

Citizens of the World but Non-Citizens of the State: The Curious Case of Stateless People with Reference to International Refugee Law

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Abstract

A stateless person, is one who is not considered as a national by any state under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons). Here, nationality refers to the legal bond between a person and a state. This bond confers upon the national certain rights as well as duties. A person who is stateless lacks this membership and will be seen and treated as a foreigner by every country in the world. This phenomenon has also been described as “de jure statelessness”. In literature on statelessness, “citizenship” and “nationality” are usually used as interchangeable synonyms, both referring to the legal bond of membership described above. It is of interest to point out that a stateless person can also be a refugee, if in addition to not being considered as a nationality by any state they also meet the definition of Article 1 of the 1951 Refugee Convention (i.e. have fled their country due to a fear of persecution).

1. Concept of Refugee

The term refugee is derived from the root word *refugié*, noun use of past participle of *refugier* “to take shelter, protect,” from Old French *refuge*.¹ It was first applied in English to French Huguenots who migrated after the revocation (1685) of the Edict of Nantes. The word meant “one seeking asylum” until 1914, when it evolved to mean “one fleeing home” (first applied in this sense to civilians in Flanders heading west to escape fighting in World War I).² The main emphasis of this paper is to discuss the concern of internal refugees as for instance stateless people. It is to be noted that the Convention definition of refugee status excludes internal refugees from the scope of global protection. The strict insistence on this territorial criterion has prompted concern

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¹ Refugee, Online Etymology Dictionary, retrieved from: <http://www.etymonline.com/index.php?allowed_in_frame=0&search=refugee>, visited on 21st September, 2017 at 2:00 pm.

² Id.

that there is a mismatch between the definition and the human suffering consequent to involuntary migration. There has been a very practical concern that the inclusion of internal refugees in the international protection regime might prompt states to attempt to shift responsibility for the well-being of large parts of their own population to the world community.

It has also been a matter of concern that any attempt to respond to the needs of internal refugees would constitute an infringement of the national sovereignty of the state within which the refugee resided. Refugee law, as a part of international human rights law, constitutes a recent and carefully constrained exception to the long-standing rule of exclusive jurisdiction of states over their inhabitants. While it was increasingly accepted in the early 1950s that the world community had a legitimate right to set standards and scrutinize the human rights record of the various countries, it was unthinkable that refugee law would intervene in the territory of a state to protect citizens from their own government. The best that could be achieved within the context of the accepted rules of international law was the sheltering of such persons as were able to liberate themselves from the territorial jurisdiction of a persecutory state.

None of the factors which dictated the exclusion of internal refugees limited resources, concern about state participation, or respect for sovereignty was so much a matter of conceptual principle, as it reflected the limited reach of international law.

1.1. Analysis and Application of the Concept

The most widely accepted legal definition of refugee is the one that has been provided by the Refugee Convention, which defines a refugee as:

“Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country.”³

However due to inadequacy of the definition, certain legislations have been enacted which have worked as appurtenance to the original convention

While analysing the definition certain pre-requisites of the definition it can be observed that with time certain nuances to the pre-existing terminologies appended to the definition have been developed. Nevertheless, certain key features so addressed by the definition have been dealt to further elaborate upon the definition such as well-founded fear of being persecuted⁴,

³ Who is a refugee? Refugee Council of Australia, available <<https://www.refugeecouncil.org.au/getfacts/international/definitions/who-is-a-refugee/>>, visited on 21st September 2017 at 2:00 pm.

⁴ The criteria for determining what is well founded is composed of two elements, subjective- i.e. relating to the perceptions, emotions and experiences of refugee claimant and basis of evaluation of applicant's statements. Objective which may be assessed from the general situation of the country of origin. Trakroo, Ragini, Bhat, Aparna and others, Refugees and Law, Human Rights Network, Jangpura, New Delhi, 2006.

race⁵, religion, nationality⁶, membership of a particular social group⁷ and political opinion.⁸

1.2. General Provisions for Determining Refugee Status

A person is a refugee in accordance with the 1951 Refugee convention as soon as she/he fulfils the criteria contained in the definition with reference to the inclusion clauses. However certain exemptions are also provided under exclusion and cessation clauses. The 1951, Refugee Convention details three groups of people who while fulfilling the criteria for refugee status are not considered to be refugees under international law. These include, persons already receiving UN protection or assistance⁹, persons not considered to be in need of international protection¹⁰ and persons not deemed to be deserving of international protection¹¹

⁵ Persecution because of race or ethnicity is a cause of refugee movement in many parts of the world. Discrimination on the basis of race, ethnicity, caste, colour or creed though prohibited all over the world, but its rudiments are found in one form or the other (Ugandan citizens of Indian origin).

