

UNHCR'S ACTIVITIES IN THE FIELD OF STATELESSNESS:  
PROGRESS REPORT

I. INTRODUCTION

1. In its Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons adopted at its forty-sixth session in 1995,<sup>1</sup> the Executive Committee requested UNHCR to promote the avoidance and reduction of statelessness and to report on a biennial basis on its activities in this field. Two progress reports were subsequently presented to the Standing Committee at its 8<sup>th</sup> and in 15<sup>th</sup> meetings.<sup>2</sup> The present paper outlines various activities which have taken place since the last reporting exercise. It takes stock of the overall direction of the statelessness programme and identifies some challenges ahead. In doing so it takes into account the recommendations arising from the comprehensive review of the statelessness programme undertaken recently by the Evaluation and Policy Analysis Unit.<sup>3</sup> In addition it highlights issues particularly affecting women and children. UNHCR welcomes this opportunity for consultation and renewed direction on the issue of statelessness, particularly as it impacts special groups. Elements for a conclusion are contained in the final paragraph of the paper.

II. OVERVIEW OF ACTIVITIES

A. Defining the scope of the problem

2. There is often confusion about who is a stateless person and how to identify cases of statelessness. Stateless persons do not necessarily cross borders, seek asylum, or emerge as a distinct group in a given population. Few national registration systems are equipped to accurately identify the number of stateless persons on a State's territory. Some stateless persons are registered as foreigners, some as non-national residents, and many are categorized as nationals of another State even in instances where the other State in question does not consider them as its nationals. Some countries do not have effective registration systems. In other cases, persons may be registered as stateless but this information is not widely available because of political sensitivities. Furthermore, numerous stateless persons are categorized as refugees or asylum-seekers even in cases where they have been rejected for asylum or have not sought asylum.

3. The root causes of statelessness may vary from one region to another. However, *all* States have citizenship laws and, by definition, all States try to enumerate which persons have citizenship and which persons do not. As States do not make this determination in precisely the same way or in consultation with other States, instances continue to arise in which individuals are not granted citizenship by *any* State. The situation is further exacerbated by political tensions, varying ethnic

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<sup>1</sup> Conclusion No. 78 (XLVI); A/AC/96/860, para.20; see also the "omnibus" resolution adopted at the General Assembly's fiftieth session (A/RES/50/152).

<sup>2</sup> EC/49/SC/CRP.15, and EC/47/SC/CRP.31.

<sup>3</sup> *Evaluation of UNHCR's Role and Activities in Relation to Statelessness Issues*, EPAU Report, to be issued in June 2001.

and racial notions of national identity, social or economic challenges, conflicts between or within States, transfer of territory, and issues such as marriages, birth registration and the civil status of women and children.

4. The 1995 Executive Committee Conclusion requested UNHCR to “promote the prevention and reduction of statelessness through the dissemination of information, and the training of staff and government officials; and to enhance cooperation with other interested organizations.” A first step in this respect has been to try and establish the magnitude of the problem globally. To assist staff in identifying where and how the problem arises, UNHCR has developed a list of root causes of statelessness, and has modified its reporting mechanisms to include information on the scope of the problem. The cooperation of States is critical in assessing situations of statelessness, so as to promote appropriate strategies for prevention and solutions.

#### B. Promotion of the Statelessness Conventions

5. The High Commissioner’s Accession Campaign preceding the 50<sup>th</sup> anniversary of the Office was a major initiative to encourage States to accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness. It served both to address statelessness cases as well as to develop a harmonized international response to the problem. During the two-year period of the Campaign there were nine accessions to the 1954 Convention and four accessions to the 1961 Convention, bringing the total numbers of States parties to 23 and 53, respectively.<sup>4</sup> The Campaign contributed to raising awareness of the Statelessness Conventions; increasing the profile of the problem of statelessness in UNHCR’s dialogue with States; globalizing UNHCR’s activities in this field; and promoting awareness and understanding of issues of statelessness and of the Conventions as tools to address such problems. Cooperation with other United Nations agencies and regional partners has also helped to promote accessions.

