



Denial of Citizenship: A Challenge to Human Security

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This Issue Paper is in part based on the findings of a Brussels Expert Meeting under the auspices of the European Policy Centre with the support of the Ford Foundation. The first part of this Issue Paper constitutes a discussion paper by Constantin Sokoloff, writing in his capacity for the Advisory Board on Human Security. The second part of this paper summarises the Expert Meeting.

Foreword

For the vast majority of us we never think about citizenship. We have a passport; we travel. We have a social security card; we receive health cover. We have a polling card; we vote. But for millions of our fellow citizens in different countries around the world citizenship is denied. This causes hardship and anguish but the plight of most of these ‘forgotten people’ rarely makes the headlines as they have few advocates ready to take up their cause.

The ‘denial of citizenship’ was highlighted, however, in the Human Security (Ogata) report that was presented to the United Nations two years ago. The European Policy Centre, through its Global Governance Work Programme, was proud to take a lead in presenting the Human Security report to a Brussels audience via a conference featuring Peter Sutherland, the President of the EPC’s Advisory Council, and a member of the Human Security Board. The EPC subsequently was approached to organise an expert meeting on the subject of ‘denial of citizenship’ and this Issue Paper is a report of that meeting combined with a summary of a longer background paper prepared by Constantin Sokoloff, a consultant to the UN.

The EPC wishes to thank François Fouinat, the former Secretary General of the Advisory Committee on Human Security, for advice in organising the meeting, and Brad Smith, Vice President of the Ford Foundation, for financial support of the meeting.

The EPC will continue to work on Human Security issues as part of its Global Governance Programme.

Fraser Cameron
EPC Director of Studies

Introduction

The Universal Declaration of Human Right provides that “everyone has a right to a nationality” and that “no one shall be arbitrarily deprived of his nationality.” However, millions of people continue to live without the benefits of citizenship world-wide. Despite the magnitude of the problem and the serious implications citizenship deprivation has, the issue is insufficiently addressed by the international community.

A few factors contribute to this “deficiency” to properly address the issue:

- a) lack of sufficient information on the exact number of people or groups concerned;
- b) most of the identified/selected cases arose from a direct action of the State which preserves sovereign discretion in matters of citizenship;
- c) international law provisions with regard to nationality and citizenship are spread over several international instruments, none directly enforceable upon States;
- d) the root cause of citizenship denial is often not addressed because it is obscured by more immediate needs of the people concerned.

These immediate needs are only a consequence of lack of nationality – for example those populations that are categorised as “refugees” and whose needs are addressed under the umbrella of humanitarian action and assistance.

The analysis in *Denial of Citizenship: A Challenge to Human Security* emphasises the need for an integrated approach to the issue of citizenship denial. It also argues that adopting a human security angle could constitute a comprehensive working instrument, encompassing root causes as well as the consequences of lack of nationality of large population groups.

The conditions that generate large groups of non-citizens were reviewed in the report in the context of selected cases; the implications and consequences from a human security perspective were emphasised. The report also considers measures that have been taken to address the phenomenon and their degree of success.

A human security approach to citizenship denial

The 2003 Report¹ of the Commission on Human Security defines human security expansively as covering “the vital core of all human lives in ways that enhance human freedoms and human fulfilment.”

The human security concept is fundamentally rights-based, establishing the need to preserve the core values all people are entitled to under universal human rights. In this regard, the right to citizenship appears fundamental to ensuring the conditions of human security as most human rights derive from and depend upon it.

Human security is a concept that underlines the safety and dignity of the individual human person, as opposed to the power and authority of the state. This opposition was crucial in exploring the implications of the denial of citizenship. Since many rights and protections flow from state institutions, individuals not recognised as citizens of the state in which they live constitute an extremely vulnerable group.