⁶ It is interpreted, in a broad sense to include the origins and membership of particular ethnic, religious, cultural and linguistic groups. Article 1(A) of the 1951 Convention; As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” Nationality, interpreted broadly, illustrates the points of distinction which can serve as the basis for the policy and practice of persecution.

⁷ It may include any group of persons or any individual associated with a particular group, who demonstrates common characteristics (i.e. similar backgrounds, habits or social status) these common characteristics must be immutable or fundamental to a person’s identity such that the person should not be able to change it.

⁸ Supra note 3.

⁹ Article 1D states that the convention shall not apply to persons already in receipt of assistance from a UN organ or agency other than the UNHCR. This category includes refugees under the protection of the UNRWA and similar organisations which may be set up in future.

¹⁰ Article 1E states that those persons who are granted most of the rights normally enjoyed by nationals in the country where they have been received shall not enjoy the protection of the 1951 convention.

¹¹ Article 1F of the 1951 Convention states that the provisions of that convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he [or she] has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments 11 drawn up to make provision in respect of such crimes;
- (b) he [or she] has committed a serious non-political crime outside the country of refuge 11 prior to his [or her] admission to that country as a refugee; or
- (c) he [or she] has been guilty of acts contrary to the purposes and principles of the United Nations. 11 The grounds for exclusion are enumerated exhaustively in the 1951 Convention. While these grounds are subject to interpretation, they cannot be supplemented by additional criteria in the absence of an international convention to that effect.

The cessation clauses (Article 1 C (1) to (6) of the 1951 Convention)¹² spell out the conditions under which a refugee ceases to be a refugee. They are based on the consideration that international protection should not be granted where it is no longer necessary or justified. Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses. This strict approach towards the determination of refugee status results from the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes.¹³

1.3. Genre of Refugees

To avail the benefit of asylum it is imperative that the concerned people come within the ambit of refugee definition. As is being discussed in UN Global Compact¹⁴, there is a need to distinguish the genuine refugees from the in genuine ones and this can be achieved by recognising them under different categories, such as the Convention and Mandate Refugees¹⁵, Internally Displaced Persons

¹² Article 1 C of the 1951 Convention provides that, this Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.
- (6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

¹³ Refugee Status Determination, available at, <http://www.unhcr.org/3d58e13b4.pdf>, last visited on 11th October, 2017.

¹⁴ 2017 UN Forum on Business and Human Rights, available at unglobalcompact.org, last visited on 5th December, 2017.

¹⁵ A convention refugee is a person recognised under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. This Person is recognised and protected by a state that is party to the Convention. A mandate refugee may include all those persons who qualify as refugees under the mandate of the UNHCR. The definition of a mandate refugee has been drawn from the statute of the UNHCR by the General Assembly and the Economic and Social Council (ECOSOC), resolution to cover a wider group of persons finding themselves in refugee like situations.

(IDP's)¹⁶, Refugees *Sur place*¹⁷, Stateless persons¹⁸ and Persons in regimes of temporary protection¹⁹.

2. Stateless People

2.1. Definition of Stateless Person

A *stateless person* is someone who is not considered as a national by any state under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons). Here, nationality refers to the legal bond between a person and a state. This bond confers upon the national certain rights (like the right to live in the country or participate in elections) as well as duties (like the duty of military service, where this is still in place). A person who is stateless lacks this membership and will be seen and treated as a foreigner by every country in the world. This phenomenon has also been described as “*de jure statelessness*”.

