Readings and information sources

Key readings

- * 1961 Convention on the Reduction of Statelessness.
- * C. Batchelor, "Transforming international legal principles into national law: the right to a nationality and the avoidance of statelessness" in *Refugee Survey Quarterly*, Vol. 25, Issue 3, 2006.
- * P. Leclerc & R. Colville, "In the Shadows" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * Extracts from universal and regional human rights instruments relating to the right to a nationality and the prohibition of discrimination in relation to the enjoyment of the right to a nationality.
<http://www.unhcr.org/4517da8e2.html>
- * UN Human Rights Council, *Arbitrary deprivation of nationality: Report of the Secretary-General*, 26 January 2009, A/HRC/10/34.
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Additional readings and information sources

- * G. McDougall, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development – Report of the Independent Expert on Minority Issues*, A/HRC/7/23, 28 February 2008.
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- * International Law Association, *Final Report on Women's Equality and Nationality in International Law*, Committee on Feminism and International Law, London Conference, 2000
<http://www.ila-hq.org/download.cfm/docid/297E944B-219F-4BD3-B2F6768D64A1C664>
- * S. Benhabib, *Transformations of Citizenship – Dilemmas of the Nation State in the Era of Globalisation*, Koninklijke van Gorcum, Assen, 2001.
- * Inter-Parliamentary Union (IPU) and UNHCR, "Chapter 3: Eliminating the causes of statelessness" in *Nationality and Statelessness: A handbook for parliamentarians*, 2005.
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- * M. Gibney, *Who should be included? Non-citizens, conflict and the constitution of citizenry*, CRISE Working Paper No. 17, September 2006.
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- * J. Goldston, "Holes in the rights framework: Racial discrimination, citizenship and the rights of non-citizens" in *Ethics and International Affairs*, Vol. 20, No. 3, 2006.
http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/articles/noncitizens_20061030
- * J. Doek, "The CRC and the right to acquire and to preserve a nationality" in *Refugee Survey Quarterly*, Vol. 25, Issue 3, 2006.
- * M. Manly, "Sorry, wrong gender" in *Refugees Magazine*, Issue 147, Vol. 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * C. Pouilly, "Africa's hidden problem" in *Refugees Magazine*, Issue 147, Vol. 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter VIII on "International Law and the Prevention of Statelessness", Intersentia, 2008.
- * K. Southwick, M. Lynch, *Nationality Rights for All. A progress report and global survey on statelessness*, Refugees International, Washington DC, March 2009.
<http://www.unhcr.org/refworld/docid/49be193f2.html>

Stand-alone unit B

Statelessness explained, part 2 (of 2)

Summary

This unit builds on the materials covered in Unit A, which provided an introduction to the phenomenon of statelessness and an in-depth look at the prevention of statelessness. Here, attention is turned to the reduction of statelessness – the resolution of existing cases – and the protection of stateless persons.

In looking at avenues for the reduction of statelessness, students are briefly introduced to the demands placed by international law on a State's policy of nationality attribution, including through naturalisation, in the specific circumstance of statelessness. Thus, the potential for case-by-case, individual naturalisation of stateless persons as a means of reduction is studied and the relevant provisions of the 1954 Convention relating to the Status of Stateless Persons and the European Convention on Nationality are presented, along with relevant statements by UN treaty bodies. Thereafter, the possibility of resolving statelessness through large-scale reduction campaigns is presented. Students are shown how international legal standards relating to the right to a nationality and the avoidance of statelessness can inspire a reduction campaign which

could be based on laws adopted specifically to tackle statelessness among a certain population or legislative amendments designed to prevent future statelessness that are applied with retroactive effect. Students take a look at an example of a large-scale reduction campaign and are asked to consider what is involved in the design, implementation and monitoring of such a campaign and what difficulties may arise at each stage that must be taken into account for the campaign to be successful.

Moving to the discussion of the protection of stateless persons, students are reminded of a fundamental premise of human rights law – that most rights are to be enjoyed by everyone, everywhere. The development of human rights law as a move towards de-linking enjoyment of rights from nationality is discussed as is the impact of this development on the role of nationality in the enjoyment of rights. Students are shown how universal and regional human rights standards and machinery can contribute to the enjoyment of rights by stateless persons, but also in which areas stateless persons may miss out on full protection as a result of their lack

of a nationality.

The 1954 Convention relating to the Status of Stateless Persons is introduced as a complementary and supplementary legal regime, alongside human rights law. The current standing, including the number of State parties and recent calls for further accession, to the 1954 Convention is briefly laid out. Through a closer inspection of a number of provisions of the 1954 Convention, students are asked to consider the instrument's strengths and weaknesses. Attention is thereby paid, in particular, to the effect of offering rights at different "levels of attachment" to the State and at different "standards of treatment". In addition, the inclusion of certain special rights such as access to travel documents versus the absence of provisions relating, for instance, to entry and residence or supervision of the Convention is discussed. Finally, to bring the units A and B to a close, students look at the efforts that are currently being made to combat statelessness and its detrimental effects by summarising the role of different national, regional and international actors in addressing this issue as identified over the course of these two units.

Learning objectives

- Explain how reduction may be achieved through case-by-case, individual naturalisation and large-scale reduction campaigns.
- Outline possibilities and calls for facilitated naturalisation of stateless persons under international law.
- Discuss how a large-scale reduction campaign may take shape and what basic considerations come into play in the design, implementation and monitoring of such a campaign.
- Recognise why human rights law is relevant to the enjoyment of rights by stateless persons and explain how universal and regional human rights standards and mechanisms can be used to promote the enjoyment of rights by stateless persons.
- Appreciate how the lack of a nationality may render a stateless person vulnerable under human rights law.
- Discuss the content and approach, strengths and weaknesses, of the legal regime for the protection of stateless persons established under the 1954 Convention relating to the Status of Stateless Persons.
- Understand how international law complements the 1954 Convention
- Identify some of the actors that are involved in tackling statelessness and discuss some of the ways in which they are contributing to a response to this issue.

Readings and information sources

Key readings

- * 1954 Convention relating to the Status of Stateless Persons.
<http://www.unhcr.org/3bbb25729.pdf>
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<http://www.unhcr.org/436774c62.pdf>
- * Office of the United Nations High Commissioner for Human Rights, *The Rights of Non-Citizens*, Geneva 2006.
<http://www.ohchr.org/Documents/Publications/noncitizensen.pdf>
- * G. Gyulai, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*, chapter VI on “Facilitated Access to Citizenship”, Hungarian Helsinki Committee, June 2007.
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- * C. Batchelor, "The International Legal Framework Concerning Statelessness and Access for Stateless Persons", contribution to the European Union Seminar on the Content and Scope of International Protection, Madrid, January 2002
<http://www.unhcr.org/3dca6fc84.pdf>
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<http://www.fmreview.org/FMRpdfs/FMR32/07-10.pdf>
- * K. Perks, A. de Chickera, "The Silent Stateless and the Unhearing World: Can Equality Compel Us to Listen?" in *The Equal Rights Review*, Vol. 3, Equal Rights Trust, 2009.
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Stand-alone unit C

Children, nationality and statelessness

Summary

This stand-alone unit discusses the problem of statelessness among children with a particular focus on the prevention of childhood statelessness. Students are first provided with an introduction to the concepts of nationality and statelessness. The scale and impact of the problem of statelessness worldwide is discussed and the specific consequences of statelessness for children are identified. Next, students take a closer look at how children may be vulnerable to statelessness. They are shown the potential for a conflict of laws relating to the attribution of nationality to a newborn child – *jus soli* and *jus sanguinis* – that may lead to statelessness at birth. Students also look at the situation of foundlings, children born to migrant or refugee parents, children involved in international adoption and the role of birth registration. Since the nationality of a dependent child often remains linked to the nationality of

his or her parents, students discuss the potential threat of statelessness where loss of citizenship of the parent automatically affects the citizenship of the child, as well as the potential for reduction of statelessness among children where the acquisition of citizenship (e.g. by naturalisation) of the parent leads to acquisition of citizenship by the child.

The relevant provisions of the 1961 Convention on the Reduction of Statelessness are identified and their effectiveness in preventing statelessness among children is discussed. To this end, some background on history, approach and overall content of the 1961 Convention is offered. Students are asked to evaluate the strengths and weaknesses of the 1961 Convention, including by weighing up the level of detail of the safeguards against statelessness versus the lack of guidance in determining when the Convention is applicable and

the careful focus on safeguards against statelessness that do not further impinge on the freedom of States to regulate nationality versus the failure to rule out the creation of statelessness in a number of circumstances. In parallel to the assessment of the 1961 Convention, other relevant international norms are introduced. Thus, the many re-statements of the right of every child to acquire a nationality and the right to be registered at birth, found in universal and regional human rights instruments are presented. The content and scope of these provisions are discussed and an overall evaluation can be made of how international law deals with the various ways that children may encounter statelessness. Time allowing, the role of bodies such as the Committee on the Rights of the Child and organisations such as UNICEF in developing policy and undertaking activities to prevent statelessness can also be looked at.

Learning objectives

- Describe the problem of statelessness, its scale and consequences.
- Explain the ways in which children may find themselves at risk of statelessness.
- Discuss the overall approach and content of the 1961 Convention on the Reduction of Statelessness.
- Appreciate the strengths and weaknesses of international standards for the avoidance of statelessness among children.
- Identify some of the actors that are involved in tackling statelessness among children and discuss the ways in which they are contributing to a response to this issue.

Readings and information sources

Key readings providing a general introduction to statelessness

- * P. Leclerc, R. Colville, "In the Shadows" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * M. Manly, S. Persaud, "UNHCR and responses to statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/07-10.pdf>

Key readings on children and statelessness

- * UNICEF, *Birth Registration: Right from the Start*, Florence, 2002.
<http://www.unicef.at/fileadmin/medien/pdf/birthreg.pdf>
- * IPU and UNHCR, *Nationality and Statelessness: A handbook for parliamentarians*, chapter 3 on "Eliminating the causes of statelessness" 2005.
<http://www.unhcr.org/436774c62.pdf>
- * Jaap Doek, "The CRC and the right to acquire and to preserve a nationality" in *Refugee Survey Quarterly*, Vol. 25, Issue 3, 2006.
- * M. Lynch, M. Teff, "Childhood statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/31-33.pdf>
- * 1961 Convention on the Reduction of Statelessness.
<http://www.unhcr.org/refworld/docid/3ae6b39620.html>
- * Extracts from universal and regional human rights instruments relating to the right to a nationality and the right to birth registration.
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Additional readings and information sources

- * R. Cordova, *Nationality, including statelessness. Third report on the elimination or reduction of statelessness*, A/CN.4/81, March 1954.
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- * African Commission on Human and Peoples' Rights, *Case of John K. Modise v. Botswana*, Comm. No. 97/93, 2000.
- * C. Batchelor, "Developments in International law: The Avoidance of Statelessness Through Positive Application of the Right to a Nationality" in *Council of Europe's First Conference on Nationality*, Strasbourg, 2001.
- * Youth Advocate Program International, *Stateless Children – Youth Who are Without Citizenship*, Washington DC, 2002.
<http://www.yapi.org/old/publications/bookletseries/Stateless.pdf>
- * UNICEF, *The State of the World's Children. Excluded and Invisible*, New York, 2006.
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- * M. Lynch, *Futures Denied: Statelessness among infants, children and youth*, Refugees International, 2008.
<http://www.unhcr.org/refworld/docid/48fef8632.html>
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter IV on "Addressing the Technical Causes of Statelessness", Intersentia, 2008.
- * S. Heap, C. Cody, "The Universal Birth Registration Campaign" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/20-22.pdf>

Stand-alone unit D

Gender, nationality and statelessness

Summary

This stand-alone unit discusses gender issues in the context of nationality attribution and how discriminatory laws and practices can lead to statelessness. Students are first provided with an introduction to the concepts of nationality and statelessness. The scale and impact of the problem of statelessness worldwide is discussed and an impression is given of the consequences of statelessness for individuals, communities and States. Next, students take a look at how nationality is attributed by States and at how gender can be a factor in laws and policies relating to nationality. In particular, this unit discusses the existence of, and reasoning behind,

nationality laws that discriminate on the basis of gender. It looks at the increased vulnerability of women to statelessness as a result of changes to their nationality status through marriage or divorce and the heightened risk of statelessness among children in the event of nationality laws that limit the ability of women to transmit their nationality to their children.

Students then look at the role of human rights law and instruments such as CEDAW, ICCPR and the Convention on the Nationality of Married Women in tackling gender discrimination in the context of nationality attribution. The content

and scope of these provisions are discussed, including through consideration of a number of reports and statements by relevant bodies such as the CEDAW Committee (e.g. concluding observations on periodic state reports; general recommendations). Finally, students discuss the efforts that are being made to combat gender discrimination in relation to a right to a nationality and to avoid statelessness in this context, including by looking at the role of different national, regional and international actors in addressing this issue.

Learning objectives

- Describe the problem of statelessness, its scale and consequences.
- Explain the ways in which gender may be a factor in the attribution of nationality and how gender discrimination in nationality laws and practices may lead to statelessness.
- Discuss the overall approach and content of the 1961 Convention on the Reduction of Statelessness.
- Appreciate the strengths and weaknesses of international law for the avoidance of statelessness arising from gender discrimination.
- Identify some of the actors that are involved in combating gender discrimination where it impacts on the right to a nationality and discuss how they are contributing to a response to this issue.

