

Protecting the Human Rights of Stateless Persons

Event Report, Geneva, 29 September 2010

Amal De Chickera and Jim Fitzgerald¹

On 29 September 2010, The Equal Rights Trust (ERT) and the International Commission of Jurists (ICJ) co-hosted a side event to the 15th Session of the Human Rights Council on Statelessness, Discrimination and Human Rights. The event, which was held at the Palais des Nations, was chaired by ERT's Executive Director, Dimitrina Petrova. The speakers at the event were: (1) Volker Türk (Director of International Protection, United Nations High Commissioner for Refugees (UNHCR)); (2) Jan Borgen (Deputy Secretary General, International Commission of Jurists (ICJ)); (3) Tamás Molnár (Senior Legal Advisor, Ministry of Interior of the Republic of Hungary); and (4) Amal De Chickera (ERT's Head of Statelessness and Nationality projects). ERT's Advocacy and Communications Officer, Jim Fitzgerald, was the event rapporteur.

The discussion at this event was informed by the findings of ERT's recent report, *Unravelling Anomaly*.² The event began with the screening of a short video produced by ERT and entitled *No Place To Go*, in which two stateless people based in the UK shared their views and experiences with ERT.

Volker Türk spoke of the UNHCR mandate and perspective on statelessness, and stressed the importance of getting more organisations to prioritise the issue and build-

ing momentum in this regard. The key points which he made are as follows:

(1) It is very good to have a dialogue on statelessness from a human rights perspective. *Unravelling Anomaly* puts forward many interesting and challenging ideas which need to be explored and addressed.

(2) Of the estimated 12 million stateless people in the world, only 6 million are currently identified and accounted for in country-level statistics. Identification of stateless people is a complex issue and one which is often viewed as a political issue by states.

(3) There are two specific instruments governing statelessness – the 1954 Convention Relating to the Status of Stateless Persons (the 1954 Convention) and the 1961 Convention on the Reduction of Statelessness. However, there has been a low level of ratification of these Conventions. In addition, there are international human rights law and regional legal instruments – in particular in the Council of Europe – and other international legal instruments on nationality issues. However, national and international standards in this area are not consolidated and gaps do exist.

(4) It is not sufficiently widely known that UNHCR has a statelessness mandate. Indeed,



Photo credit: Massimo Frigo

From left: Tamás Molnár, Volker Türk, Dimitrina Petrova, Jan Borgen and Amal De Chickera at side event on statelessness, Geneva, 29 September 2010

the issue of statelessness is itself not widely publicised or well-known. However, UNHCR is increasing its work on behalf of stateless people around the world and is encouraged to see the rise in the attention paid to the issue.

(5) The dual anniversaries of the 1961 Convention on the Reduction of Statelessness and the 1951 Convention relating to the Status of Refugees provide an opportunity for advocacy on the question of statelessness, including on accession to the Conventions, reform of nationality laws and progress to reduce statelessness. UNHCR will be conducting many activities around this anniversary.

Volker Türk concluded his talk by calling for more civil society actors to get involved in work on statelessness, and also calling for more states to take action on statelessness. He commended the Government of Hungary on progressive steps taken, including accession to both statelessness conventions and the implementation of its statelessness determination procedure.

Amal De Chickera gave a brief background of ERTs work on statelessness before drawing attention to the (i) legal; (ii) political; (iii) institutional; and (iv) equality challenges which face the human rights community when addressing the statelessness problem.

The **legal challenge** pertaining to statelessness is the challenge of promoting the right of every individual human being to have a nationality, while ensuring that the lack of a nationality does not have a negative impact on the enjoyment of other human rights. The tension between national sovereignty and universal human rights goes to the heart of this challenge.

The 1954 Convention is an important document because it introduced an obligation to recognise statelessness, and to provide documentation to stateless people. But it has its limitations. Primarily, being a pre-human rights document, the Convention falls short of obligating states to promote and protect the human rights of stateless persons. Thus, it is ERT's view that while civil society ac-

tors must continue to lobby for ratification of the 1954 Convention, the Convention must be complemented by international human rights norms. Furthermore, regardless of whether or not states have ratified the 1954 Convention, they must fulfil their human rights obligations in respect to everyone (including stateless persons) within their jurisdiction. Implicit to the 1954 Convention is the necessity for states to identify stateless persons within their territories. Consequently, it is essential that all states have in place fair procedures for the determination of statelessness.

On the subject of detention – when a stateless person is detained in an immigration context, removal becomes very difficult. Therefore, in the absence of maximum time limits and strong protections, stateless persons can experience indefinite detention. International human rights standards including those pertaining to arbitrary detention, cruel, inhuman and degrading treatment, proportionality, necessity, and the right of review must be applied in the context of the detention of stateless persons as well. The more one examines the situation of stateless persons – particularly in detention – the more it becomes apparent that many legal standards we take for granted are ignored.

The stateless are **politically** voiceless. They do not form a political constituency, and therefore they cannot enter into the political discourse. In fact, the political discourse in many countries is alarmingly turning anti-immigrant, leaving the stateless in an even more vulnerable position. The human rights community must find a way to bring the issue of statelessness to the forefront of politics. This is a massive challenge, to which there are no easy answers.