2.2. Concept of Citizenship and Nationality

In literature on statelessness, “citizenship” and “nationality” are usually used as interchangeable synonyms, both referring to the legal bond of membership described above. However, in some countries or contexts, the use of terminology may deviate from this. It is therefore important to make an effort to understand the exact meaning or content of the terminology in use in the country that is under study. For the purposes of interpreting and applying the internationally established definition of a stateless person in practice, it can also be important to keep the following in mind. The notion of ‘belonging’ within a state is determined by membership.²⁰ Citizens belonging to a territory are politically accepted and acknowledged and are legal members of the

¹⁶ Those who are forced to leave their place of residence as a result of persecution, human rights violations, or civil and ethnic strife but who have remained in their country of origin or habitual residence are referred to as internally displaced persons (IDP's). Such persons are often not afforded the international protection given to refugees. Accordingly, the safety of these persons lies with the national government and any uninvited intervention would be considered interference in the internal affairs of the respective governments.

¹⁷ Refugee *Sur Place* means those refugees who are living outside his country of origin being an immigrant or in other part of the world having valid legal documents but due to subsequent occurrence become refugees.

¹⁸ A stateless person is someone who is not considered as a national by any state under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons). A person who is stateless lacks this membership and will be seen and treated as a foreigner by every country in the world. This phenomenon has also been described as “*de jure statelessness*”.

¹⁹ Temporary protection regimes are sometimes established by states to protect persons in refugee like situations until such time as conditions in their country of nationality are deemed benign enough to allow for repatriation in safety and dignity. This is frequently used in cases of mass influx where individual status determination is not possible.

²⁰ N. Chowdhory, Refugees, Citizenship and Belonging in South Asia, https://doi.org/10.1007/978-981-13-0197-1_2.

state.²¹ These citizens are admitted on the basis of rules of admissions determined either from birth, domicile or marriage.²² The conventional notion of belonging is typically dictated by these rules of membership. Citizenship constitutes the basis of the relationship between the individual and the state. The spheres of inclusion/exclusion of rights are determined by the state.²³ In search of For a person to be “stateless” it is not relevant how the person came to be without a nationality or whether there is the possibility for the person to acquire a nationality by taking action, the only thing that matters is whether, at the present moment, the person is considered as a national by any state. It is also irrelevant to determine location of the person. Statelessness occurs in both migration and non-migration contexts. A stateless person may never have crossed an international border, having lived in the same country for his or her entire life. To determine whether a person is considered as a national by a state under the operation of its law, requires a careful analysis of how a state applies its nationality laws in practice, in that individual’s case. In some cases, an objective analysis of the law would lead to the conclusion that the person is a national, but the state may not in practice follow the letter of the law, so the analysis must be based on how the competent authorities interpret the law. Nationality is almost always granted based on certain factual links between a person and a state: either links through family or through territory. To work out whether a person is stateless, it is usually sufficient to look at whether they have the nationality of any of the places with which they have such links, i.e. country of birth, country of nationality of parents, country of habitual residence and country of nationality of spouse.

2.3. Refugee Law and Statelessness

It is of interest to point out that a stateless person can also be a refugee, if in addition to not being considered as a nationality by any state they also meet the definition of article 1 of the 1951 Refugee Convention (i.e. have fled their country due to a fear of persecution). Refugees, as per the rule of statist claims on belonging, remain outside the ensemble of rights that prioritize rights to citizens over according similar rights to non-citizens.²⁴ In a general sense, the capacity of individuals to move into or away from a state effectively challenges the capacity of the state to control the ‘status of the border’.²⁵ In a practical sense, migration empowers those who move as they challenge the government’s ability to impose ‘difference’ by patrolling the ‘dynamics of bodies’ in the border areas since ‘moving bodies’ represent a cluster of people in search of transcontinental rights.²⁶ Stateless refugees are identified and treated as refugees - e.g. in UNHCR’s statistics on statelessness only non-refugee stateless populations are counted. Hence under this discourse, concept of “*de facto statelessness*” is discussed. It is most often invoked to describe a situation in which a person holds a nationality

²¹ Id.

²² Id.

²³ Id.

²⁴ Supra note 20.

²⁵ Id.

²⁶ Id.

and is considered as a national by a state under the operation of its law, but this nationality is in some way ineffective.