Readings and information sources

Key readings providing a general introduction to statelessness

- * P. Leclerc & R. Colville, "In the Shadows" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * M. Manly, S. Persaud, "UNHCR and responses to statelessness" in *Forced Migration Review*, Issue 32, April 2009.
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Key readings on gender, nationality and statelessness

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- * M. Manly, "Sorry, wrong gender" in *Refugees Magazine*, Issue 147, Vol. 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * UN Human Rights Council, Resolutions on human rights and arbitrary deprivation of nationality, 2008 – 2010.
 - 2010 Human Rights Council<http://www.unhcr.org/refworld/docid/4c36e7402.html>
 - 2009 Human Rights Council<http://www.unhcr.org/refworld/docid/49958be22.html>
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<http://www.unhcr.org/4a4b809d9.html>
- * A. Edwards, *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, UNHCR Legal and Protection Policy Research Series, PPLAS/2009/02, August 2009.
<http://www.unhcr.org/4a8d0f1b9.html>
- * Extracts from the 1961 Convention on the Reduction of Statelessness as well as universal and regional human rights instruments relating to the right to a nationality and gender discrimination, including the 1957 Convention on the Nationality of Married Women.
 - 1961 Convention available at<http://www.unhcr.org/refworld/docid/3ae6b39620.html>
 - Extracts from other instruments available at<http://www.unhcr.org/4517da8e2.html>
 - 1957 Convention available at<http://www.unhcr.org/refworld/pdfid/3ae6b3708.pdf>

Additional readings and information sources

- * UNHCR, "Statelessness and citizenship" in *The State of the World's Refugees – A humanitarian agenda*, Oxford University Press, 1997.
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- * S. Joseph, *Gender and Citizenship in the Arab World*, Concept Paper UNDP Mediterranean Development Forum, April 2002.
<http://www.pogar.org/publications/gender/suad/gender.pdf>
- * UN Division for the Advancement of Women, *Women, nationality and citizenship*, June 2003.
<http://www.un.org/womenwatch/daw/public/jun03e.pdf>
- * V. Kartashkin, *The rights of women married to foreigners*, Working Paper for the Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2003/34, 30 June 2003.
<http://www.unhcr.org/refworld/docid/3f4f636b7.html>
- * K. McKinsey, "Lose a husband, lose a country" in *Refugees Magazine*, Issue 147, Vol. 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * UNDP Programme on Governance in the Arab Region – Gender and Citizenship Initiative website.
<http://www.pogar.org/resources/gc/index.aspx>

Stand-alone unit E

Minorities, nationality and statelessness

Summary

This stand-alone unit discusses the vulnerability of ethnic, religious and linguistic minorities to statelessness. Students are first provided with an introduction to the concepts of nationality and statelessness. The scale and impact of the problem of statelessness worldwide is discussed and an impression is given of the consequences of statelessness for individuals, communities and States. Next, students take a look at how nationality is attributed by States and at how discrimination can be a factor in laws and policies relating to nationality. In particular, this unit discusses the existence of, and reasoning behind, nationality laws that discriminate either directly or indirectly against minority groups. It looks at how statelessness can

result from arbitrary deprivation of nationality or be perpetuated by denial of citizenship, including through the presentation of examples of such practices. Discrimination is thereby also identified as a barrier to the reduction of statelessness.

Thereafter, the relevant international legal framework is identified. The provision of the 1961 Convention on the Reduction of Statelessness that addresses discriminatory deprivation of nationality is considered. It may be of interest to offer some background information on the overall approach and current standing of this Convention and to ask students to assess the strengths and weaknesses of the 1961 Convention in tackling statelessness among

children. Relevant human rights norms are then presented, including those found in CERD, resolutions of the Human Rights Council (and the former Commission on Human Rights) and regional instruments. Students are also familiarised with the decision of the Inter-American Court on Human Rights in the Case of *Yean and Bosico v. Dominican Republic* and relevant decisions of the African Commission on Human and Peoples' Rights. Finally, students discuss other efforts that are being made to combat discrimination in relation to the right to a nationality and to avoid statelessness in this context, including by looking at the role of different national, regional and international actors in addressing this issue.

Learning objectives

- Describe the problem of statelessness, its scale and consequences.
- Explain the ways in which discrimination, on grounds such as ethnicity, language and religion, may be a factor in the attribution of nationality and may lead to statelessness and appreciate the acute vulnerability of minorities to statelessness.
- Appreciate the strengths and weaknesses of international standards for the avoidance of statelessness arising from discrimination against minorities.
- Discuss the importance of the Inter-American Court of Human Rights' decision in the Case of *Yean and Bosico v. Dominican Republic* and relevant decisions of the African Commission.
- Identify some of the actors that are involved in combating racial discrimination where it impacts on the right to a nationality and discuss how they are contributing to a response to this issue.

Readings and information sources

Key readings providing a general introduction to statelessness

- * P. Leclerc, R. Colville, "In the Shadows" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * M. Manly, S. Persaud, "UNHCR and responses to statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/07-10.pdf>

Key readings on minorities, nationality and statelessness

- * Inter-American Court of Human Rights, *Case of Yean and Bosico v. Dominican Republic*, Series C, Case 130, 8 September 2005.
<http://www.unhcr.org/refworld/docid/44e497d94.html>
- * African Commission on Human and Peoples Rights, *Malawi African Association and Others v Mauritania*, AHRLR 149 (ACHPR 2000), 2000.
- * J. Goldston, "Holes in the rights framework: Racial discrimination, citizenship and the rights of non-citizens", in *Ethics and International Affairs*, Vol. 20, No. 3, 2006.
http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/articles/noncitizens_20061030
- * G. McDougall, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development – Report of the Independent Expert on Minority Issues*, A/HRC/7/23, 28 Feb. 2008.
<http://www.unhcr.org/refworld/docid/47d685ea2.html>
- * B. Wooding, "Contesting discrimination and statelessness in the Dominican Republic" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/23-25.pdf>
- * UN Human Rights Council (and former Commission on Human Rights), Resolutions on human rights and arbitrary deprivation of nationality, 1997 – 2010.

2010 Human Rights Council	http://www.unhcr.org/refworld/docid/4c36e7402.html
2009 Human Rights Council	http://www.unhcr.org/refworld/docid/49958be22.html
2008 Human Rights Council	http://www.unhcr.org/refworld/docid/49997add1d.html
2005 Commission on Human Rights	http://www.unhcr.org/refworld/docid/429c3b694.html
1999 Commission on Human Rights	http://www.unhcr.org/refworld/docid/3b00f04654.html
1998 Commission on Human Rights	http://www.unhcr.org/refworld/docid/3b00f0405c.html
1997 Commission on Human Rights	http://www.unhcr.org/refworld/docid/3b00f09e44.html
- * Extracts from the 1961 Convention on the Reduction of Statelessness as well as universal and regional human rights instruments relating to the right to a nationality and the prohibition of discrimination.

1961 Convention available at	http://www.unhcr.org/refworld/docid/3ae6b39620.html
Extracts from other instruments available at	http://www.unhcr.org/4517da8e2.html

Additional readings and information sources

- * K. Groenendijk, "Nationality, Minorities and Statelessness. The Case of the Baltic States", in *Helsinki Monitor*, Vol. 4, No. 3, 1993.
- * UNHCR, "Statelessness and citizenship" in *The State of the World's Refugees – A humanitarian agenda*, Oxford University Press, 1997.
<http://www.unhcr.org/3eb7ba7d4.pdf>
- * Inter-American Commission on Human Rights, "Chapter IX: Situation of Haitian migrant workers and their families in the Dominican Republic" in *Report on the situation of human rights in the Dominican Republic*, OEA/Ser.L/V/II.104, 7 October 1999.
<http://www.cidh.org/countryrep/dominicanrep99/Chapter9.htm>
- * C. Pouilly, "Africa's hidden problem" in *Refugees Magazine*, Issue 147, Vol. 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * S. Jackson, "Of 'doubtful nationality': Political Manipulation of Citizenship in the D.R. Congo" in *Citizenship Studies*, Vol. 11, No. 5, November 2007.
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter V on "Addressing Statelessness resulting from Arbitrary Deprivation of Nationality", Intersentia, 2008.
- * A. Hussein Adam, "Kenyan Nubians: standing up to statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/19-20.pdf>

Stand-alone unit F

Statelessness, migration and forced displacement

Summary

This stand-alone unit explores the interplay between migration, forced displacement and statelessness: how migration and forced displacement can lead to statelessness and vice versa. Students are first provided with an introduction to the concepts of nationality and statelessness. The scale and impact of the problem of statelessness worldwide is discussed and an impression is given of the consequences of statelessness for individuals, communities and States.

Next, students take a look at how nationality is attributed by States and at how migration can be a factor in the acquisition and loss of nationality. Through straightforward examples, students are shown how migration leads to an increased risk of conflicts of laws that could result in statelessness. Students are then shown how statelessness can also form a barrier to migration, due to the possible absence of a country to which a stateless person has the right to return. The issue of (prolonged) detention is raised. In addition, examples are provided of

how statelessness leads to increased vulnerability to forced displacement, such as through expulsion of denationalised persons. Students are also asked to think about how refugees who formally possess a nationality may be exposed to an increased risk of statelessness and how nationality disputes and statelessness may impact on the implementation of a durable solution to refugee situations. The interplay between statelessness and human trafficking as well as statelessness and irregular migration is also discussed.

If a more in-depth consideration of the overlap, similarities and differences between the issue of statelessness and that of refugees is envisaged, students may be reminded of the shared history of the international community's response to statelessness and refugee issues and of the parallel development of the 1954 Convention relating to the Status of Stateless Persons and the 1951 Convention relating to the Status of Refugees. The definitions of

a refugee and of a stateless person can be compared and contrasted and students can be asked to think about how these definitions and the legal regimes that have been built upon them may interact – i.e. when is a stateless person also a refugee and what does this mean for the application of international legal standards? Students could also be asked to think about the enduring link between statelessness and refugee issues, including such questions as how a finding of statelessness may contribute to the substantiation of a claim to refugee status.

The relevant legal standards for the avoidance of statelessness in the context of migration are presented, including those relating specifically to refugees, victims of human trafficking and irregular migrants. Finally, students look at the efforts that are being made to combat statelessness and its detrimental effects, including by looking at the role of different national, regional and international actors in addressing this issue.

Learning objectives

- Describe the problem of statelessness, its scale and consequences.
- Explain the ways in which the issues of migration, forced displacement and statelessness interact.
- Outline the shared history of the international response to statelessness and refugee issues, including the lasting impact that this has had on relevant legal standards.
- Discuss the definition of a stateless person and the definition of a refugee and how these definitions may intersect.
- Appreciate the different ways in which statelessness and refugee issues may be linked.
- Describe how relevant international standards can help to avoid statelessness arising in the context of migration and forced migration.
- Identify some of the actors that are involved in tackling statelessness and discuss some of the ways in which they are contributing to a response to this issue.

Readings and information sources

Key readings providing a general introduction to statelessness

- * P. Leclerc, R. Colville, "In the Shadows" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * M. Manly, S. Persaud, "UNHCR and responses to statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/07-10.pdf>

Key readings on statelessness, migration and forced displacement

- * S. Grant, "The Legal Protection of Stranded Migrants" in R. Cholewinski (ed.) *International Migration Law*, TMC Asser Press, The Hague, 2007.
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter VII on "Addressing the 'new' causes of statelessness" (section 2 on Migration), Intersentia, 2008.
- * E. Aukot, "Am I stateless because I am a nomad?" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/18.pdf>
- * C. Komai, F. Azukizawa, "Stateless persons from Thailand in Japan" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/33.pdf>

Additional readings and information sources

- * Extracts from UNHCR, *Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/Eng/Rev.1, Reedited January 1992.
<http://www.unhcr.org/refworld/pdfid/3ae6b3314.pdf>
- * UNHCR, "Statelessness and citizenship" in *The State of the World's Refugees – A humanitarian agenda*, Oxford University Press, 1997.
<http://www.unhcr.org/3eb7ba7d4.pdf>
- * R. Piotrowicz, "Victims of trafficking and de facto statelessness" in *Refugee Survey Quarterly*, Vol. 21, Special Issue, 2002.
- * R. da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, chapter 14 on "Naturalisation", UNHCR, POLAS/2006/02, June 2006.
<http://www.unhcr.org/refworld/pdfid/44bb9b684.pdf>
- * L. van Waas, "The Children of Irregular Migrants: A Stateless Generation?" in *Netherlands Quarterly of Human Rights*, Vol. 25, 2007.
- * J. Bloom, *The link between trafficking and statelessness*, Presentation before the US Catholic Coalition Against Human Trafficking, February 2009.
<http://www.rcusa.org/uploads/pdfs/Trafficking%20&%20Statelessness,%202-11-09.pdf>
- * K. Crabtree, "We have no soil under our feet" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/14.pdf>
- * K. Perks, J. Clifford, "The legal limbo of detention" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/42-43.pdf>
- * Equal Rights Trust (ERT), *Unravelling Anomaly – Detention, Discrimination and the Protection Needs of Stateless Persons*, London, July 2010.
<http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>

Comprehensive Course Outline



UNHCR / G. CONSTANTINE

A stateless ethnic Korean man and
his Ukrainian partner.

Unit 1 [core unit]

An introduction to nationality and statelessness around the world

Summary

In this unit, students will start to think about nationality and statelessness by first exploring their preconceptions of and personal experience with these two concepts. Two questions guide the introduction to the topic of statelessness: Where does your nationality come from? And what does it mean to you? The discussion of these questions forms the backdrop for a presentation of the doctrines for the attribution of nationality, some basic causes of statelessness and the impact of statelessness on individuals and communities. Thus, students discover how a link with a State through birth, parentage or residence can be translated into nationality

through laws based on *jus soli*, *jus sanguinis* and *jus domicilii*. Through simple examples, students learn to appreciate how the existence of these different doctrines, side by side, may lead to cases of statelessness as well as dual nationality. Students consider what the possible advantages and disadvantages of dual nationality may be, based on their perception of the role of nationality.

This is followed by a look at some of the major existing situations of statelessness worldwide in order to reveal the overall scale and consequences of statelessness. Students discuss the impact

of statelessness on individuals and communities, including the psychological effects, the barriers it creates for the enjoyment of different rights and benefits and the broader impact on societal cohesion. The notion of human security is introduced and students consider how the detrimental effect of statelessness could be discussed in terms of human security. Finally, students also discuss the importance of limiting statelessness, from the perspective of States and the international community, such as for the purpose of combating forced displacement, potential national security problems and international instability.

Learning objectives

- Identify the links between a person and a State that can form the basis for the attribution of nationality.
- Discuss some of the benefits of nationality and appreciate the difficulties stateless persons may face.
- Recognise how a conflict of nationality laws could lead to statelessness as well as to cases of dual nationality.
- Explain why individuals, States and the international community have an interest in addressing statelessness.
- Describe the scale of statelessness worldwide and identify a number of significant stateless populations.