6. The increased level of support for the international legal framework is encouraging. Nonetheless, there continue to be challenges. Some States are unwilling to accede to the Statelessness Conventions because the issue of citizenship touches on a sensitive area of State sovereignty. Other States do not consider accession to the Conventions as a priority, despite the presence of large numbers of stateless persons on their territory. A number of States that have acceded to the Statelessness Conventions have failed to adopt laws to implement the instruments. A regional focus on accessions and effective implementation is being explored. Promotion of the international legal framework can be strengthened through partnerships among States, UNHCR, and relevant organizations.

#### C. Technical and advisory services

7. Providing technical and advisory services to States, organizations, legal aid societies, courts and, not least, to stateless persons continues to be an expanding area of work for UNHCR as it seeks to avoid and reduce statelessness. Increasingly States and interlocutors are turning to the Office for assistance to avoid and reduce statelessness. Through its technical and advisory services UNHCR can play an important role in promoting positive developments of law, policy and practice as well as improving dialogue among the States globally. All States have nationality laws, but not all States are aware of how their approach may conflict with the approaches adopted elsewhere. UNHCR can provide information and expertise to identify gaps.

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<sup>4</sup>New States Parties to the 1954 Convention are Chad, Guatemala, Latvia, Lithuania, Mexico, Saint Vincent and the Grenadines, Slovakia, Swaziland and Zimbabwe; new States Parties to the 1961 Convention are Chad, Slovakia, Swaziland and Tunisia.

8. Over the past five years, the Department of International Protection (DIP) has provided technical advice on statelessness in relation to the laws and practice of 141 States, and cooperated directly with 51 States in drafting legislation reform. In Central and Eastern Europe, where almost one million persons have obtained citizenship or acquired special status in recent years, UNHCR has been involved in programmes and activities ranging from the provision of advice in drafting laws concerning citizenship and residence to technical assistance in establishing administrative arrangements to deal with cases of statelessness or restitution of nationality.

#### D. Building partnerships

9. UNHCR has frequently provided technical and advisory services to States through regional frameworks or in cooperation with regional organizations, such as under the CIS programme of action. It is hoped that these efforts will serve as a platform for harmonizing law and practice throughout the CIS and neighbouring States. UNHCR continues its close cooperation with the Council of Europe and is pursuing increased dialogue with the Organization for Security and Cooperation in Europe (OSCE).

10. Similar partnerships are gradually being developed beyond Europe, most notably in recent months in collaboration with the Organization for African Unity (OAU). A series of meetings and consultations<sup>5</sup> led last year to the adoption by the OAU of a resolution on the avoidance and reduction of statelessness in the African context. Expanding global partnerships have also concentrated on civil society structures at the national level, including collaborative efforts with academic institutions, NGOs, legal aid societies, lawyers and practitioners. Cooperation continues to expand with United Nations bodies, notably the International Law Commission (ILC) in the framework of the preparation of articles concerning nationality in relation to the succession of States, leading to a General Assembly Resolution adopted at its fifty-fifth session<sup>6</sup>. UNHCR maintains cooperation with the Committee on the Rights of the Child and the Human Rights Committee, both Committees promoting accession to the Statelessness Conventions and encouraging States in efforts toward resolution of cases. Cooperation has also been established between UNHCR and the Human Rights Commission, the Sub-Commission on the Promotion and Protection of Human Rights, the Committee on the Elimination of Racial Discrimination, and with the Committee on the Elimination of All Forms of Discrimination Against Women. The latter will be an important forum in which to discuss issues of statelessness faced by women directly and in relation to their children. At the operational level, last year saw the expansion of UNHCR's consultations with United Nations partners in the African, Middle Eastern, and Asian regions.

#### E. Training and dissemination of information

11. UNHCR has invested considerably in training staff in the problem of statelessness and in UNHCR's role. In the past five years, 39 staff training sessions on statelessness have taken place, involving over 1200 participants. Nine of the sessions were held in the reporting period since June 1999. The training sessions also serve to help design action plans at the country and/or regional level. Statelessness training has now been incorporated into UNHCR's Protection Learning Programmes.