3. International Recognition of Refugees and Statelessness

Three treaties have been adopted to address problems of displacement and statelessness: the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. A non-refugee, stateless person enjoys protection under the 1954 statelessness Convention, while a stateless refugee qualifies for protection under both the 1954 statelessness and 1951 refugee Conventions.²⁷ In these cases, he or she will usually be classified and treated primarily as a refugee. The refugee Convention provides more comprehensive protection for stateless refugees, including the non-penalisation of unlawful entry and the prohibition of refoulement. To avoid “double counting”, stateless refugees are reported within the refugee statistics of the United Nations High Commissioner for Refugees (UNHCR), while only non-refugee stateless persons are accounted for in the statelessness statistics. A stateless refugee may, nevertheless, continue to face problems once the fear of persecution no longer exists and he or she is expected to return to the country of origin. Stateless persons may be unable to return because they are not recognized as nationals. Then, international protection as a stateless person may be necessary. The 1961 Convention on the Reduction of Statelessness aims to help states to avoid statelessness and provides for acquisition or retention of nationality in various circumstances. It is equally applicable to non-refugee stateless persons and stateless refugees.²⁸

4. Consequences of Statelessness

Forced displacement²⁹ and statelessness are interconnected phenomena on many levels. Statelessness can be both a root cause and a product of displacement. Moreover, the circumstances and consequences of statelessness also add additional layers of insecurity and vulnerability for those who have been uprooted from their homes. It is critical for organisations working on refugee issues or aiding forcibly displaced populations to be aware of the ways in which statelessness can interact with displacement. Statelessness can be deduced as a root cause of displacement. For instance, in case of Rohingya's. The Rohingya³⁰ are an ethnic and religious minority in Myanmar. They are not

²⁷ Statelessness, available at <http://www.unhcr.org/statelessness.html>, last visited on 26th February, 2018.

²⁸ UN High Commissioner for Refugees (UNHCR), Self-Study Module on Statelessness, 1 October 2012, available at: <http://www.refworld.org/docid/50b899602.html>, last visited on 28th February 2018.

²⁹ Forced displacement refers to the situation of persons who are forced to leave or flee their homes due to conflict, violence, and human rights violations, Forced Displacement: A developmental Challenge, available at http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164201144397/Forced_Displacement.pdf, last visited on 28th February, 2018.

³⁰ For Rohingya There is no place called home, available at <http://www.thehindu.com/news/international/for-rohingyas-there-is-no-place-called-home/article19620567>. ece, last visited on 27th February, 2018.

considered to belong to Myanmar, despite having lived there for centuries. They are not recognized as nationals under the current nationality law, adopted in 1982. They have suffered from extreme and targeted human rights abuses for decades, leaving many Rohingya with no other choice than to flee the country and seek refuge abroad. Without identity papers or travel documents, the Rohingya often resort to dangerous and illicit routes to escape Myanmar. In exile, despite being in need of international protection as refugees, in many host countries the Rohingya also find themselves facing harsh conditions. Known as one of the most persecuted communities in the world, the Rohingya is an example of how persecution and violence against stateless populations can trigger forced displacement. It also illustrates that displacement does not resolve the vulnerability of stateless people – this remains with them in exile, where they await a solution.³¹

5. Reduction of Statelessness

Reduction basically involves finding a durable solution for “reducing” existing cases of statelessness. This procedure has two undersigned dimensions that of acquiring formal legality and that of having social and economy inclusion

5.1. The Legal Aspect of Reduction: Acquisition and Confirmation of Nationality³²

In most protracted situations, the stateless population has lived in a territory for generations and their country of residence is the centre of their family and social lives, their livelihoods and their broader interests. The most effective means to resolving such situations will therefore include recognizing the links of the population to the State through birth or long-term residence. As set out in the conclusions of UNHCR’s 2010 Expert Meeting on Statelessness Determination Procedures: For stateless individuals within their own country, as opposed to those who are in a migration context, the appropriate status would be one which reflects the degree of attachment to that country, namely, nationality.³³ A simple technique for the reduction of statelessness is thus the modification of the domestic legal framework to bring it into line with relevant international standards for the prevention of statelessness and applying these changes with retroactive effect. This method was employed for instance in Algeria, where nationality legislation initially prevented women from transmitting their nationality to their children. New legislation in 2005 established that nationality was acquired by birth to an Algerian mother or father, without restricting application of the provision only to children born after the law came into effect, thus resolving existing cases of statelessness. Other countries in the region, for example Egypt, opted to allow acquisition of nationality by application during a transitional period.³⁴

³¹ Supra note at 22.