Readings and information sources

Key readings

- * C. Sokoloff, *Denial of Citizenship: A challenge to human security*, prepared for the Advisory Board on Human Security, February 2005.
<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1087378>
- * P. Leclerc, R. Colville, "In the Shadows" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter III, section 1 on "The attribution of nationality: doctrines and competences", Intersentia, 2008.
- * M. Lynch, *Statelessness: International blind spot linked to global concerns*, Refugees International, 2 September 2009.
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Additional readings and information sources

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<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b7248&skip=0&query=nottebohm>
- * UNHCR, *The world’s stateless people – Questions and Answers*, Information booklet, Geneva, September 2007.
<http://www.unhcr.org/refworld/docid/47a707900.html>
- * I. Goris, J. Harrington, S. Köhn, “Statelessness: what it is and why it matters”, in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/textOnlyContent/FMR/32/Goris,%20Harrington%20%20Kohn.doc>
- * K. Southwick, M. Lynch, *Nationality Rights for All. A progress report and global survey on statelessness*, Section on “Global Survey of Statelessness”, Refugees International, Washington DC, March 2009.
<http://www.unhcr.org/refworld/docid/49be193f2.html>
- * M. Manly, L. van Waas, “The value of the human security framework in addressing statelessness” in A. Edwards, C. Ferstman (eds.) *Human Security and Non-Citizens. Law, Policy and International Affairs*, Cambridge University Press, 2010.

Unit 2 [core unit]

State sovereignty, nationality and statelessness

Summary

This unit concentrates on the relationship between State sovereignty, the regulation of nationality and questions of statelessness, thereby uncovering the origins of this phenomenon. Students discuss why the attribution of nationality by a State is such a fundamental aspect of State-building. The basic freedom of States to grant and withdraw nationality according to their own rules and principles is explained, including the role of considerations of State sovereignty and self-determination in underlying this freedom. Students are reminded of the doctrines that have been developed by States for the attribution of nationality – *jus*

solis, *jus sanguinis* and *jus domicilii* – and how different approaches to nationality may lead to statelessness. The possibility of loss, renunciation or deprivation of nationality is also introduced and students are shown how this may result in statelessness.

The traditional perspective of international law on questions of nationality is discussed, with reference to the finding of the Permanent Court of International Justice in the *Tunis and Morocco Nationality Decrees* case. The right to a nationality, as recognized in the Universal Declaration of Human Rights and numerous other instruments, is also presented as is

the 1984 judgement of the Inter-American Court of Human Rights on proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Students are asked to contemplate the tension between the freedom of States to regulate nationality and the need to conclude international agreements in order to prevent statelessness. The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws is introduced as a basis for discussing how common international standards could be shaped for the avoidance of statelessness while respecting State autonomy in nationality matters.

Learning objectives

- Explain how the existence of different doctrines for attributing nationality and the possibility of loss, renunciation or deprivation of nationality may lead to statelessness.
- Appreciate the tension that exists between the freedom of States to regulate nationality and the need to avoid statelessness / ensure the right to a nationality.
- Formulate some basic rules that could be adopted as common international standards to help avoid statelessness.

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Unit 3

Statelessness as an international legal concept and the challenge of identification

Summary

This unit focuses on the definition of statelessness and the challenges involved in identifying cases of statelessness as well as persons who are at risk of statelessness. Definition and identification are shown to be the cornerstone of any response to statelessness – both for the protection of stateless persons and the prevention and reduction of statelessness. The accepted international definition of a stateless person, as included in article 1 of the 1954 Convention relating to the Status of Stateless

Persons is presented. Its historical development, in parallel to the definition of a refugee, is briefly discussed. Students are shown that this definition is described as relating to *de jure* statelessness and the concept of *de facto* statelessness is introduced. The relationship between these concepts is discussed as well as the strengths and weaknesses of different approaches to the question of definition.

The problem of applying any definition of statelessness in practice

is introduced and students are asked to consider how an individual or a State could go about proving what is, in effect, a negative (the absence of a nationality). It is explained that many States have yet to develop or formalise procedures for identifying stateless persons. By looking at existing examples, students give further thought to what kinds of evidence can be relied upon to determine nationality status and how the procedure and responsibility for identification should be organised.

Learning objectives

- Discuss the concepts of *de jure* and *de facto* statelessness and offer examples to illustrate these definitions.
- Explain the importance of definition and identification of statelessness.
- Discuss possible methods for the identification of statelessness, identifying the strengths and weaknesses of various approaches.

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Unit 4 [core unit]

Preventing statelessness (1): Conflicts of laws and statelessness among children

Summary

This unit discusses the particular problem of avoiding statelessness among children. Students first take a closer look at how children may be vulnerable to statelessness. They are reminded of the potential for a conflict of laws relating to the attribution of nationality to a newborn child. Additional issues are raised, including the situation of foundlings, children born to migrant or refugee parents, children involved in international adoption and the role of birth registration. Since the nationality of a dependent child often remains linked to the nationality of his or her parents, students discuss the potential threat of statelessness where loss of citizenship of the parent automatically effects the loss of citizenship of the child, as well as the potential opportunity for reduction of statelessness among children where the acquisition of citizenship

(e.g. by naturalisation) of the parent leads to acquisition of citizenship by the child.

The relevant provisions of the 1961 Convention on the Reduction of Statelessness are identified and their effectiveness in preventing statelessness among children is discussed. To this end, some background on history, approach and overall content of the 1961 Convention is offered. Students are asked to evaluate the strengths and weaknesses of the 1961 Convention, including by weighing up the level of detail of the safeguards against statelessness versus the lack of guidance in determining when the Convention is applicable and the careful focus on safeguards against statelessness that do not further impinge on the freedom of States to regulate nationality versus

the failure to rule out the creation of statelessness in a number of circumstances. In parallel to the assessment of the 1961 Convention, other relevant international norms are introduced. Thus, the many formulations of the right of every child to acquire a nationality and the right to be registered at birth, found in universal and regional human rights instruments are presented. The content and scope of these provisions are discussed and an overall evaluation can be made of how international law deals with the various ways that children may be rendered stateless. Time allowing, the role of bodies such as the Committee on the Rights of the Child and organisations such as UNICEF in developing policy and undertaking activities to prevent statelessness can also be looked at.

Learning objectives

- Explain the ways in which children may find themselves at risk of statelessness.
- Discuss the overall approach and content of the 1961 Convention on the Reduction of Statelessness.
- Appreciate the strengths and weaknesses of the 1961 Convention, in particular in relation to the avoidance of statelessness among children.
- Identify and discuss other relevant international standards for the avoidance of statelessness among children.

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Unit 5 [core unit]

Preventing statelessness (2): Nationality, discrimination and statelessness

Summary

This unit looks at the role that discrimination can play in the creation and perpetuation of statelessness. The two main issues considered are discrimination on the grounds of gender and discrimination against ethnic, religious or linguistic minorities. The unit discusses the existence of, and reasoning behind, nationality laws that discriminate on the basis of gender. It looks at the increased vulnerability of women to statelessness as a result of changes to their nationality status through marriage or divorce and the heightened risk of statelessness among children where nationality laws limit the ability of women to transmit their nationality to their children. The approach taken to gender and nationality in the 1961

Convention on the Reduction of Statelessness is identified. Students then look at the role of human rights law and instruments such as ICCPR, CEDAW and the Convention on the Nationality of Married Women in tackling gender discrimination in the context of nationality attribution. The content and scope of these provisions are discussed, including through consideration of a number of reports, statements and conclusions by relevant bodies such as the CEDAW Committee.

Thereafter, the vulnerability of ethnic, religious and linguistic minority groups to deprivation or denial of nationality is discussed and illustrated through examples that show the different ways in

which discrimination may influence law or practice. The provision of the 1961 Convention on the Reduction of Statelessness that addresses discriminatory deprivation of nationality is considered before relevant human rights norms, including CERD, resolutions of the Human Rights Council, the former Commission on Human Rights, and regional instruments are discussed. Students are also familiarised with the decision of the Inter-American Court on Human Rights in the Case of *Yean and Bosico v. Dominican Republic* – the context of and details of this case can also be used as the focal point for discussing this issue, with students basing the investigation of relevant international norms around this case study.

Learning objectives

- Describe the role that discrimination can play in creating and perpetuating statelessness.
- Explain why women may find themselves at risk of statelessness and how gender discrimination in nationality law can heighten the threat of statelessness among children.
- Discuss the value of the human rights instruments for the prevention of statelessness in the context of gender discrimination.
- Explain the ways in which minority groups may find themselves at risk of statelessness.
- Discuss the value of the 1961 Convention on the Reduction of Statelessness for the prevention of statelessness in the context of discrimination against minorities.
- Identify and discuss other relevant international standards for the avoidance of statelessness in the context of discrimination against minorities.

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Unit 6

Preventing statelessness (3): Statelessness in the context of State succession

Summary

This unit considers the particular challenges presented by the context of State succession for the regulation of nationality and the avoidance of statelessness. The two main types of State succession are presented: universal and partial succession. It is then shown how each type may lead to statelessness by creating potential for a conflict of laws. Through examples, students discover how the complexities and sensitivities of State-building may further increase the risk of statelessness following State succession. For instance, documentation or registration systems that were in place prior to State succession may be inaccessible or unavailable to the successor State(s), hindering the verification of a person's claim to citizenship. Or a newly-elaborated

nationality law may be discriminatory in intent or effect, perhaps reflecting ongoing distrust or animosity between different segments of the population.

Turning to the international legal framework put in place to guide States through these difficult questions, the content, strengths and limitations of the relevant provision of the 1961 Convention on the Reduction of Statelessness is discussed first. The ILC Draft Article on the nationality of natural persons in relation to the succession of States, the Council of Europe Convention on the avoidance of statelessness in relation to State succession and the relevant provisions of the European Convention on Nationality are then

considered in detail. Students look at how the responsibility for the avoidance of statelessness is shared between predecessor and successor States. Particular attention is paid to those articles and provisions that may be considered especially innovative, including the use of the notion of "appropriate connection", the introduction of the right of option to pre-empt disputes, the call for international consultation and cooperation, the detailed procedural safeguards outlined and the grant of nationality to persons born on the territory of a successor State when they would otherwise be stateless. Students may be asked to consider the potential for employing such norms more broadly in order to avoid statelessness arising in other circumstances.

Learning objectives

- Explain how statelessness may arise in the context of (different types of) State succession and what additional factors may play a role in increasing risks of statelessness
- Discuss the approach taken by the 1961 Convention on the Reduction of Statelessness to the prevention of statelessness in the context of State succession
- Recognise and describe the innovative value of some of the standards that have recently been elaborated to address the problem of statelessness in the context of State succession.

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Unit 7 [core unit]

Reducing statelessness (1): International law and the reduction of statelessness

Summary

In this unit, attention is turned to the reduction of statelessness – in other words, the resolution of existing cases. In particular, it considers the demands placed by international law on a State's policy of nationality attribution, including through naturalisation, in the specific circumstance of statelessness. Students first consider the potential for case-by-case, individual naturalisation of stateless persons as a means of reduction. The relevant provisions of the 1954 Convention relating to the Status of Stateless Persons and the European Convention on Nationality

are discussed, along with relevant statements by international human rights bodies. Attention is paid to the barriers that may confront stateless persons seeking to naturalise and whether such barriers are legitimate as well as what action could be taken to assist stateless persons in the process of naturalisation.

Thereafter, alternative means of resolving statelessness, particularly legislative reform and large-scale reduction campaigns, are presented. Students are asked to think about how international legal standards relating to the right to a nationality

and the avoidance of statelessness can be applied, so as to tackle existing cases of statelessness. Examples can be discussed such as: the introduction of legal reforms which bring gender equality in the enjoyment of nationality rights and are given retroactive effect (as seen recently in various North African States) or the use of the court system to achieve clarification of the law and recognition of nationality for a population which was not considered to possess nationality or whose citizenship was previously disputed (as seen, for example, in Bangladesh).

Learning objectives

- Explain how reduction may be achieved through case-by-case, individual naturalisation, changing criteria for attribution of nationality and large-scale reduction campaigns.
- Recognise the barriers that stateless persons seeking naturalisation may confront.
- Outline possibilities and calls for facilitated naturalisation of stateless persons under international law.
- Describe how international standards relating to the right to a nationality and the avoidance of statelessness may guide legal reform and a dedicated reduction campaign.

Readings and information sources

Key readings

- * Committee on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination against non-citizens*, New York, 1 October 2004.
<http://www.unhcr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d?Opendocument>
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter XII on "Protecting the Special Needs of the Stateless" (section 1 on "Naturalisation"), Intersentia, 2008.
- * K. Hussain, "The end of Bihari statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/30-31.pdf>
- * B. Manby, *Citizenship law in Africa*, section on "Gender discrimination – Reforms in North Africa", pp. 50-52, Open Society Institute, 2009.
<http://www.afrimap.org/english/images/report/OSI-Citizenship-Law-in%20Africa-full.pdf>
- * UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, paras. 41-47 on "Reduction – seeking solutions for stateless populations".
<http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>

Additional readings and information sources

- * Inter-American Court on Human Rights, *Advisory Opinion on the Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica*, OC-4/84, paras. 36-42 and paras. 63-68, 19 January 1984.
<http://www.unhcr.org/refworld/pdfid/44e492b74.pdf>
- * E. Paulsen, "The citizenship status of the Urdu-speaking Biharis in Bangladesh" in *Refugee Survey Quarterly*, Vol. 25, No. 3, 2006.
- * G. Gyulai, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*, chapter VI on "Facilitated Access to Citizenship", Hungarian Helsinki Committee, June 2007.
<http://www.unhcr.org/497099902.pdf>
- * A. Korir Sing'Oei, "Promoting Citizenship in Kenya: The Nubian Case" in B. Blitz, M. Lynch (eds.) *Statelessness and the benefits of citizenship: A comparative study*, Research Project for the Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, 2009.
http://www.udhr60.ch/report/statelessness_paper0609.pdf
- * UNHCR, *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*, 2008, sections 2.10-2.13 on "Reduction of Statelessness".
<http://www.unhcr.org/refworld/docid/49a28afb2.html>

Unit 8 [core unit]

Reducing statelessness (2): Addressing large-scale statelessness situations through dedicated reduction campaigns

Summary

This unit turns to the challenge of resolving existing cases of statelessness in practice, looking in particular at dedicated, large-scale reduction campaigns. Examples are given of the content of such campaigns which could be based on specially adopted laws to tackle statelessness, existing naturalization provisions or legislative amendments designed to prevent future statelessness that are applied with retroactive effect. Any such campaign necessarily

involves a number of steps: from identifying, clarifying or elaborating the necessary legal foundation for reducing statelessness; to mobilising and building the capacity of all relevant actors (government, civil society, persons affected) to implement the reduction campaign; to supervising the implementation of the campaign and ensuring that a remedy is available for anyone who is overlooked. Students are asked to consider what is involved at each stage - design, implementation and

monitoring - of such campaigns and what difficulties may arise. In addition, time allowing, students could take a closer look at activities that have been undertaken as a precursor to a large-scale reduction campaign, such as research, awareness-raising and lobbying efforts in order to discover what can be done to move a protracted situation of statelessness closer to resolution.