12. UNHCR has also actively pursued its dialogue with States and government officials through training and debriefing sessions. Increasingly activities are focussing beyond the European context, and effective dialogue has now been established with a number of governments in Asia, Africa,

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<sup>5</sup> Special OAU/UNHCR Meeting of Government and Non-Government Technical Experts at the 30<sup>th</sup> Anniversary of the 1969 OAU Refugee Convention held in Conakry, 27 – 29 March 2000.

<sup>6</sup> A/RES/55/153.

Middle East and North America. As part of this expanded activity, UNHCR has also undertaken training workshops for NGOs, legal aid societies and United Nations partners.

13. One challenge is to meet the high level of demand with very limited resources. Internally, the strategy has been to develop and expand capacity beyond DIP, and to engage operational and field staff. Externally, efforts are being made to identify appropriate partnerships, particularly with regional and non-governmental organizations, as well as research institutes with a view to increasing the resources available for training and capacity-building.

### III. SOME CHALLENGES AHEAD

#### A. Statelessness issues impacting women

14. Issues of gender and statelessness are becoming increasingly apparent as UNHCR develops its activities in this field. The vast majority of beneficiaries of efforts to avoid and reduce statelessness and to ensure the protection of stateless persons are women and children. In situations where the problem of statelessness has hit broad sections of society as a result of political events, such as State succession, women and children account for the majority of those affected.

15. There are also instances in which statelessness affects a woman as a consequence of her gender or through her relationship to her children or spouse. All of these issues have an impact on family status and unity. Problems may arise with regard to the registration of marriages and registered marriages, with the result that the woman is not considered lawfully wed and has no entitlements flowing from the marriage, including any which pertain to citizenship, even though she may have lost or forfeited her citizenship of origin. Improvements in registration practices, based on social and cultural realities, would be a positive measure to address these situations. Additionally, where practices concerning marriage vary from region to region, States should consider the adoption of approaches that promote the best interests of the women concerned.

16. As regards statelessness and the relationship between a woman and her children or her spouse, several problems can be identified. Women may face major difficulties in passing their citizenship to their children even in those exceptional cases where the father is stateless and the child is born in the mother's country of citizenship. Women who marry stateless persons often cannot extend their citizenship to their spouses, even when they are resident in the wife's country. As a consequence, women who *have* citizenship may end up living as stateless persons because the statelessness of their spouse or of their children imposes upon them all the attributes of statelessness itself.

17. While statelessness in association with marriage has been effectively addressed through the Statelessness Conventions and related instruments such as the 1979 Convention on the Elimination of Discrimination Against Women, the principles and provisions set forth in these instruments are not globally nor consistently applied in law or practice. Wider accession and more effective implementation would help to address these problems.

18. The trafficking of women has also given rise to problems related to the establishment of their identity and national status. Trafficked women may have their documents stolen or destroyed either on arrival in a third country or prior to transfer, often making it impossible to prove their status when they try to re-enter their country. They may be placed in detention in the country to which they have been transported illegally, and may linger there for years because of the refusal by the country of citizenship to readmit them in the absence of evidence of their nationality, and refusal by the country of detention to release them without proper documentation. UNHCR has

assisted in the resolution of a number of such cases recently, but the vast majority of such problems go undetected. Enhanced cooperation among states, based on the establishment of proper procedures and criteria, as well as greater flexibility with respect to documentation requirements, could help to promote appropriate and early solutions so that women who have already been victimized do not suffer further isolation.

19. Recognizing the need for further data and research on issues of gender and statelessness, DIP has established partnerships with the Universities of Toronto and New York University through jointly supervised internship programmes. The research has been used to further collaboration with the International Law Association's Committee on Feminism and International Law regarding its work on women and nationality. UNHCR continues to expand its cooperation with women's legal aid societies and advocates. Efforts in this regard will provide deeper insight into the problems as well as the means to overcome them.

#### B. Statelessness issues impacting children

20. One of the principle problems for children in association with statelessness is access to birth registration. In order to lay *any* claim to citizenship an individual must be able to show where s/he was born and to whom. However, birth registration does not always take place. In many instances the citizenship status of children suffers as a result of their being orphans. UNHCR has encountered thousands of stateless children in orphanages, including following the dissolution of States in Europe. Without a legal status while in the orphanage, their situation worsens when they are released upon reaching adulthood, as they are treated as being "illegals" in the only country in which they have ever lived.