³² Promoting the respect of standards of treatment for stateless persons facilitates their integration and is thus a helpful step towards reduction of statelessness.

³³ UN High Commissioner for Refugees, Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions), December 2010, para 24, available at: <http://www.unhcr.org/refworld/docid/4d9022762.html>, last visited on 27th February, 2018.

³⁴ Supra Note at 21.

5.2. Social and Economic Inclusion

Acquisition of nationality does not immediately guarantee the full and effective alleviation of statelessness: “Any attempt to eliminate statelessness would only be fruitful if it resulted in ‘not only the attribution of a nationality to individuals, but also an improvement in their status’”.³⁵ An effective strategy for the reduction of statelessness should look beyond the problem of formal nationality attribution and ensure that persons who were formerly stateless become fully participating members of society, enjoying all the rights and opportunities of citizenship on an equal basis with other nationals. With this in mind, UNHCR’s Executive Committee has commented on the importance of promoting social and economic participation of stateless persons as an element of the reduction of statelessness. The Committee “encourages States [...] to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies”.

Such activities cannot be seen as a replacement for conferral or confirmation of citizenship. It must be understood that “no matter how extensive the rights granted to a stateless person may be, they are not the equivalent of acquiring citizenship”.³⁶ Thus, while the promotion of social and economic participation undeniably is crucial to improving the lives of the stateless, efforts to reduce the problem will remain incomplete until legal integration is also realized. The promotion of social and economic participation and the realization of legal integration must go hand in hand. This was the approach, for instance, in Ukraine, where Crimean Tatars who had been deported to Central Asia under Stalin, began returning to Ukraine around the time of the dissolution of the USSR and were either stateless or at risk of becoming stateless.³⁷ The legal resolution of statelessness issues was accompanied by a programme devised to foster sustainable human development in a manner that contributes to the maintenance of peace and stability in Crimea through initiatives aimed at preventing interethnic conflicts and enhancing integration among different ethnic groups including through promoting “economic development, income and employment generation and sustainable access to basic infrastructure and services”.³⁸ Although this can be seen as a protection effort, it was actually carried out in the context of a programme to prevent and reduce statelessness. The approach adopted in Crimea brought long-term social and economic integration not only through a combination of legal and material assistance but also through “addressing the needs of the communities that received returnees, to foster mutual understanding and tolerance”.³⁹

³⁵ “Stateless Persons: Some Gaps in International Protection” by Carol Batchelor, 1995 (citing, in part, the work of Manley O. Hudson, rapporteur of the International Law Commission), Id.

³⁶ “Nationality and Statelessness – A handbook for parliamentarians” published by UNHCR and IPU, 2005.

³⁷ Id.

³⁸ Id.

³⁹ Id.

6. Protection of Stateless Persons

The protection of stateless persons, of their fundamental rights and freedoms is a matter for which international law now provides firm groundwork. Today, protection cannot be considered as exclusively incidental to nationality. Instead, it is a function that attaches directly to the inherent dignity and integrity of the human personality, the totality of which is the province of the community of nations.⁴⁰

6.1. “Stateless Person” Status Determination

Under its mandate, for statelessness UNHCR can assist States which do not have the capacity or resources to put in place statelessness determination procedures, by conducting determinations itself if necessary and as a measure of last resort. It can also play an advisory role in developing or supporting State procedures.⁴¹ Individual registration of stateless persons by UNHCR may be appropriate where the country of residence lacks the capacity and/or will to protect and assist the individuals concerned and where UNHCR wants to keep track of protection interventions carried out on behalf of the individuals concerned.⁴²

6.2. Documentation

The 1954 Convention relating to the Status of Stateless Persons also provides an avenue for stateless persons to acquire other forms of documentation, such as the certification of civil status (birth, marriage, adoption, death, or divorce) or of professional or education expertise. Its article 25 provides for “administrative assistance” for stateless persons, which includes the issuance of a range of documents that would ordinarily be offered by the juridical, administrative or consular authorities of a person’s country of nationality. Human rights law also requires States to ensure that everyone can receive a birth certificate and marriage certificate as appropriate.⁴³