Learning objectives

- Discuss legislative solutions to large-scale statelessness situations, how a reduction campaign may take shape and what basic considerations come into play in the design, implementation and monitoring of such a campaign.
- Identify barriers that may exist to the implementation of a large-scale reduction campaign, including those relating to the State and those relating to the population concerned.
- Explain the importance of working in partnership for the success of a large-scale reduction campaign and describe how different actors may contribute to different elements of the campaign.

Readings and information sources

Key readings

- * UNHCR, *Beyond Borders – Strengthening asylum in Ukraine*, Bulletin No. 5 of UNHCR in Ukraine, 2005.
<http://www.unhcr.org/42bbff3f2.pdf>
- * K. Southwick, M. Lynch, *Nationality Rights for All. A progress report and global survey on statelessness*, section on “Drawing lessons from recent progress in statelessness cases”, Refugees International, Washington DC, March 2009.
<http://www.unhcr.org/refworld/docid/49be193f2.html>
- * P. Sivapragasam, “From statelessness to citizenship: Up-country Tamils in Sri Lanka” in B. Blitz, M. Lynch (eds.) *Statelessness and the benefits of citizenship: A comparative study*, Research Project for the Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, 2009.
http://www.udhr60.ch/report/statelessness_paper0609.pdf
- * UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, paras. 41-47 on “Reduction – seeking solutions for stateless populations”.
<http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>

Additional readings and information sources

- * N. Gurung, E. Paulsen, "Nepal moves mountains" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * J. van Selm, "Stateless Roma in Macedonia" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/46-47.pdf>
- * Website of the Campaign for Arab Women's Right to Nationality.
<http://www.learningpartnership.org/citizenship/>

Unit 9 [core unit]

Protecting stateless persons (1): Human rights law and the protection of stateless persons

Summary

This unit looks at a range of international legal standards that offer guidance for the protection of stateless persons, alongside the provisions of the 1954 Convention relating to the Status of Stateless Persons which will be discussed in the following unit. Students are shown how universal and regional human rights standards and machinery can contribute to the enjoyment of rights by stateless persons – indeed the very development of human rights law as a move towards diminishing the role of nationality for the enjoyment of rights is discussed. The historical significance of nationality and the influence of the development of

human rights law on the role of nationality are discussed. Through looking more closely at contemporary human rights instruments, students are encouraged to think about the extent to which the enjoyment of rights has been de-linked from nationality over the past half-century and to consider in which areas stateless persons may miss out on full protection as a result of their lack of a nationality.

Students are, in particular, asked to consider the meaning and scope of the principle of non-discrimination and of equality before the law, in the context of distinctions between citizens and non-citizens and the

specific question of the position of stateless persons. The use of human rights treaty reporting or individual complaints procedures to promote the rights of stateless persons is discussed through the presentation of relevant examples. The overall impact of these international standards that complement the protection offered by the 1954 Convention can be explored further through the consideration of cases relating to a particular country or of certain thematic concerns, such as the scope of the right to enter one's "own country" in the context of statelessness.

Learning objectives

- Recognise why human rights law is relevant to the enjoyment of rights by stateless persons.
- Discuss the extent to which the development of human rights law has led to de-linking of nationality and human rights protection and how this has impacted on the role of nationality in the enjoyment of rights.
- Explain how universal and regional human rights standards and mechanisms can be used to promote the enjoyment of rights by stateless persons.
- Identify and discuss relevant human rights standards for the enjoyment of rights by stateless persons in particular cases – taking into account the country and the issue involved.
- Understand how international human rights law complements the 1954 Convention.

Readings and information sources

Key readings

- * C. Tiburcio, *The Human Rights of Aliens under International and Comparative Law*, chapter II on "The Historical Development of the Treatment of Aliens" and chapter III on "Development of the Treatment of Aliens from Diplomatic Protection to Human Rights", Kluwer Law International, The Hague, 2001.
- * Office of the United Nations High Commissioner for Human Rights, *The Rights of Non-Citizens*, Geneva 2006. <http://www.ohchr.org/Documents/Publications/noncitizensen.pdf>
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter XIII on "International Law and the Protection of Stateless Persons", Intersentia, 2008.

Additional readings and information sources

- * Hannah Arendt, “The Decline of the Nation-State and the End of the Rights of Man” in *The origins of totalitarianism*, Harcourt Brace Jovanovich, New York, 1948.
- * Extracts from General Comments and Recommendations of UN human rights treaty bodies relating to nationality and statelessness.
<http://www.unhcr.org/4517ab402.html>
- * G. Goodwin-Gill, “The rights of refugees and stateless persons” in K.P. Saksena (ed.) *Human Rights Perspectives & Challenges*, Lancers Books, New Delhi, 1994.
- * European Court of Human Rights, *Kuric and Others v. Slovenia*, Application No. 26828/06, 13 July 2010.
<http://www.unhcr.org/refworld/docid/4c3f01312.html>
- * Equal Rights Trust (ERT), *Unravelling Anomaly – Detention, Discrimination and the Protection Needs of Stateless Persons*, London, July 2010.
<http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>

Unit 10

Protecting stateless persons (2): The 1954 Convention relating to the Status of Stateless Persons

Summary

This unit aims to familiarise students with the legal regime for the protection of stateless persons offered by the 1954 Convention relating to the Status of Stateless Persons. A brief history of the Convention is given and the influence of the drafting history of the instrument, including how the 1951 Refugee Convention influenced its content. The current standing, including the number of State parties and recent calls for further accessions, of the 1954 Convention is also presented. The definition of a stateless person set out in the 1954 Convention is recalled and the

advantages and disadvantages of this focus on *de jure* statelessness (discussed in unit 3) can be briefly reviewed.

Through a close inspection of the text of the 1954 Convention, students are asked to consider the instrument's strengths and weaknesses. Attention is thereby paid, in particular, to the effect of offering rights at different "levels of attachment" to the State and at different "standards of treatment". Students discover, for instance, that although the 1954 Convention requires a stateless person to be

lawfully present or lawfully staying in order to enjoy a number of the rights, the instrument does not deal with the question of status or the right to enter and reside in a State party. Students also investigate the inclusion of certain special rights such as access to identity and travel documents and exemption from reciprocity. In addition, students may discuss how the 1954 Convention could be implemented by States – which areas of legislation and policy are affected and what practical concerns may arise.

Learning objectives

- Discuss the content and approach of the legal regime for the protection of stateless persons established under the 1954 Convention relating to the Status of Stateless Persons.
- Appreciate the influence of the drafting history on the text of the 1954 Convention.
- Articulate the strengths of the 1954 Convention – recognise provisions that offer strong and/or important benefits to the protection of stateless persons.
- Identify how the 1954 Convention is complemented by international human rights law.

Readings and information sources

Key readings

- * 1954 Convention relating to the Status of Stateless Persons.
<http://www.unhcr.org/3bbb25729.pdf>
- * P. Weis, "The Convention relating to the Status of Stateless Persons" in *International and Comparative Law Quarterly*, Vol. 10, 1961, pp. 255-261.
<http://untreaty.un.org/cod/avl/ha/cssp/cssp.html>
- * G. S. Goodwin-Gill, *Introduction on the Convention relating to the Status of Stateless Persons*,
<http://untreaty.un.org/cod/avl/ha/cssp/cssp.html>
- * G. Gyulai, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*, chapter V on "Protection Status of Non-Refugee Stateless Persons", Hungarian Helsinki Committee, June 2007.
<http://www.unhcr.org/497099902.pdf>
- * K. Perks, A. de Chickera, "The Silent Stateless and the Unhearing World: Can Equality Compel Us to Listen?" in *The Equal Rights Review*, Vol. 3, Equal Rights Trust, 2009.
<http://www.equalrightstrust.org/ertdocumentbank/perks%20and%20chickera.pdf>

Additional readings and information sources

- * C. Batchelor, "The International Legal Framework Concerning Statelessness and Access for Stateless Persons", contribution to the *European Union Seminar on the Content and Scope of International Protection*, Madrid, January 2002.
<http://www.unhcr.org/3dca6fc84.pdf>
- * UNHCR and IPU, *Nationality and Statelessness. A handbook for parliamentarians*, chapter 2 on "Identifying and Protecting Stateless Persons", Geneva, 2005.
<http://www.unhcr.org/436774c62.pdf>
- * N. Robinson, *Convention relating to the Status of Stateless Persons. Its Origin, Significance, Application and Interpretation*, Institute of Jewish Affairs, New York, 1958.
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter IX on "Background to Protecting Stateless Persons", Intersentia, 2008.

Unit 11

Statelessness, migration and forced displacement

Summary

This unit explores the interplay between migration, forced displacement and statelessness: How migration and forced displacement can lead to statelessness and vice versa. Through straightforward examples, students are shown how migration may prompt a change of nationality and increase the incidence of mixed nationality marriages, thereby leading to a heightened risk of conflicts of laws that could result in statelessness. In particular, students consider how the safeguards that have been put in place in many countries to prevent dual nationality may create statelessness among migrants who seek to acquire the nationality of their host country, if these safeguards are not carefully tailored to avoid leaving a person without any nationality.

Then, drawing on the findings from unit 9 in relation to the stateless

and the right to enter “one’s own country”, statelessness is shown to form a barrier for (legal) migration and the issue of detention is raised. In addition, examples are provided of how statelessness leads to increased vulnerability to forced displacement, such as through expulsion of denationalised persons. Students are also asked to think about how refugees may be exposed to an increased risk of statelessness and how nationality disputes and statelessness may impact on the implementation of a durable solution to refugee situations. The interplay between statelessness and human trafficking as well as statelessness and irregular migration is also discussed and, again, the relevant international legal standards are considered.

If a more in-depth consideration of the overlap, similarities and differences, between the issue of

statelessness and that of refugees is envisaged, students may be reminded of the shared history of the international community’s response to statelessness and refugee issues and of the parallel development of the 1954 Convention relating to the Status of Stateless Persons and the 1951 Convention relating to the Status of Refugees. The definitions of a refugee and of a stateless person can be compared and contrasted and students can be asked to think about how these definitions and the legal regimes that have been built upon them may interact – i.e. when is a stateless person also a refugee and what does this mean for the application of international legal standards? Students could also be asked to think about the enduring link between statelessness and refugee issues, including such questions as when a finding of statelessness may contribute to the substantiation of a claim to refugee status.

Learning objectives

- Outline the shared history of the international response to statelessness and refugee issues, including the lasting impact that this has had on relevant legal standards.
- Discuss the definition of a stateless person and the definition of a refugee and how these definitions may intersect.
- Appreciate the different ways in which statelessness and refugee issues may be linked.
- Identify relevant international legal standards for the avoidance of statelessness in the context of migration and forced displacement, including with respect to victims of trafficking and irregular migrants.

Readings and information sources

Key readings

- * G. S. Goodwin-Gill, J. McAdam, *The Refugee in International Law*, section 4.1.2. on “Statelessness”, pp 67-70, 3rd edition, Oxford, 2007.
- * S. Grant, “The Legal Protection of Stranded Migrants” in R. Cholewinski (ed.) *International Migration Law*, TMC Asser Press, The Hague, 2007.

- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter VII on “Addressing the ‘new’ causes of statelessness” (section 2 on Migration), Intersentia, 2008.
- * E. Aukot, “Am I stateless because I am a nomad?” in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/18.pdf>
- * C. Komai, F. Azukizawa, “Stateless persons from Thailand in Japan” in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/33.pdf>
- * Extracts from UNHCR, *Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/Eng/Rev.1, reedited January 1992.
<http://www.unhcr.org/refworld/pdfid/3ae6b3314.pdf>

Additional readings and information sources

- * R. Piotrowicz, “Victims of trafficking and de facto statelessness” in *Refugee Survey Quarterly*, Vol. 21, Special Issue, 2002.
- * R. da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, chapter 14 on “Naturalisation”, UNHCR, POLAS/2006/02, June 2006.
<http://www.unhcr.org/refworld/pdfid/44bb9b684.pdf>
- * L. van Waas, “The Children of Irregular Migrants: A Stateless Generation?” in *Netherlands Quarterly of Human Rights*, Vol. 25, 2007.
- * J. Bloom, *The link between trafficking and statelessness*, Presentation before the US Catholic Coalition Against Human Trafficking, February 2009.
<http://www.rcusa.org/uploads/pdfs/Trafficking%20&%20Statelessness,%202-11-09.pdf>
- * K. Crabtree, “We have no soil under our feet” in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/14.pdf>
- * K. Perks, J. Clifford, “The legal limbo of detention” in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/42-43.pdf>
- * Equal Rights Trust (ERT), *Unravelling Anomaly – Detention, Discrimination and the Protection Needs of Stateless Persons*, London, July 2010.
<http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>

Unit 12 [core unit]

Tackling statelessness: Whose job is it and what prospects are there for the future?

Summary

This unit provides students with the opportunity to reflect on what has been learnt in the preceding units and to think about how statelessness can be tackled most effectively, now and in the future. Consideration is given to the wide variety of actors that may be involved in responding to statelessness and the role of each actor – taking into account its responsibility (for example under international law) and what the actor has to offer in terms of expertise, capacity, access, etc. Special attention is paid to the role of States. The focus is then turned to UNHCR, with an explanation of the agency's

global mandate on statelessness and a look at the types of activities that it has undertaken to date. Among the other actors that can be discussed are UN agencies, the Human Rights treaty bodies, regional organizations (such as the Council of Europe) and human rights mechanisms (such as the Inter-American Court of Human Rights, African Commission on Human and Peoples' Rights), NGOs and affected populations.

This is also an opportunity to present and discuss some of the latest developments – accession to the Statelessness Conventions, newly

adopted instruments, case law, UNHCR activities, NGO campaigns, etc. It may be of interest, in this context, to remind students of the motivation for individuals, States and the international community to address statelessness, as discussed in earlier units. Time allowing, students could also be asked to reflect on broader questions relating to the regulation of citizenship in the modern world – the parameters of inclusion and exclusion – and what importance should be attributed to nationality now and in the future.

Learning objectives

- Describe UNHCR's statelessness mandate and the four areas of its response to statelessness: identification, protection, prevention and reduction.
- Describe the role that is or should be played by different actors in tackling statelessness.
- Discuss examples of ways in which different actors have been involved in responding to statelessness.