In keeping with a human security approach to the issue of citizenship denial, three elements offer a practical tool for evaluating the consequences of denial: protection, empowerment and the concept of vulnerable groups. As protection and empowerment are inherent to the notion of citizenship, lack or denial of citizenship creates conditions for human insecurity. Non-citizens face numerous risks to their own human security owing to their economic, social and political marginalisation. Not only are they more vulnerable and exposed to threats, they are in no position to make the choices that would allow them to mitigate their exposure to those threats or determine their own future. The core of human insecurity for non-citizen groups is this vulnerability, as the risks faced are not only severe but also cumulative.

The granting of citizenship is considered to be a sovereign function. When States use citizenship to exclude segments of society they often resort to arguments of State security. Juxtaposing the concept of human security with the denial of citizenship, thereby emphasising the individual's interests, dignity and basic freedoms serves as an important counterweight to concerns of State security. This is especially true in situations where the enforcement of restrictive citizenship policies breeds conflict and poses a direct threat to State security. Ensuring citizenship based on security is therefore a pre-condition to State security, or better, an intrinsic part of State security.

Ethnicity and citizenship denial: A choice of terminology

The cases selected for discussion in the report arose in the context of State-building processes that concerned multi-ethnic environments. The emergence of new States often involved societies that lacked a democratic culture and in most cases a sense of national identity. Consequently the “people” or the “nation” were defined along existent cultural markers such as ethnic groups, language or religious denomination. Group membership thus became politicised as a means of inclusion or exclusion from the State and society. The politicisation of group membership/ethnicity impacted on the substance of citizenship. It is through the politicisation of ethnicity that the denial of citizenship of large groups was made possible in most of the cases reviewed.

The working definition retained in the paper is the one given by the European Convention on Nationality. According to the Convention, nationality is the legal bond between a person and a State and “does not indicate a person's ethnic origin.”² The norm of “nationality” is considered equivalent to the norm of “citizenship.”

The report chose to use the term “denial of citizenship” rather than “statelessness” to draw a distinction between the two. Denial of citizenship implies an action or an omission by the State that renders people stateless. Denial focuses on the root causes of statelessness that, from a human security perspective, should be addressed to resolve the problem and allow those denied rights to enjoy participative membership in the country where they live. The necessary legal action aiming at eradicating statelessness is to be complemented by a pro-active and determined effort to address the root causes and to deal with the most glaring consequences of the denial of citizenship.

Selected cases of denial of citizenship: an overview

Most of the cases discussed described situations of denial of rights resulting from State-building or State-succession processes. Another common trait shared by all of these cases is that denationalisation³ usually concerned a homogenous group, be it an ethnic group, a minority group, a religious or linguistic group. Discriminatory practices towards the targeted groups were also found to be similar.

Most of the cases reviewed are the result of complex circumstances, overlapping situations and the compounded effect of multiple discriminatory actions on the part of the State. The cases selected for discussion allowed for the identification of a number of traits, practices and patterns common to most of the groups concerned.

A few elements could be distinguished as premises for disenfranchisement⁴:

1. State-building processes were usually pursued along homogenous/mono-ethnic lines – as in the case of Bhutan, Japan or Myanmar;
2. State succession processes sought to define national identity in opposition to former and potential future or perceived threats to national identity and security – as in the case with Estonia, Latvia⁵ or Slovenia;
3. Post-conflict situations can lead to the denationalisation of a group of people in retaliation for their association with the enemy - as in the case of the Bihari in Bangladesh or the Bedoon in Kuwait;
4. Weak states or failed states may chose to pursue exclusionary policies in order to cope with an ailing social, political or economic system and reinforce national unity and mobilise support for the country’s leadership – as in the case of DRC and Ivory Coast.

A number of forms and patterns of discrimination resulting in the denial of citizenship were identified. They could eventually be developed into a basic framework/crisis watch mechanism for identifying citizenship denial processes.

They include:

- legal norms,⁶
- administrative harassment and red tape
- economic exploitation.

The implications of denial of citizenship for the population groups concerned are severe from a human security point of view. Extreme poverty, the creation of conditions for exploitation, forced labour, human trafficking, health deterioration, deterioration of the group's social fabric, etc., are direct consequences of disenfranchisement. Moreover, denationalisation policies have severe consequences for state security and regional security creating situations of conflict as evidenced by the case of the Ivory Coast or of the DR Congo. Displacement and migration are often a direct result of policies of discrimination and citizenship denial.