21. Problems of statelessness can also arise for children as a result of the conflict of laws. For newborns, some States grant citizenship by descent, others by place of birth, and both methods are well established and accepted as part of State practise. However, because States do not harmonize their approaches, instances continue to arise in which the child is not granted citizenship either in the State of birth or in the State in which the parent(s) holds citizenship, leaving the child stateless. Unless the States negotiate, or one State modifies the otherwise strict application of its law, children are rendered stateless in these and other contexts. The Statelessness Conventions contain provisions and principles that promote resolution of the problems faced by children. The 1961 Convention has children as its *principal* beneficiaries by providing mechanisms for the acquisition of citizenship for all children who would otherwise be stateless. As such, the Conventions constitute an important tool in ensuring that statelessness is avoided for children. Further accessions by States could help to address these problems.

#### C. Expanding the scope of activities

22. The recent evaluation of UNHCR's role and activities concerning statelessness highlighted the importance of the expansion of its work. In terms of geographical scope, the problem of statelessness has become more global, with requests for UNHCR's assistance from a growing number of States around the world. The growing substantive scope of the problem of statelessness is both complex and varied. While in some situations, statelessness and refugee problems overlap, in others statelessness is unrelated to refugees and requires a qualitatively different response and expertise.

23. Increasingly, UNHCR is focusing its work on the implementation of policies through the development of regional and country strategies for the prevention and solution of problems of statelessness; on providing technical and advisory services to governments to address the issues; and on developing the capacity and resources of UNHCR and its partners in this field. The specific

problems relating to women and children also indicate a need for assisting individual cases in addition to promoting legal and administrative changes.

24. The increasing needs and the growing demands that are being placed upon UNHCR require resources beyond the existing two posts on statelessness currently in DIP. With two mandates - for refugees and for stateless persons - it has been difficult for UNHCR to devote adequate profile and resources to statelessness issues, particularly where they relate to non-refugee situations. Toward this end, the Office is actively identifying new partners and networks, particularly beyond the European context. However, establishing partnerships and ensuring the technical training and other collaborative measures also require human resources. Strong and practical support is needed from the international community in furtherance of this goal.

#### IV. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

25. As outlined above, UNHCR's work has already led to the resolution of numerous cases of statelessness and has contributed to the prevention of statelessness as one of the root causes of displacement and refugee flows. Moreover, the acquisition of citizenship following displacement has played an equally important role in helping to resolve refugee flows as well as cases of statelessness. However, this work has also served to identify significant issues and remaining areas for action, both within and outside the framework of refugee problems. At a time of limited resources, future activities need to be prioritized, well planned and clearly outlined. Further direction from the Executive Committee, particularly as regards the situation of women and children, is welcome at this juncture.

26. By way of conclusion, the Executive Committee may wish to consider the following points:

- (a) Acknowledge the global dimension of the problem and encourage States to cooperate with UNHCR in assessing situations of statelessness with a view to identifying the scope of the problem and devising appropriate solutions, including with regard to stateless women and children who are not refugees;
- (b) Reiterate the call for accessions to the Statelessness instruments to address the particular problems in relation to women and children;
- (c) Encourage States to call on UNHCR for technical and advisory services to avoid and reduce statelessness, particularly with a view to adopting a common approach on national legislation reform and implementation procedures with reference to the Statelessness Conventions;
- (d) Encourage UNHCR to develop partnerships with regional and other international organizations for the promotion of the international legal instruments, technical and advisory services, training and capacity-building activities;
- (e) Endorse UNHCR's efforts to broaden its activities geographically and substantively, including in the context of addressing the problems of statelessness faced by women and children outside the refugee framework;
- (f) Underline the importance notably for women of identity documentation, proper registration of births and marriages, and call upon States to adopt all necessary measures in this regard, including improvements to registration based on social and cultural realities;
- (g) Encourage States to develop mechanisms for cooperation aimed at preventing negative consequences with respect to nationality affecting women and children, notably in the context of trafficking in which establishing national identity is of particular importance.