Readings and information sources

Key readings

- * UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, paras. 25-40 on "Prevention – addressing causes of statelessness".
<http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>
- * UNHCR Executive Committee, *Conclusion No. 106: Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, Geneva, 6 October 2006.
<http://www.unhcr.org/refworld/docid/453497302.html>

Additional readings and information sources

- * UNHCR, "Statelessness and citizenship" in *The State of the World's Refugees – A humanitarian agenda*, Oxford University Press, 1997.
<http://www.unhcr.org/3eb7ba7d4.pdf>
- * IPU and UNHCR, *Nationality and Statelessness: A handbook for parliamentarians*, chapter 4 on "UNHCR's role", 2005.
<http://www.unhcr.org/436774c62.pdf>
- * S. Benhabib, *Transformations of Citizenship – Dilemmas of the Nation State in the Era of Globalisation*, Koninklijke van Gorcum, Assen, 2001.
- * R. Colville, "New twist to a sad tale" in *Refugees Magazine*, No. 147, Issue 3, 2007.
<http://www.unhcr.org/46d2e8dc2.html>
- * L. van Waas, *Nationality Matters. Statelessness under International Law*, chapter XIV on "Final Observations", Intersentia, 2008.
- * UNHCR, *UNHCR's activities in the field of statelessness: Progress report*, EC/55/SC/CRP.13/Rev.1, Geneva, 30 June 2005.
<http://www.unhcr.org/refworld/pdfid/47a707930.pdf>
- * UNHCR, *Progress report on statelessness 2009*, EC/60/SC/CRP.10, Geneva, 29 May 2009.
<http://www.unhcr.org/refworld/pdfid/4a5c594ef.pdf>
- * N. Green, T. Pierce, "Combatting statelessness: a government perspective" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/34-35.pdf>
- * G. Gyulai, "Remember the forgotten, protect the unprotected" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/48-49.pdf>
- * M. Manly, S. Persaud, "UNHCR and responses to statelessness" in *Forced Migration Review*, Issue 32, April 2009.
<http://www.fmreview.org/FMRpdfs/FMR32/07-10.pdf>

For the latest information on engagement of different actors on statelessness:

UNHCR Statelessness	http://www.unhcr.org/statelessness
Refugees International.....	http://www.refugeesinternational.org
Open Society Justice Initiative	http://www.justiceinitiative.org
Equal Rights Trust detention of stateless persons project	http://www.equalrightstrust.org/stateless%20persons/index.htm
International Observatory on Statelessness.....	http://www.nationalityforall.org/
European Union Democracy Observatory on Citizenship.....	http://eudo-citizenship.eu/
Council of Europe website on activities in the area of nationality.....	http://www.coe.int/nationality
Citizenship Rights in Africa Initiative.....	http://www.citizenshiprightsinafrica.org/

Annexes



UNHCR / G. CONSTANTINE / 2009

This 11-year-old girl was born in the breakaway Georgian region of Abkhazia, but has lived most of her life in Ukraine. She would like to get Ukrainian citizenship, but has faced problems getting her birth certificate recognized.

Sample Exercises and Case Studies

The following suggested exercises and sample case studies are designed to allow students to better absorb the readings studied as part of a class, seminar or course on statelessness. They do not necessarily cover all of the topics included in this guide. Instead, they offer ideas as to how students can be encouraged to discover the issue and the materials in such a way as to promote interactive learning. The number of each exercise corresponds to the number of the unit in which it may be incorporated, but the exercises can also be grouped differently and/or used as part of a stand-alone unit on statelessness within a related course.

Exercise 1

Where does my nationality come from and what does it mean to be stateless?

a) Where does my nationality come from?

Interactive classroom activity

Students are asked to complete a simple questionnaire asking:

- In which country were you born?

- What is your father's nationality?

- What is your mother's nationality?

- In which country are you currently residing?

- How long have you been residing there?

- Which country do you feel is your "home"?

Students are then asked to exchange questionnaires with a partner who will consider the answers and decide which nationality or nationalities they think the student holds. The findings – predicted nationality and whether this is correct – can then be discussed with the group. Allow more time to discuss interesting cases and ask students with mixed backgrounds whether they feel that their nationality matches their own sense of identity. Would they rather have a different or perhaps dual nationality? This exercise can also be used as an introductory activity at the start of a course / seminar on statelessness, giving the students an opportunity to get to know one another. It can be followed up with simple case studies which include examples showing how statelessness can occur through a conflict of laws.

b) What does it mean to be stateless?

Interactive classroom activity. Can also be adapted as take-home exercise

This activity aims to get students thinking about what having a (particular) nationality means.

Divide the students into pairs and give them a set time to make a list of all the things that their nationality means to them:

- What are instances in which you were asked to indicate or to prove your nationality?

- What does your nationality allow you to do?

- What might be different if you had a different nationality?

- What do you think might be more difficult or impossible if you didn't hold any nationality?

- How would you feel if you didn't hold any nationality?

Then discuss the findings, for example by making a list of ideas on the whiteboard and talking about each one in turn. This activity can then be followed up with a second exercise, this time looking at information about situations of statelessness. Ask the students to read a report, magazine article or news item¹ on the situation of a particular stateless population and underline all of the problems that stateless persons are reported to face. Ask the students to discuss (in class or as a written piece for a take-home exercise) how the findings in the report compared to their own preconceptions of the problem of statelessness - for example, compared to the list that they came up with in the previous exercise when looking at what their nationality means to them. What problems are particularly worrying or surprising?

Exercise 2

Inclusion and exclusion, nationality and statelessness

Interactive classroom activity

Students should debate the following question: "Should nationality be attributed at birth?" This question allows students to consider the costs and benefits of nationality. For instance, if citizenship is attributed at birth, the person concerned cannot consent to the acquisition of citizenship even though this involves taking on certain obligations.

The following two chapters of the publication "The Birthright Lottery: Citizenship and Global Inequality" by Ayelet Schachar, Harvard University Press, 2009, can provide useful background reading:

- * "Introduction: the puzzle of birthright citizenship"
- * "Chapter 5: Popular defences of birthright citizenship and their limitations".

¹ The editions of *Refugees Magazine* (2007) and *Forced Migration Review* (2009) devoted to statelessness are good sources of articles on different situations of statelessness. UNHCR's statelessness website and the websites of various NGOs working on the issue of statelessness can also be consulted for recent reports or news items that would be suitable for this exercise – if students have ready access to the internet, they could be asked to find a report themselves using the suggested links included at the start of this Guide.

Exercise 3

Case study on the identification of statelessness: Principles and practices

Interactive classroom activity or take-home exercise

Students should imagine a situation in a successor State to the former Soviet Union. There are many reports of persons who only hold their former Soviet passport and have difficulties establishing that they have in fact acquired the nationality of one of the successor States and are entitled therefore to nationality documentation which is essential to improve their situation. Others have no documentation at all. Some of the persons may actually not qualify for any nationality (or be unable to prove it). Some persons have written petitions to Parliament pointing out their difficulties in leading a normal life. The government has decided to take action. As information is only anecdotal, the Ministry of Interior decides to send four teams to the region where most of the persons are reported to live. They will each interview a sample of 1,000 persons to gather more information. Each team has a small budget of 12,000 Ducats (local currency) and has full discretion in how the budget is used. It is advisable to design a questionnaire to be able to statistically evaluate data. Including one question costs 1,000 Ducats.

Students gather in four teams and have to draw up a plan to gather as much useful information as possible and then compare their strategies.

Exercise 4:

Legal analysis on safeguards for the prevention of statelessness

Interactive classroom activity or take-home exercise

State A is considering acceding to the 1961 Convention on the Reduction of Statelessness. You have been engaged as a government consultant to take a closer look at State A's current nationality law to determine whether any amendments will be needed to ensure that it conforms with the terms of the 1961 Convention. The Nationality Act in question is provided below. Read it through carefully and identify any provisions that may lead to statelessness as well as good practices that help to avoid statelessness. Discuss what amendments you would propose to bring the Nationality Act into line with the 1961 Convention. In addition, since the authorities of State A are particularly interested in avoiding statelessness among children, make suggestions as to how the Nationality Act could be further reformed to maximise the prevention of childhood statelessness.

Nationality Act State A

● Section 1

- (1) Citizens of State A by birth are those persons born in the territory of State A either to a male citizen of State A, or to a female citizen if the father of the child is deceased before birth, unknown, or stateless.
- (2) Are also citizens by birth those persons born to a male citizen of State A outside the territory of State A, whose birth has been registered within one year after birth with the State A consulate responsible for the State where the person was born.

● Section 2

Any person who is born outside of State A to a mother who is a national of State A shall have the right to become a national of State A upon reaching 18 years of age, if the following conditions are fulfilled:

- (i) He shall have made State A his permanent residence when he reaches 18 years of age;
- (ii) He is of good conduct and sound character and has not been convicted of a crime or with imprisonment for a period exceeding six months for an indecent act;

(iii) He has an understanding of the language of State A; and

(iv) He submits an application for State A nationality within six months after his 18th birthday.

● Section 3

The birth of any child in State A, regardless of whether the parents have the nationality of State A, must be notified to the representative or to the officials of the Personal Status Registry Office. The child must be registered within one year of birth.

● Section 4

The representative or the official of the Vital Registration Office in State A shall register the birth of any minor in the Birth Register. The following information must be provided for entry into the Register:

- (a) Hour, day, month, year and place of birth (province, district, city/village) and date of birth registration.
- (b) Name, family name and gender of the child.
- (c) Name, family name, identity card number or the number of the residence permit or passport, and the place of issuance of the identity card or residence permit or passport, and the place of residence of a parent.
- (d) A declaration by the doctor or the official obstetrician or by the authorities of the establishment where the child was born. If such a declaration is unavailable, the name, family name, identity card number and place of issuance of the identity card and the place of residence of two witnesses must be provided.

Note – after registration of the birth, if the child is of State A nationality, the identity card shall be issued and delivered and notification shall be sent to the branch of the Vital Registration Office of the place where the identity booklet of either of the parents was issued so that the birth can be registered in the Birth Register on the page specified for the parents. If the child is a foreigner only the birth certificate shall be issued and delivered.

[...]

● Section 8

If any doubt exists about the identity and the nationality of the individuals and the necessary documents are not presented to prove identity or nationality, in order to establish the identity, the case shall be referred to the police department in order to establish the nationality. Until the identity and the nationality are established, the birth of the child shall not be entered into the Birth Register and the birth certificate shall be retained.

[...]

● Section 13

Nationality by naturalisation may not be given to a person unless he can provide proof that he has renounced his original nationality.

[...]

● Section 16

Nationality of State A shall be withdrawn from any person who has acquired such nationality by naturalisation, in the following cases:

- (i) If he commits or attempts to commit an action which is deemed dangerous for the security or safety of the country.
- (ii) If he has been punished repeatedly for crimes of dishonour.
- (iii) If the data upon which the nationality has been granted were proven to be forged, fraudulent or containing deception.
- (iv) If he resides outside the country without valid reasons for a period exceeding four years.

If a person's nationality is withdrawn on the basis of this section of the Nationality Act, it may accordingly be withdrawn from his wife and minor children.

Exercise 5

Legal analysis on discrimination and statelessness

Interactive classroom activity or take-home exercise

You work for an international NGO that advocates for equality in the enjoyment of all human rights. Your job is to monitor and report on discriminatory State practices. Your current assignment is to review the nationality law of State B and to identify any provisions that are discriminatory or may lead to a discriminatory application of the law. Your supervisor has asked you to provide a commentary on each of these provisions, explaining:

- (a) In what way (on which ground) the provision is discriminatory or how the application of the provision may lead to indirect discrimination;
- (b) How such discrimination may contribute to the creation or prolongation of statelessness; and
- (c) Which international standards are applicable and whether the provision is in violation of these standards.

Here are the relevant extracts from the Nationality Act of State B:

● Article 3

Every person born in State B after independence shall become a citizen of State B on the date of his birth if one of his parents is a citizen and is a person of African race.

● Article 4

A person born outside State B after independence shall become a citizen of State B on the date of his birth if his father is a citizen by birth and is a person of African race.

[...]

● Article 9

The marriage of a foreign woman to a citizen of State B shall not entitle her to acquire the nationality of her husband, unless she informs the Ministry of the Interior of her wish to become a national, provided that the marriage has lasted for three years as from the date of expressing such wish and on the condition that she has revoked her original nationality [...] However, in all cases a foreign husband may not enjoy the nationality of his wife.

● Article 10

A wife who acquires the nationality of State B by dependence to her husband, under the previous article, shall retain the nationality of State B if her husband dies. Citizenship may not be withdrawn from her except in the two following cases:

- (a) If she marries a foreign national.
- (b) If she restores her original nationality or acquires another nationality.

[...]

● Article 17

State B nationality may be granted by Decree by the Minister of the Interior to any person of full age satisfying the following conditions:

- (a) That he has lawfully resided in State B for at least 20 consecutive years or for at least 10 consecutive years if he is of African race belonging to an African country. The requirement of consecutive residence shall not be affected if the applicant leaves State B on official business;
- (b) That he has lawful means of earning his living;
- (c) That he is of good character and has not been convicted of an honour-related crime or of an honesty-related crime;
- (d) That he is fluent in the language and familiar with the customs of State B;
- (e) That he adheres to the State religion, and, if he has converted to the State religion according to the prescribed rules and procedures, that a period of at least 5 years has passed before the grant of naturalisation. Nationality thus

acquired is lost and the Decree of naturalisation rendered void if the naturalised person renounces the State religion or behaves in such a way as clearly indicates his intention to abandon the State religion.

[...]

● Article 22

The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal or review in any court.

Exercise 6

Statelessness in the context of State succession

Interactive classroom activity or take-home exercise

Students work together in four groups. The State they formerly lived in has dissolved into four new independent States. Each group constitutes an advisory body to the government in one of the States, mandated to draw up the key elements of new nationality legislation. Their task is to identify who should qualify for the initial body of citizens and to determine the main principles for acquisition of nationality in the State. The President advised that considering the present instability, loyalty of the new citizens would be paramount. She also asked the advisory committee to take into account potential large-scale migration as a result of State succession.

Students should now imagine State succession unfold, including large numbers of migrants leaving and arriving in the territory. Based on their proposed legislation, they should try to identify through sample cases if statelessness is successfully avoided and if they think that they have laid the foundation for a stable future.