Conclusion and recommendations

As the causes of persistent citizenship denial situations are political as well as legal, solutions must be sought to encompass both arenas. The identification of appropriate policy responses is further complicated by the fact that citizenship inequalities and citizenship denial are historically and culturally produced and are, therefore, context specific. For example, patrilineal kinship systems lead to a diminished citizenship status of women and their removal from participation in society other than through the nuclear family. What this suggests is that successful policy responses need to be tailored to the needs of the specific context and based on an analysis of the particular causes of discrimination and inequality in citizenship access and status.

In the light of such constraints, the human security framework offers a more practical approach. It proposes to address the phenomenon of denial of citizenship by identifying the mechanisms of denial as well as the underlying motivations. Denial of citizenship, be it a deliberate policy of disenfranchisement or an omission or act of neglect on the part of a state constitutes the root-cause of a given statelessness situation.

Identifying areas of insecurity, threats to basic rights and freedoms and overall gaps in the protection of people allows for a broader understanding of the forms and patterns of discrimination employed that could lead to denial of citizenship and to a situation of statelessness.

Human security is a comprehensive approach that integrates the notion of social exclusion and links it to an extended framework that includes economic security, health, education, conflict, governance and migration perspectives. Threats should not be addressed in isolation from each other, but as being interconnected, and interdependent. Human security is an inclusive approach, examining the symptoms of human insecurity while seeking to produce recommendations that address root causes. It explicitly aims to connect issues of protection, rights, development, and governance.

The UN High Commissioner for Refugees (UNHCR) is the agency designated under Article 11 of the 1961 Convention on the Reduction of Statelessness, to act as mediator between states and stateless individuals seeking to resolve nationality

issues.⁷ The UNHCR offers advisory and technical assistance to governmental bodies with mandates extending to issues of nationality and citizenship. Its continued involvement in matters of denationalisation is important as, by virtue of its position, the agency can identify and exploit as well as create opportunities for solutions in addressing the root causes of disenfranchisement.

The report makes a number of recommendations: conducting an exhaustive exercise to identify caseloads of non-citizens; advocacy and awareness raising by means of a structured information campaign; the development of general principles and best practices instruments for non-citizens; an international entity capable of monitoring the applications of these principles should be designated. The UNHCR should take the lead in gathering expertise from other actors such as the High Commissioner for Human Rights as well as NGOs concerned and play a more active role in the resolution of statelessness situations.

Constantin Sokoloff, Advisory Board on Human Security.

2. Expert Group Discussion on the Denial of Citizenship⁸

Introduction

Fraser Cameron, Director of Studies at the European Policy Centre, welcomed the participants, explained the context of the meeting and thanked the Ford Foundation for its support and Mr. Lakhdar Brahimi, Special Adviser to the UN Secretary-General, for agreeing to chair the meeting.

Brad Smith, Vice President of the Ford Foundation indicated that the Foundation was funding the study of denial of citizenship as part of the wider project on human security in the context of the UN. He stressed that the meeting was between experts involving representatives from international organisations governments, NGOs and academia. The objective was to achieve concerted action.

The Chair, **Lakhdar Brahimi** said that the discussion paper prepared by Constantin Sokoloff was simply a starting point. It was not intended to be a complete paper covering every aspect of the topic. Since the meeting was between experts there should be no formal statements from the organisations represented. The aim was to achieve a better understanding of the subject and to arrive at sensible recommendations.

The denial of citizenship: background paper presentation

Constantin Sokoloff, the author of the background report circulated to participants, indicated that the human security unit of the UN had taken a holistic approach to the subject. Behind the issue of statelessness lay the concept of dignity, empowerment of the individual and putting people at the centre of the problem.