6.3. An Adequate Standard of Living

Stateless people often do not enjoy an adequate standard of living. Due to problems relating to immigration status, lack of documentation or the simple fact of statelessness, stateless persons often have difficulties accessing education, work, healthcare, housing and more. As a result, their formal exclusion results in economic, social and cultural

⁴⁰ G. Goodwin-Gill, “The rights of refugees and stateless persons” in K.P. Saksena (ed.) *Human rights perspectives and challenges (in 1900’s and beyond)*, Lancers Books, New Delhi, 1994.

⁴¹ *Handbook on the Protection of Stateless Persons (2014)* (explaining the definition of statelessness and procedural considerations for determining whether a person is stateless), available at <http://www.unhcr.org/statelessness.html>, last visited on 27th February, 2018.

⁴² *Id.*

⁴³ For the right to birth registration see, for example, article 24 of the International Covenant on Civil and Political Rights and article 7 of the Convention on the Rights of the Child. For the registration of marriages, see article 16 of the Convention on the Elimination of All Forms of Discrimination against Women and article 3 the Convention on consent to marriage, minimum age for marriage and registration of marriages, 1962.

marginalization. Yet ensuring economic, social and cultural participation of stateless persons is a core objective within the context of both the protection of stateless persons and the reduction of statelessness.

6.4. Sexual and Gender-Based Violence and Trafficking

Statelessness can increase the vulnerability to Sexual and Gender Based Violence (SGBV). Stateless people may easier fall victim to such violence because they live on the margins of society – often lacking a residence status and documentation. As a result of lack of access to the formal job market and other economic opportunities, it is for example known that some stateless persons in Thailand have resorted to engaging in prostitution or ended up being trafficked (see below). In Côte d’Ivoire, stateless women and girls – because they lacked documentation – were particularly vulnerable to harassment from law enforcement agents at check-points. Furthermore, due to their marginalized status, authorities will not necessarily pursue investigations involving stateless persons with the same effort as for other persons. As such, stateless women and men, boys and girls, are all vulnerable to SGBV. Stateless persons are often excluded from mechanisms existing in the country where they reside that would protect them from domestic violence, rape, sexual exploitation or forced marriage, or that would assist them in such a situation. Sometimes, stateless persons therefore seek marriage as a protective measure to secure them the recognition of or access to nationality – or at least some basic legal status. Such a relationship is marked by dependence on the part of the stateless individual, trapping him or her in the relationship while rendering her vulnerable to violence and exploitation. In some cases, the identification of a concrete link between citizenship issues and an increased incidence of trafficking has opened opportunities to address both problems concurrently. For example, the absence of recognition or documentation of nationality of members of Thailand’s Hill Tribes was discovered to be a contributing factor in their high vulnerability to trafficking. In response, organizations such as UNESCO and UNICEF teamed up to facilitate a birth registration and documentation campaign designed to prevent and reduce statelessness, protect stateless children and ward off the risk of trafficking. The programme included awareness-raising efforts through the development of such projects as a video entitled “A Right to Belong” that explored the issue of citizenship for Hill Tribe people in their own words. This is further evidence of the importance of tackling issues of statelessness in conjunction with efforts to address underlying or resulting human rights abuses.⁴⁴

The international legal regime that has been put in place for tackling trafficking can be discussed as, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime. ⁴⁵ In addition, the Convention on the Elimination of

⁴⁴ Supra note 21.

⁴⁵ The link between refugees and statelessness Introduction, available at <http://www.syrianationality.org/pdf/link-between-refugees-statelessness.pdf>, last visited on 27th February, 2018.