Exercise 7

Reduction of statelessness (including through naturalisation)

Interactive classroom activity or take-home exercise

The following segments of text have been taken from the report *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe* (G. Gyulai, Hungarian Helsinki Committee, June 2007). They provide an account of the legal provisions relevant to the reduction of statelessness in three countries – Hungary, Poland and Slovenia. Compare and contrast the legislation of these States on the basis of the information provided, including by:

- a) Explaining how the law may contribute to the reduction of statelessness
- b) Specifying which international standards are relevant to the formulation of these national provisions
- c) Identifying good practices in the law of one or more States for promoting the reduction of statelessness
- d) Discussing areas in which the law of one or more States could be improved and making suggestions for legal reform

Optional additional exercise: Ask the students to look at the legislation and administrative procedures relevant to the reduction of statelessness in their own country and analyse this using the questions above. Alternatively, access the legislation of additional States via Refworld (<http://www.refworld.org>) or another database such as the European Union Democracy Observatory on Citizenship (<http://eudo-citizenship.eu/>).

Hungary

Act LV of 1993 on Hungarian Citizenship basically rests on the principle of *jus sanguinis*: A child born to a Hungarian citizen becomes a Hungarian citizen from birth regardless of the place of birth. The principle of *jus soli* may arise in two cases:

- (3) Until counter-proof is presented a person shall be considered a Hungarian citizen, if he/she
- (b) was born in Hungary, from stateless parents with residence in Hungary;
- (c) is a child found in Hungary born from unknown parents.¹

The general conditions for obtaining Hungarian citizenship are the following:

- (1) A non-Hungarian citizen may be granted Hungarian citizenship upon application, if:
 - (a) prior to his/her application he/she has been continuously living in Hungary for eight years;
 - (b) he/she has no criminal record according to Hungarian law and there is no pending criminal procedure against him/her before a Hungarian court at the time of the application;
 - (c) his/her livelihood and accommodation in Hungary is guaranteed;
 - (d) his/her naturalisation would not endanger the interests of the Republic of Hungary;
 - (e) he/she certifies to have successfully passed an examination on basic constitutional issues in Hungarian language, or is exempted from this examination based on the provisions of this Act.²

Stateless persons can apply for Hungarian citizenship with the general conditions as defined in Section 4 (1) of the Hungarian Citizenship Act. One preferential rule applies to them: the mandatory continuous residence in Hungary before application is reduced to five years (instead of eight) in their case.³ If the stateless foreigner is married to a Hungarian citizen for at least three years (or the wedlock ended because of the death of the spouse), if his/her minor child is a Hungarian citizen or if he/she is adopted by a Hungarian citizen, the period of mandatory residence before application is further reduced to three years.⁴

In Hungary, the President of the Republic makes determinations on applications for citizenship, upon the recommendation of the Minister of Justice and Law Enforcement.⁵ In practice, it is the Nationality Directorate of the Office of Immigration and Nationality that processes such claims. Negative decisions on citizenship claims do not contain justification and can be challenged neither through administrative appeal nor through judicial review mechanisms.

Poland

The Act on Polish Citizenship of 15 February 1962, while based on the *jus sanguinis* principle, includes a specific provision evoking *jus soli*: When both parents are unknown or their citizenships undetermined or they have no citizenship, their child shall acquire Polish citizenship if he/she is born or was found on Polish territory.⁶

The Polish Citizenship Act dedicates a separate section to the issue of stateless persons willing to obtain Polish nationality. According to Section 9 of the Act:

1. A person who has no citizenship or whose citizenship is undetermined can be recognised as a Polish citizen if that person has been residing in Poland for at least five years.
2. Recognition of a person as a Polish citizen takes place upon a motion submitted by that person.

1. *Ibid.*, Section 3 (3).

2. *Hungarian Citizenship Act*, Section 4 (1).

3. *Ibid.*, Section 4 (4) (c).

4. *Ibid.*, Section 4 (2) (a)-(c).

5. *Ibid.*, Section 6 (1).

6. *Polish Citizenship Act*, Section 5.

3. Recognition of a person as a Polish citizen covers the children of the person recognised as a Polish citizen if the children are residing in Poland. (...)

The Polish Citizenship Act does not ensure preferential treatment for stateless persons for the mandatory period of continuous residence in the country before application for citizenship (the general rule also stipulates five years⁷). But at the same time, it determines different procedural rules:

- (1) The acquisition of nationality by stateless persons may not be conditional on the presentation of evidence that a person has renounced or been deprived of citizenship of another State.⁸
- (2) While in cases of foreigners (including stateless persons) in general Section 8 of the Act uses “granting” (**nadanie**), Section 9 says “recognising” (**uznanie**) Polish citizenship, referring as **lex specialis** to the case of stateless persons or those with undetermined nationality. The different wording covers different procedures. The first is a discretionary decision of the President of the Republic, without mandatory reasoning and with no possibility of administrative appeal or judicial review. The latter decision is issued by a **wojewoda**, in a procedure regulated by the Polish Code of Administrative Procedure.⁹ In this case, the **wojewoda**’s “administrative discretion” is limited, according to the well-established jurisprudence of the Supreme Administrative Court (**Naczelny Sąd Administracyjny**), in contrast to the unlimited scope of presidential discretion, taking into account concerns of public interest. Negative decisions shall contain justification and may be challenged by an administrative appeal to the President of the Office for Repatriation and Aliens (ORA). The decision of the ORA is subject to judicial review by a two-tier system of administrative courts.¹⁰

Slovenia

The Citizenship Act of the Republic of Slovenia¹¹ reflects the **jus sanguinis** principle. The Slovene Citizenship Act also contains provisions evoking the **jus soli** principle:

A child born or found on the territory of the Republic of Slovenia of unknown parentage or whose parents are of unknown citizenship or have no citizenship at all shall acquire citizenship of the Republic of Slovenia.¹²

Section 10 of the Act sets forth general conditions for obtaining Slovene citizenship through naturalisation:

The competent authorities may within their discretion admit the petitioner through naturalisation to the citizenship of the Republic of Slovenia if the State is interested in such an act for national reason. The person shall fulfil the following conditions:

1. that the person has reached 18 years of age;
2. that the person has a release from current citizenship or can prove that such a release will be granted if he/she acquires citizenship of the Republic of Slovenia,¹³
3. that the person has been actually living in the Republic of Slovenia for the period of 10 years, of which the last five years prior to the petition for citizenship must be without interruption and has to have a legal alien’s status;
4. the person has guaranteed a permanent source of income of an amount that enables him/her and persons who he/she is under the law obliged to maintain material and social welfare;
5. the person must demonstrate active command of the Slovenian language in an obligatory written and oral examination;
6. that the person has not been sentenced to a prison term longer than three months or that has not been sentenced conditionally to a prison term with a test period longer than one year;
7. that there is no ban on the person’s residence in the Republic of Slovenia;

7. *Ibid.*, Section 8 (1).

8. *Ibid.*, Section 9 (4).

9. Act of 14 June 1960.

10. Act 30 August 2002 on procedures before administrative courts, Section 3 (2) (1).

11. The Official Gazette of the Republic of Slovenia, No. 1/91, 30/91, 38/92; also see: Constitutional Court decision in 61/92, Constitutional Court decision in 61/92, 13/94, Constitutional Court decision in 59/99, 96/2002 and 127/06.

12. Slovene Citizenship Act, Section 9.

13. According to the explanatory part of the present Section, this condition is fulfilled “if the person has no citizenship at all or if the person can submit the evidence that his/her own citizenship is cancelled through naturalisation by the law of his own State.”

8. that the person's admission to citizenship of the Republic of Slovenia poses no threat to public order, the security or defence of the State;
9. the person must discharge his/her tax obligations;
10. the person has given an oath to respect free democratic constitutional order, as set in the Constitution of the Republic of Slovenia.

Slovene law provides for preferential treatment for stateless applicants for citizenship in two respects:

- (1) They are exempted from the obligation to prove that they are released from previous citizenship or that they will be released after acquisition of the Slovene citizenship.¹⁴
- (2) The mandatory period of continuous residence in the country is reduced to five years in their case.¹⁵

Claims for Slovene citizenship are decided upon by the Ministry of the Interior. The application has to be filed to the territorial administrative unit where the person permanently or temporarily resides.¹⁶ The territorial unit's decisions are reviewed by a central authority of the Ministry of the Interior. Should the Ministry decide negatively, a judicial review is possible by filing a lawsuit to the Administrative Court of Slovenia (*Upravno Sodišče*). The latter's decision will be further subject to review by the Supreme Court (*Vrhovno Sodišče*).¹⁷

Exercise 8

Reducing statelessness: Partners, strategies and activities

Interactive classroom activity

a) Partners

Divide the students into groups of 4 (or more) and divide these generic roles among each group - i.e. each group will have at least one student in each of these roles:

1. The State;
2. The stateless population;
3. The international community;
4. Civil society.

Start the exercise by asking the students to reflect on the role that they have been given (or work as a group taking each role in turn) and devise a list of the different actors that are to be found within their overall role. For instance, the "role" of the State actually describes a range of actors such as the central government, local authorities and courts. Once the students have identified as many different actors as they can think of, the groups can compare answers so that a more complete list can be generated. Then inform the students that, as part of their "role", they are assigned responsibility for representing those actors in the discussion on reduction strategies.

b) Strategies and activities

From within their "role", using the lists of actors prepared in part a) of this exercise, the students will now discuss strategies for the reduction of statelessness on the basis of the following case:

Bringing gender equality to nationality law in North Africa.

The last few years have seen some important changes in the nationality policy of a number of countries in Northern Africa, including Algeria, Egypt, Morocco and Tunisia. Prior to the legal reform, these countries only allowed

¹⁴. *Ibid.*, Section 10 (2).

¹⁵. *Ibid.*, Section 12 (8).

¹⁶. *Ibid.*, Section 27 (1)-(2).

¹⁷. See *Administrative Dispute Act, Official Gazette of the Republic of Slovenia, No. 105/06*.

nationality to be transmitted from parent to child (*jus sanguinis*) through the paternal line. In other words, a father could confer his nationality to his child, but a mother could not (other than in a number of exceptional circumstances). Although the numbers were unknown, it was believed that this policy was leading to the creation of statelessness among a substantial number of children born to female nationals who could not transmit their nationality. In a bid to tackle these cases of statelessness at their source and in line with further efforts to promote gender equality in these States, a campaign was begun to reform the nationality laws. Women's rights organisations led the way, undertaking research to gain a better understanding of the situation and what problems these laws were causing for women and their families. The advocacy that followed, in which the media also played an important part, was directed largely at the legislative bodies in each State. In the end, the desired legal reforms and amendments to the existing nationality acts were introduced which gave women the right to transmit their nationality to their children. Aware of the need to not only prevent, but also resolve cases of statelessness, the governments adopted special policies when implementing the legal reform which allowed children born before the change in the law to benefit from the reform. For example, in Egypt if the mother was a national but the children had previously missed out on citizenship due to the discriminatory clause in the law, they could now acquire nationality by registering with the authorities. This registration procedure held enormous potential for the reduction of statelessness, so long as it was implemented fairly and correctly. So, following on from their major success, the women's rights organisations have now turned their attention to helping to monitor the effects of the new law, for example by bringing test cases before the national courts.

This brief account of a large-scale campaign for the reduction of statelessness describes five main stages:

1. Research
2. Advocacy
3. Legal reform
4. Implementation (registration)
5. Monitoring

Taking each stage in turn, ask the students to consider what types of strategy or activity could be envisaged and whether the "role" that they are playing (i.e. the State, the stateless population, the international community or civil society) should be involved. For instance, the description above mentions research conducted by women's rights organisations, one actor within civil society. What types of strategy or activity may be involved in researching a situation of statelessness (e.g. a population census, questionnaires, in-depth interviews) and what other actors may be involved (e.g. community leaders within the stateless population, local State officials, an international human rights body). Ask the students to try to come up with at least 2 different concrete strategies or activities for each stage and to make a note of as many ways as possible in which different actors can become involved – also noting if they do not see any part for their "role" in a particular stage of the reduction campaign. Then compare answers between groups.

Exercise 9

Nationality and rights under contemporary human rights law

Interactive classroom activity or take-home exercise

Ask the students to read the following two short extracts, both discussing the concept of human rights:

- Universal Declaration of Human Rights, 1948:

All human beings are born free and equal in dignity and rights [...]. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- Hannah Arendt in "The Origins of Totalitarianism", 1951:

The conception of human rights, based upon the assumed existence of a human being as such,

broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationship – except that they were still human. The world found nothing sacred in the abstract nakedness of being human [...] If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually, the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man.

This exercise is designed to encourage students to think about the relationship between nationality and rights under contemporary human rights law. Distribute copies of the text of a number of major human rights instruments or bill of rights from Constitutions and ask the students to read through them carefully and highlight any articles/provisions that they feel have some influence on the question of the relationship between nationality and rights. For instance, give each student two human rights instruments to assess, or one of the following sets:

1. Universal Declaration of Human Rights & Convention on the Elimination of All Forms of Racial Discrimination
2. International Covenant on Civil and Political Rights & Convention on the Rights of the Child
3. International Covenant on Economic, Social and Cultural Rights & Convention on the Elimination of All Forms of Discrimination Against Women.

Ask the students to make a list of all the different issues/articles/provisions that relate to (i) the right to a nationality and (ii) the enjoyment of rights related to nationality. The students then discuss how the possession of a nationality or the lack of any nationality may influence the enjoyment of these rights. What have they learned about the position of stateless persons under human rights law?

Exercise 10

Strengths and weaknesses of the 1954 Statelessness Convention

Interactive classroom activity or take-home exercise

Ask the students to read the following short extract from a case that came before the United States Supreme Court (*Trop v. Dulles*) in 1958. It discusses the impact of the withdrawal of nationality, resulting in statelessness:

There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organised society. It is a form of punishment more primitive than torture for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights, and presumably as long as he remained in this country he would enjoy the limited rights of an alien, no country need do so because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights.

By now the students already have a good idea of some of the areas where non-citizens may be denied enjoyment of the full spectrum of human rights. Ask the students to take a minute to think about the areas in which general human rights law did not seem to offer all of the answers and stateless persons may find themselves in a vulnerable position (recall unit 9 and exercise 9). Then read through the articles of the 1954 Convention relating to the Status of Stateless Persons.

Your task is to evaluate this instrument. Think about the following questions: What do you find striking about the issues that are included or the way that the rights are elaborated? To what extent does this instrument deal with the problems uncovered earlier? Does it address those areas that you expected an instrument on the rights of stateless persons to deal with?