Amal De Chickera then analysed the **institutional challenge** related to statelessness. Statelessness is a human rights problem. It is also an immigration and refugee problem. It falls squarely within the mandates of human rights, refugee and immigration organisations, but very few have prioritised the issue. Neither the human rights world, nor the refugee world has done enough. At an institutional level, more organisations need to prioritise the issue. They need to be aware of the implications of statelessness on their area of expertise – be it detention, women’s rights, child rights or asylum services. It is also important to enhance cooperation amongst organisations that work on the issue. We need to find new ways of working together, sharing our expertise and collectively moving forward.

As to the **equality challenge**, it has three elements:

i) Discrimination affecting the stateless in their own country, both in respect of citizenship rights and in other areas. The situation faced by the Rohingya in Burma is the most striking example in this regard.

ii) Discrimination affecting stateless migrants, many of whom are in the developed world, who often face unfair restrictions on the right to work and access to social welfare, and are arbitrarily detained pending removal.

iii) Inequalities within the treatment of statelessness. These inequalities arise as a result of the distinction which is made between *de jure* stateless persons (those with no legal nationality) and *de facto* stateless persons (those with a nationality which is completely ineffective). The 1954 Convention only obligates protection of the *de jure* stateless, thus creating a hierarchy within the stateless

community and marginalising the *de facto* stateless.

We are left with the question: how to address this hierarchy? There are a number of possible approaches:

- a. Expand the definition of *de jure* statelessness to include persons who have traditionally been categorised as *de facto* stateless.
- b. Lobby governments to provide equal protection to the *de facto* stateless as recommended in the final acts to the Statelessness Conventions.
- c. Approach the problem from a protection perspective, collapse the distinction between *de jure* and *de facto* statelessness and equally protect all persons who have protection needs arising from their ineffective nationality.

This third approach is ERTs preferred approach to the problem, but it is very much a long term goal. In the short term, maximum protection for the stateless must be pursued through the first two approaches.

Tamás Molnár has played a key role in developing Hungary's statelessness determination procedure. He spoke about the most important provisions of the procedure. In 2007 the re-drafting of Hungarian immigration law and two other instruments required the development of a new statelessness determination procedure. The three legal instruments were as follows: (i) **Act No. II of 2007** on the entry and stay of third-country nationals, chapter VIII, Articles 76-86; (ii) **Government Decree No. 114/2007**, Articles 159-169 (more detailed implementing rules); and (iii) **Ministerial Decree No. 28/2007**.

Pursuant to the Act and the two decrees, a new procedure was developed, which has been applicable since 1 July 2007. The procedure is only open to stateless persons who are **legally staying** in the country. The procedure is by **application** (orally or in writing) and is free of charge, including at the judicial phase. Throughout the process, applicants are provided with free legal assistance and access to an interpreter. At the heart of the procedure is the realisation by the drafters that establishing that a person has no nationality in relation to all states is impractical given the evidentiary challenges. As such, the requirement is that the applicant shall **prove** or **substantiate** that he/she is stateless in relation to "countries of interest", which are:

- a) State of the place of birth;
- b) State of the previous place of residence/stay; and
- c) State of nationality of the family members.

Regional Directorates and the UNHCR are required to provide administrative assistance in support of **evidence collection**. Less formality is required in respect of documentation, in acknowledgement of the difficulties of securing relevant documents. The authority itself also collects information on citizenship laws, via Hungarian diplomatic missions, UNHCR, etc. Thus, there is a **shared burden of proof**.

Decisions are required to be made within 45 working days. In case of **recognition**, a residence permit for humanitarian purpose (1 year renewable each year) and identity documentation or a bilingual travel document (1 year + 6 months, costing 18 Euros) will be issued. In case of **refusal**, a judicial

review application can be made to the Metropolitan Court in Budapest which has exclusive competence in such cases. A personal hearing will follow, after which a decision will be made within 90 days which may alter the administrative decision. The UNHCR can take part in the proceedings, in any phase. It may: (i) attend the hearings; (ii) provide administrative assistance; (iii) look into the files and make copies; and (iv) receive copies of the administrative and judicial decisions.

Jan Borgen drew some conclusions from the previous presentations and spoke of the challenge for everyone to raise awareness of the issue of statelessness. He pointed out that Hungary is an exception in terms of its statelessness determination procedure. Few other countries even recognise the problem. Therefore, there is a lot which needs to be done to better protect stateless persons.

The discussion on how to contend with the challenges of statelessness should continue. Mr Borgen said that statelessness is an old problem, but the ERT report draws attention to the human rights element and casts it in a new light: statelessness is a human rights problem, not just a humanitarian problem.

We should ask how best to build a coalition to push for greater protection of stateless people. In this regard, human rights organisations must do more. The UNHCR should explore what more it could do on behalf of the stateless, particularly in the context of lobbying governments to accede to the statelessness conventions.

The Universal Periodic Review (UPR) provides an avenue through which countries which discriminate against and abuse the human rights of stateless persons can be held accountable. Civil society must use the UPR to raise the statelessness issue. Treaty bodies have been slow in recognising the statelessness problem. They should be challenged to prioritise the statelessness issue. Similarly, Special Rapporteurs who have a mandate relevant to statelessness have an important role to play.

Following the four panel presentations, participants engaged in a lively discussion. They raising some sensitive and difficult issues, including a number of questions related to specific groups of stateless persons, such as Bihari, Palestinian, Rohingya and Somali communities in different countries.

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² The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, 2010, available at: <http://www.equalrightstrust.org/view-subdocument/index.htm?id=748>