All Forms of Discrimination against Women obliges States to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.⁴⁶ Moreover, the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography set out further legal standards for addressing trafficking and related issues.⁴⁷

6.5. Resettlement

Resettlement is now recognized as a tool to address the situation of stateless persons with acute protection needs, even if the stateless persons in question do not also qualify as refugees under the 1951 Refugee Convention. In its Conclusion 95 (2003), UNHCR’s ExCom: “Encourages States to co-operate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person’s situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious”.⁴⁸

Based on the foregoing, resettlement may be considered for cases where the individual:

1. does not have in the current or a former State of habitual residence a secure, lawful residence status which brings with it a minimum standard of treatment equivalent to that set out in the 1954 Convention relating to the Status of Stateless Persons; and
2. has no reasonable prospect of acquiring such a residence status or nationality; and
3. has acute protection needs which cannot be addressed inside the country of current or former habitual residence.”⁴⁹

In addition, the ultimate goals of reduction of statelessness – social and economic participation and formal possession of a nationality – are clearly reflected in the way in which resettlement is to be organized: “Ideally, States should give similar status to resettled non-refugee stateless persons as that given to resettled refugees. Namely, a status that provides the person in question and their accompanying dependants the enjoyment of civil, economic, social and cultural rights similar to those enjoyed by nationals and the opportunity to eventually become a naturalized citizen of the resettlement country. At the very minimum, the resettled individuals should be granted status as stateless persons under the 1954 Convention relating to the Status of Stateless Persons, encompassing rights and obligations enshrined in this instrument”.⁵⁰ Most States have not yet included stateless persons in their resettlement programmes and

⁴⁶ Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁴⁷ Convention on the Rights of the Child, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, last visited on 27th February, 2018.

⁴⁸ Supra note at 21.

⁴⁹ Id.

⁵⁰ Id.

almost all stateless persons who are resettled are at the same time refugees. More efforts need to be undertaken to promote resettlement as a solution for stateless persons in precarious situations without the prospect of a solution⁵¹

7. Conclusion

While analysing the current structure of refugee crisis reference can be made to philosophical views of Seyla Benhabib⁵² who has further postulated her theory on Rawls's Theory of Justice⁵³ and Cosmopolitan theory of Immanuel Kant⁵⁴. Benhabib tries to develop a universal normative framework for cases of migratory movement. In doing so she puts forward the idea of political membership.⁵⁵ She is in favour of the right to membership of peoples within the framework of human rights, which should be incorporated into states' constitutions through citizenship and naturalization provisions. She further defines political membership as the principles and practices of including refugees and immigrants within the political landscape of the state system.⁵⁶ Benhabib grounds her cross-border justice model heavily in Kant's right to hospitality. The 1951 Convention and its preparatory work with reasonable care confirms the obvious, that the drafters intended that both refugees with and refugees without nationality should be protected. The elimination and reduction of statelessness are the current issues in question. A stateless person should be recognized as a refugee if he or she can establish a well-founded fear of persecution on Convention grounds, with respect to the country in which they were formally habitually resident. Such place of former habitual residence may be established in turn by evidence, for example, relating to immigration or residential status, time and activities or occupation in that country, economic and social connections, or family life. Each case will depend upon its particular facts, however, and no precise formula or time period is laid down. A stateless person's claim may be rejected if he or she is proved to enjoy the protection of another State, for example, through having the right to enter and reside there. The claim of a

⁵¹ Id.

⁵² Seyla Benhabib, 'The Law of Peoples, Distributive Justice, and Migrations' [2004] 72(5) *Fordham Law Review* 1761, 1779. At S.P. Sarker, *Refugee Law in India*, DOI 10.1007/978-981-10-4807-4_1

⁵³ Rawls's theory of justice revolves around the adaptation of two fundamental principles of justice which would, in turn, guarantee a just and morally acceptable society. The first principle guarantees the right of each person to have the most extensive basic liberty compatible with the liberty of others. The second principle states that social and economic positions are to be (a) to everyone's advantage and (b) open to all.

⁵⁴ Cosmopolitan law is concerned not with the interaction between states, but with the status of individuals in their dealings with states of which they are not citizens. Moreover, it is concerned with the status of individuals as human beings, rather than as citizens of states. In Kant's political theory, cosmopolitan law is the third category of public law, in addition to constitutional law and international law.

⁵⁵ *Supra* note 52.

⁵⁶ Id.

stateless person to be a refugee will be strengthened by evidence showing that he or she is unable to return, or has been prevented from returning, to the country of former habitual residence.⁵⁷

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⁵⁷ Goodwin-Gill, Guy S, Stateless Persons and Protection under the 1951 Convention, *International Journal of Refugee Law*, December 1992.

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