Exercise 11

Case study on statelessness, migration and forced displacement

Interactive classroom activity or take-home exercise

The Feili Kurds say they originated in the Zagros mountain range of Iran. For centuries, they lived on both sides of the Iran-Iraq border in the regions of Khuzestan and eastern Iraq. Unlike the Sunni Muslim Kurds of northern Iraq, Feili Kurds are Shiite Muslims. Generations ago, their ancestors moved to Iraq and integrated successfully with local communities.

Under former Iraqi President Saddam Hussein's Baathist regime and during the course of the Iraq/Iran War, the Feili Kurds were accused of being Iranian, stripped of their nationality and expelled from the country. This was done on the basis of Resolution No. 666 of 07.05.1980, the text of which follows below.

"In accordance with the provisions of para (a) of Article 42 of the Interim Constitution,

The Revolutionary Command Council have decided in their session held on 07.05.1980 the following:

1. The Iraqi nationality shall be dropped from any Iraqi of foreign origin if it is appeared that he is not loyal to the homeland, people, higher national and social objectives of the Revolution.
2. The Minister of Interior must order anyone whose Iraqi Nationality has been dropped under para 1 unless he is convinced according to sufficient reasons that his stay in Iraq is a matter required by judicial or legal necessity or for preservation of the rights of other persons which are officially authenticated.
3. The Minister of Interior shall undertake to execute this resolution.

Saddam Hussein

Chairman of the Revolutionary Command Council"

They became stateless and unable to enjoy the rights and benefits accorded by a State to its nationals.

Students are asked to imagine the situation after the new government of Iraq took power. The Feili Kurds will finally be able to find a solution to their plight. Students are asked to identify and discuss potential solutions for Feili Kurds and how the manner in which Feili Kurds were rendered stateless should be taken into account in any strategy to address their plight.

Exercise 12

Addressing statelessness – Who cares?

Interactive classroom activity

This is a round-up exercise looking at the reasons that different actors may have to tackle statelessness. It is also a good follow-on to exercise 8 which looks at partners and strategies in responding to statelessness. If the students have not been asked to carry out exercise 8 before now, exercise 8 (a) would provide an excellent introduction to the present exercise.

In pairs or small groups, the students are asked to remind themselves of the actors that may be involved in tackling statelessness, divided among the following general roles (see exercise 8 (a)):

- | | | | |
|-----------|--------------------------|-----------------------------|---------------|
| 1. | 2. | 3. | 4. |
| The State | The stateless population | The international community | Civil society |

On the basis of all that they have learnt about statelessness over the course of a series of classes or seminars, ask the students to devise a list of arguments that may be presented in favour of addressing statelessness – legal, moral, political, economic, personal, etc. Discuss with the students which arguments they think will be most useful to convince each actor.

Films and Other Multimedia Resources

Note that some of the resources use the word statelessness in a very broad sense going beyond the understanding of statelessness as not having a nationality.

- Short films produced by Open Society Initiative, available at <http://www.soros.org/indepth/stateless>
 - * Introduction to statelessness (interview with James Goldston)
 - * Dominicans of Haitian descent
 - * Also photo galleries on Mauritians, Rohingya and Roma.

- Al Jazeera series of short films on stateless persons
 - * Hill Tribes, Thailand..... <http://www.youtube.com/watch?v=qOW6qVCXctA&feature=channel>
 - * Bihari, Bangladesh..... <http://www.youtube.com/watch?v=KoUQSqY6LNU&feature=channel>
 - * Stateless children, Thailand..... <http://www.youtube.com/user/AlJazeeraEnglish#p/search/6/7fB6g-OvbQs>
 - * Stateless in Sabah, Malaysia:
 - Part 1..... <http://www.youtube.com/user/AlJazeeraEnglish#p/search/2/IGDXjuaKwxk>
 - Part 2..... <http://www.youtube.com/user/AlJazeeraEnglish#p/search/0/vYF195BYVpl>
 - * Court case relating to gender discrimination in nationality law in Lebanon..... <http://www.youtube.com/user/AlJazeeraEnglish#p/search/0/wEVBgUEUyIk>
 - * Interview with Greg Constantine on photographing stateless populations..... <http://www.youtube.com/user/AlJazeeraEnglish#p/search/9/zBb9uMtlwS0>

- 3-part CNN Series “World’s untold stories – A forgotten people” on the Rohingya:
 - * <http://edition.cnn.com/CNN/Programs/untoldstories/blog/2009/02/forgotten-people.html>

- Series of multimedia, photographic slide shows created by Greg Constantine, including:
 - * “The Dalit: Landless and untouchable in Nepal”..... <http://www.nationalityforall.org/the-dalit>
 - * Kenya’s Nubians: Then - Now..... <http://www.nubiansinkkenya.com/>

- Feature-length documentary film about the Bihari in Bangladesh, “The Promised Land” (2007)
 - * <http://www.swapnabhumi.com/>

- Popular film touching on statelessness, “The Terminal” (2004)
 - * <http://www.theterminal-themovie.com/>

Sample Schedules

Schedule 1:

Full course on statelessness, 14 weeks

Includes all units and two additional sessions – one case study session and one practical session; schedule based on one 90-minute class per week

• **Week 1** _____ **Unit 1**
An introduction to nationality and statelessness around the world
May include exercise 1 – Where does my nationality come from and what does it mean to be stateless?

• **Week 2** _____ **Unit 2**
State sovereignty, nationality and statelessness
May include exercise 2 – Inclusion and exclusion, nationality and statelessness

• **Week 3** _____ **Unit 3**
Statelessness as an international legal concept and the challenge of identification
May include exercise 3 – Identification of statelessness

• **Week 4** _____ **Unit 4**
Preventing statelessness (1): Conflicts of laws and statelessness among children

• **Week 5** _____ **Unit 5**
Preventing statelessness (2): Nationality, discrimination and statelessness

• **Week 6** _____ **Unit 6**
Preventing statelessness (3): Statelessness in the context of State succession

• **Week 7** _____ **Unit 7**
Reducing statelessness (1): International law and the reduction of statelessness

• **Week 8 Case study session**
The prevention and reduction of statelessness – national practice and international norms
Exercises 4 – 7 (legal analysis case studies A, B, C and D)

• **Week 9** _____ **Unit 8**
Reducing statelessness (2): Large-scale statelessness reduction campaigns

• **Week 10** _____ **Unit 9**
Protecting stateless persons (1): Human rights law and the protection of stateless persons
May include exercise 9 – Nationality and rights under contemporary human rights law

• **Week 11** _____ **Unit 10**
Protecting stateless persons (2): The 1954 Convention relating to the Status of Stateless Persons
May include exercise 10 – Strengths and weaknesses of the 1954 Statelessness Convention

• **Week 12** _____ **Unit 11**
Statelessness, migration and forced displacement
May include exercise 11 – Statelessness, migration and forced displacement

• **Week 13** _____ **Unit 12**
Tackling statelessness: Whose job is it and what prospects are there for the future?

• **Week 14— Practical session**
Exercises 8 & 12 - Reducing statelessness: Partners, strategies and activities & Addressing statelessness: Who cares?

Schedule 2:

Short course on statelessness, 6 weeks

Includes all core units; units 1 & 2 and units 7 & 8 offered in a combined, abbreviated form; schedule based on one 120-minute class per week

• **Week 1** — Unit 1 & Unit 2
(abbreviated)

An introduction to nationality and statelessness around the world & State sovereignty, nationality and statelessness

Includes exercise 1 - Where does my nationality come from and what does it mean to be stateless?

• **Week 2** — Unit 4

Preventing statelessness (1): Conflicts of laws and statelessness among children

Includes exercise 4 – Legal analysis case study A: Safeguards for the prevention of statelessness

• **Week 3** — Unit 5

Preventing statelessness (2): Nationality, discrimination and statelessness

Includes exercise 5 – Legal analysis case study B: Discrimination and statelessness

• **Week 4** — Unit 7 & Unit 8
(abbreviated)

Reducing statelessness (1): International law and the reduction of statelessness & Reducing statelessness (2): Large-scale statelessness reduction campaigns

Includes exercise 8 – Reducing statelessness: Partners, strategies and activities

• **Week 5** — Unit 9

Protecting stateless persons (1): Human rights law and the protection of stateless persons

Includes exercise 9 - Nationality and contemporary human rights law

• **Week 6** — Unit 12

Tackling statelessness: Whose job is it and what prospects are there for the future?

Includes exercise 12 – Addressing statelessness: Who cares?

Schedule 3:

One-week (4 day) seminar on statelessness

Day 1

9.30 – 11.00 | Unit 1

An introduction to nationality and statelessness around the world

May include exercise 1 - Where does my nationality come from and what does it mean to be stateless?

11.30 – 13.00 | Unit 2

State sovereignty, nationality and statelessness

14.00 – 15.30

Film followed by debate

Select film from, for instance, 3-part CNN Series "World's untold stories – A forgotten people" on the Rohingya; documentary about the Bihari in Bangladesh, "The Promised Land".

Exercise 2 – Inclusion and exclusion, nationality and statelessness

Day 2

9.30 – 11.00 | Unit 4

Preventing statelessness (1): Conflicts of laws and statelessness among children

11.30 – 13.00 | Unit 5

Preventing statelessness (2): Nationality, discrimination and statelessness

14.00 – 15.30

Case study session

Prevention of statelessness – national practice and international norms

Exercises 4 & 5 (legal analysis case studies A & B)

Day 3

9.30 – 11.00 | Unit 7

Reducing statelessness (1): International law and the reduction of statelessness

11.30 – 13.00 | Unit 8

Reducing statelessness (2): Large-scale statelessness reduction campaigns

14.00 – 15.00

Practical session

Exercise 8 - Reducing statelessness: Partners, strategies and activities

15.30 – 17.30

Optional extra – screening of "The Terminal"

Day 4

9.30 – 11.00 | Unit 9

Protecting stateless persons (1): Human rights law and the protection of stateless persons

11.30 – 13.00 | Unit 10

Protecting stateless persons (2): The 1954 Convention relating to the Status of Stateless Persons

14.00 – 15.30 | Unit 12

Tackling statelessness: Whose job is it and what prospects are there for the future?

Includes exercise 12 - Addressing statelessness: Who cares?

Schedule 4:

2-day seminar on statelessness, focusing on prevention and reduction

Day 1

10.00 – 12.00 | Unit 1 & 2
(abbreviated)

An introduction to nationality and statelessness around the world & State sovereignty, nationality and statelessness

13.00 – 14.00 | Unit 4
(discussion of theory only)

Preventing statelessness (1): Conflicts of laws and statelessness among children

14.30 – 15.30 | Unit 5
(discussion of theory only)

Preventing statelessness (2): Nationality, discrimination and statelessness

16.00 – 17.00: Case study session

Prevention of statelessness – national practice and international norms

Exercises 4 & 5 (Legal analysis case studies 1 & 2)

Day 2

10.00 – 12.00 | Unit 7 & 8
(abbreviated)

Reducing statelessness (1): International law and the reduction of statelessness & Reducing statelessness (2): Large-scale statelessness reduction campaigns

13.00 – 14.00 | Unit 12
(discussion of theory only)

Tackling statelessness: Whose job is it and what prospects are there for the future?

14.30 – 16.00

Practical session

Exercises 8 & 12 – Reducing statelessness: Partners, strategies and activities & Addressing statelessness: Who cares?

Sample Schematics / Handouts

The presentation slides are made available in electronic form together with this guide on UNHCR's Refworld website:

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

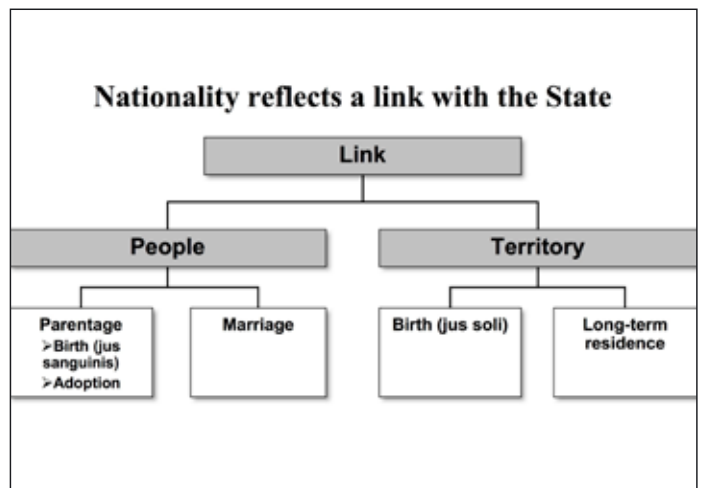
and UNHCR's homepage on statelessness:

