



Equal Rights for the Stateless

A human right is nothing more than a pure moral aspiration if its protection is no one's responsibility. Human rights responsibilities fall on states. If a person's human right is denied or violated, the state must guarantee, protect and fulfil the right. But which state?

If you thought the answer was, "their own state, the one whose name a person would fill in a form asking about their 'nationality'", you are wrong. Human rights are a matter of international concern and one aspect of their universality is that states have responsibilities to respect, protect, and fulfil the human rights not only of their citizens but of anyone within their territory or subject to their jurisdiction. Non-citizens should enjoy their human rights (with certain exceptions such as voting rights) on an equal basis with citizens.

However, this basic equality principle¹ is not translated into practice in regard to all non-citizens. From the point of view of protection needs, non-citizens are a heterogeneous group: some categories of non-citizens, such as wealthy immigrants, highly paid regular migrants or diplomatic corps personnel may be less exposed to discrimination, while other categories of non-citizens are vulnerable and in need of protection. Within the broad class of non-citizens, the most vulnerable people are those without effective nationality.

A person who does not have effective nationality is a stateless person, whether or not the fact of their statelessness has a legal expression (in which case we are talking about *de jure* stateless persons). Refugees are in effect stateless persons because their well founded fear of

persecution in "their own" state means that their nationality is not effective.

But a person can be without effective nationality for a number of reasons other than those that would render her or him a "refugee" within the narrow 1951 definition of the term. The scenarios that lead to statelessness include failure to obtain citizenship of a new state in cases of disappearance of a state and state succession (the Soviet Union, Yugoslavia); failed states with no government in control (Somalia); massive displacement (the Palestinians); conflicts of law; gender discriminatory rules determining how citizenship is passed on from parents to children (as in a number of states in the Middle East); political manipulation of citizenship, including denationalisation of minorities (Kurds in Syria, Rohingya in Burma, Banyamulenge in the Congo); irregular migration combined with a refusal of the home state to allow emigrants re-entry; stigmatisation of a person as a security threat (as argued, in respect to the Guantanamo inmates, by David Baluarte in this issue), and so on.

Globally, the stateless are a category of people who are likely victims of discrimination and other human rights violations. Therefore they have the strongest protection needs. But they are among the least protected: neither international law, nor national laws around the world measure up to the task to ensure equal rights for the stateless. When the vulnerability arising from statelessness is aggravated by the vulnerability of deprivation of liberty, we are looking at a chasm of uncertainty: the detained stateless person embodies the deepest gap between the core ideal of universal rights and

reality. This is because the detention of a stateless person often is indefinite or lengthy, likely to last as long as it takes for the detaining state to find a country to which it could dispatch the unwanted person.

It is important to understand that strengthening the protection of the stateless persons in detention is not an exotic preoccupation that would benefit only a small number of isolated cases, as one might think, mystified by the near absence of a discourse on statelessness. Immigration detention centres around the world, for example, house thousands without effective nationality. The problem is that their position is not framed from a rights perspective – i.e., from the perspective of their protection needs. When seen from this angle, what matters is their statelessness, rather than a description as “non-citizens”, “irregular migrants”, “smuggled persons”, or “failed asylum seekers” – categories that point away from the unfulfilled need for equal protection. One way to establish a protection-centred approach is to introduce a statelessness determination procedure in states which lack one (i.e. most states across the world).

In order to contribute to positive change in the laws and practices related to statelessness, and in particular to the detention of people without effective nationality, The Equal Rights Trust is carrying out research in several locations around the world and advocates legal reform, including the introduction of a statelessness determination procedure, and the introduction of specific limitations on the detention of stateless persons. Our approach to this prob-

lem is based on the *Declaration of Principles on Equality*, as it is the lack of an enforceable right to equality for the stateless that makes it possible for legislators and policy makers to let them down with impunity. The Special section of this volume of *ERR* is devoted to the problem of statelessness and focuses on the protection needs of stateless persons in any form of detention.

In the Articles section, we present a brief analysis of the recent legislative proposal by the European Commission for a new equality directive, a reflection on xenophobia in Russia, and an advocacy argument on affirmative action in higher education in Brazil. The *ERR* Testimony in this issue comes from a former inmate who was held in a mental asylum while serving a term in a Nigerian prison. His diligent and sorrowful account is a strong reminder that no equality regime is complete without including adequate provision for people with mental disability.

One of the most important issues in the field of equality is the relationship between the established types of status-based discrimination (on grounds of sex, race, religion, disability, sexual orientation, etc.), on one hand, and poverty, socio-economic exclusion and socio-economic status on the other. Could and should equality law play a role in fighting poverty and in advancing socio-economic equality? What are the challenges? As a contribution to this emerging debate, we publish a double interview with two of the most inspiring equality experts in Europe, Sandra Fredman and Margarita Ilieva.

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¹ See Declaration of Principles on Equality, The Equal Rights Trust, 2008, Principle 10: “States have a duty to respect, protect, promote and fulfil the right to equality for all persons present within their territory or subject to their jurisdiction.”