* <http://www.unhcr.org/statelessness>

Statelessness issues



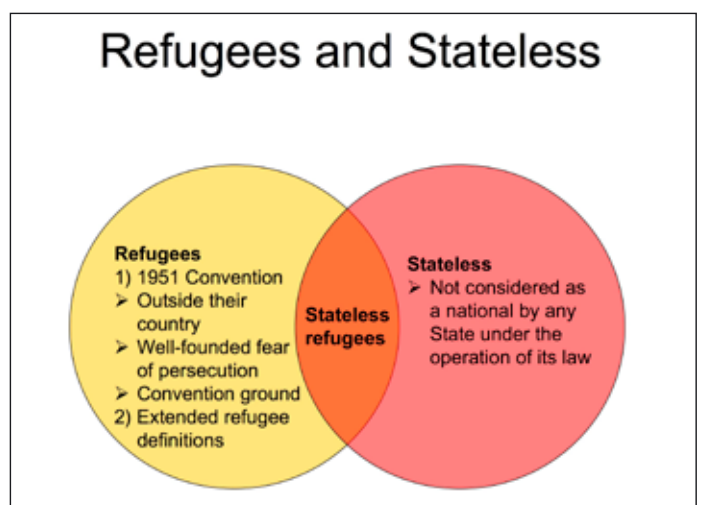
● Slide 1



● Slide 2

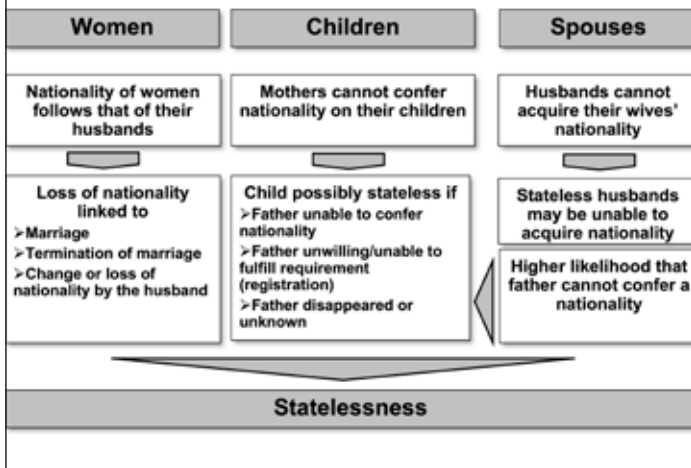


● Slide 3



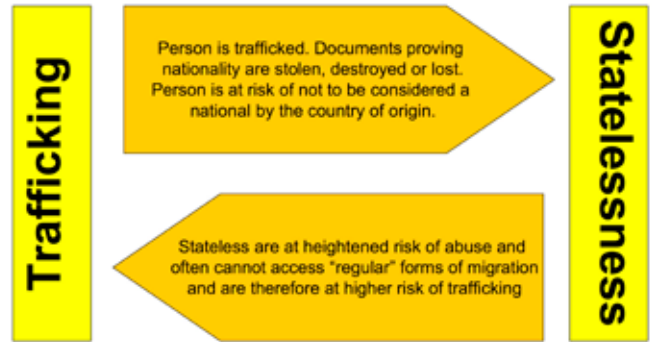
● Slide 4

Gender discrimination can create statelessness



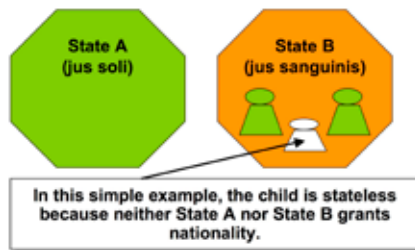
• Slide 5

Statelessness as a cause or consequence of trafficking



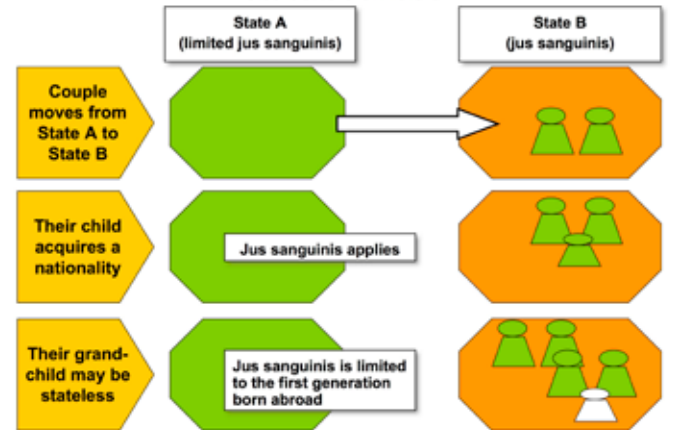
• Slide 6

Conflict of laws as a cause of statelessness: Child born in a *jus sanguinis* country to parents from a *jus soli* country



• Slide 7

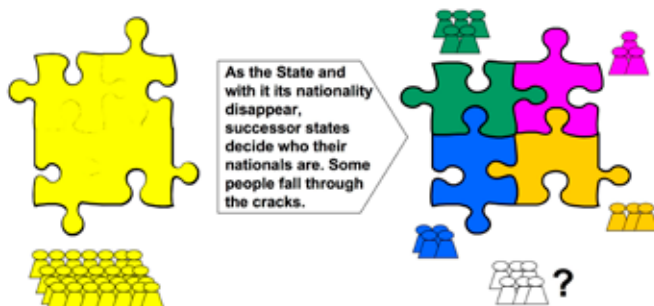
Conflict of laws as a cause of statelessness



• Slide 8

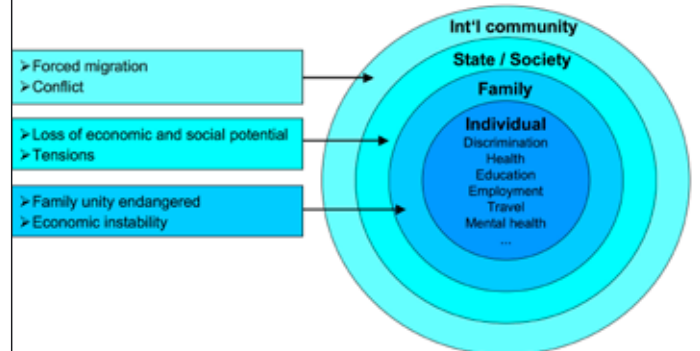
State succession often leads to statelessness

Example of "universal" succession in which one State disappears and is replaced by 2 or more new States



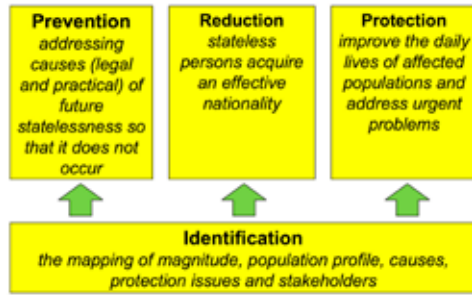
• Slide 9

Possible consequences of statelessness



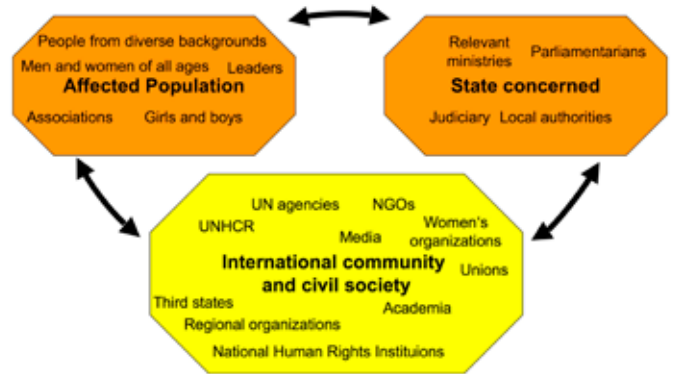
• Slide 10

Addressing statelessness



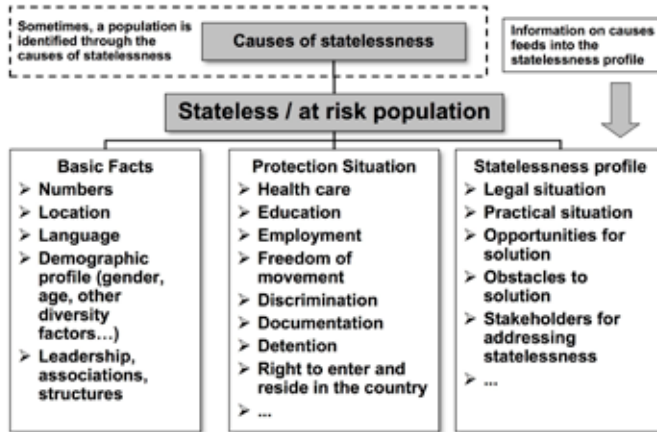
● Slide 11

Statelessness stakeholders



● Slide 12

Identification of statelessness



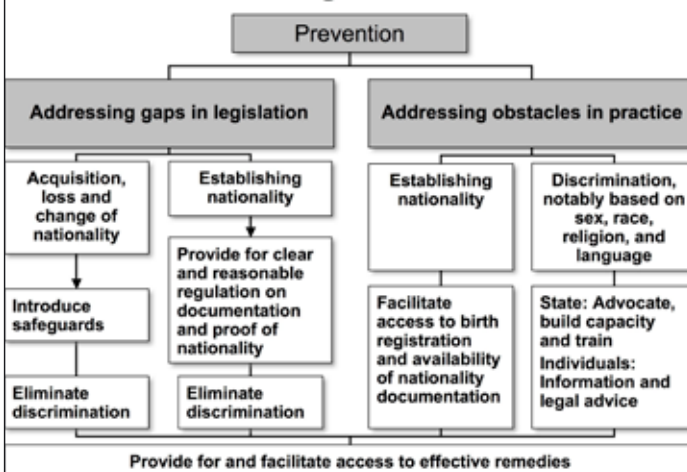
● Slide 13

Analyzing stakeholders



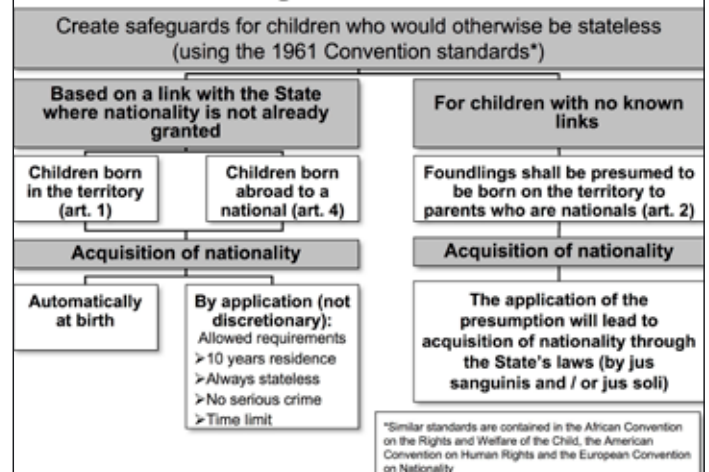
● Slide 14

Preventing statelessness



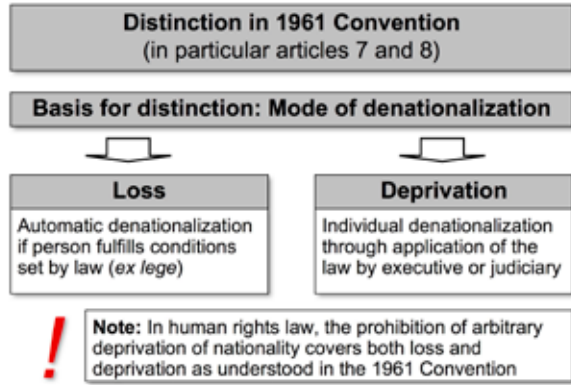
● Slide 15

Preventing statelessness at birth



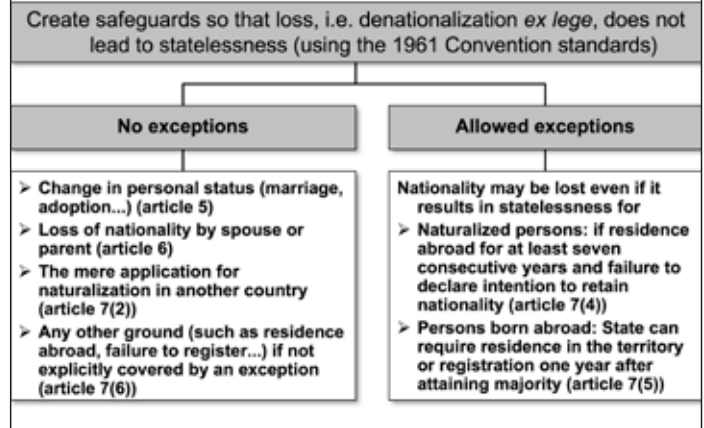
● Slide 16

Distinction of Loss and Deprivation



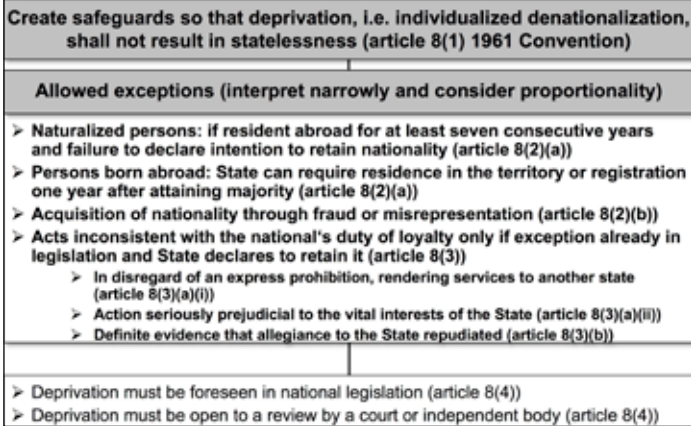
● Slide 17

Preventing statelessness through legal safeguards for loss of nationality



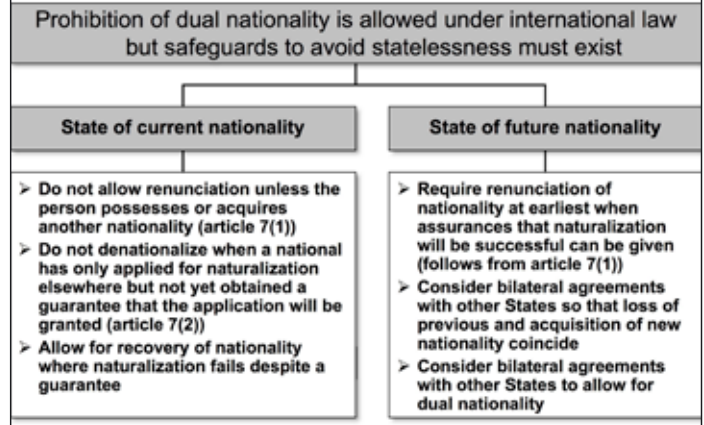
● Slide 18

Preventing statelessness through legal safeguards for deprivation of nationality



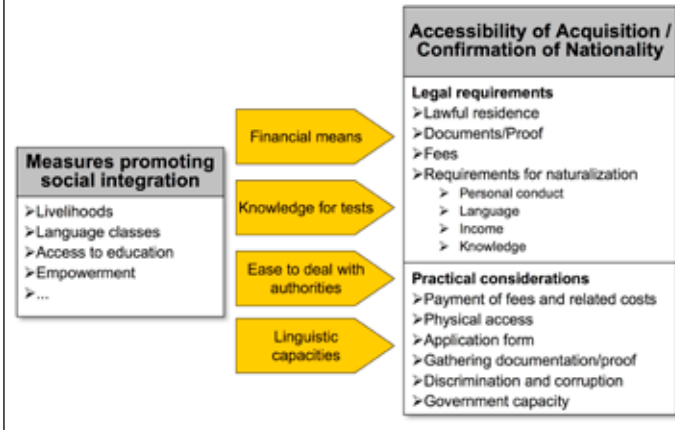
● Slide 19

Preventing statelessness upon change of nationality



● Slide 20

Social integration improves chances for a solution



● Slide 21

UNHCR's Statelessness Mandate



- Slide 1



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