Statelessness was a static legal state; denial of citizenship implied a series of civic impairments, such as lack of education or health care. From a human security standpoint it was the dynamic denial of participative citizenship and the reason why some governments excluded some groups or simply ignored them. There was the fact of statelessness but then there was a whole dynamic of reasons and effects. Non-citizens had no automatic right to work and did not fully participate in society. They are a vulnerable group. Women and children are particularly exposed. Some non-citizens are the subject of forced labour. There are consequences for the surrounding communities, including friction and perhaps armed conflict. There was a need for early warning mechanisms.

Some have rights to citizenship and cannot claim it for lack of papers. In other cases, legal norms or tricks are manipulated by states that wants to deny it, for

example by using language criteria, ancestry or simply by applying excessive “red tape.”

Constantin Sokoloff described the normative and legal framework. This included the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the European Convention on Nationality, the Universal Declaration of Human Rights and the Convention on the Rights of the Child. There was a need to monitor progress in implementation of these instruments which, in spite of existing legal norms, was slow.

The recommendations in the Ogata report were brief and included comprehensive investigation, systematic compilation of data (it was difficult to quantify both the numbers of people and the effects of statelessness, because states sometimes are not aware themselves), awareness raising (including in the research community) and internally displaced persons issues. Human security required concrete solutions. There was a need to bridge the gap between governments and groups of stateless people and the designation of an international entity to deal with the problem. It was, furthermore, important to impress on states that they had a duty to be proactive in this field.

Discussion

The meeting discussed **the omission of important groups of peoples or concepts** from the Sokoloff report (always bearing in mind that it was not intended as a full survey of the problem of statelessness.) The Chair mentioned the 100.000 Bedouins in Kuwait. The question of regional rights in Economic Community Of West African States (ECOWAS) or the European Union was discussed. Palestinians were excluded from citizenship in the occupied territories, neighbouring states or Israel. Roma in central Europe suffered from civic disability. The Uzbeks in Tajikistan, Eritreans in Ethiopia and the Kurds in various countries were all denied rights - the list was regrettably too long. It was pointed out that the media had a duty to report these issues fairly and, preferably extensively.

The experts discussed **the difference between denial of citizenship and statelessness**. Denial of citizenship was the act or omission that created the situation of statelessness. The way to resolve statelessness was to address the reasons and mechanisms of denial as well as the root causes as outlined in the Sokoloff report - whether they be state succession issues, failed state issues or other underlying reasons.

Denial of rights because of statelessness could be caused by a number of factors (as outlined in the report) but the result was the same, namely the fact the people had no state on which to depend.⁹ There was a need to reflect the realities of the lives of individuals in order to address human security issues.

The experts also discussed **concepts of citizenship and nationality**. The 1948 UN Declaration of Human Rights states that: “No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.” However, the word nationality (membership of a nation) was often used as a synonym for citizenship. A stateless person was one who did not have the legal bond of nationality with any state, although he or she might enjoy certain rights within that state. Nationality defines a relationship with the state; citizenship is a wider concept and defines relations with the community and rights relating to it. It was pointed out that if they are treated as synonymous, then *ipso facto* citizenship benefits can be denied.

The view was expressed that citizenship had to be embraced within **human rights law** since discrimination on the grounds of race or ethnicity could be used to mistreat people and the denial of nationality could also be considered persecution. Minority rights were frequently denied because of the absence of citizenship.

Participants took note of the fact that, even if people are born in a state, they were sometimes denied nationality, particularly when the law denied rights on account of maternity as opposed to paternity. It was also noted that people who were stateless but who were not refugees were in some instances worse off than refugees, since the latter at least received protection and assistance from the UNHCR.

The meeting discussed some of the **problem areas relating to statelessness**. One issue was the fact that, whereas there were existing legal norms, they were not enforced. There were peoples who were not necessarily native to a country but who nevertheless had rights to nationality and were denied it even so. Some participants highlighted problems of discrimination in employment for non-citizens, others that they were excluded from participation in government (regarding which, it was suggested, the EU should act through its aid programmes). One of the main problems was the lack of a passport and protection rights especially when abroad. Sometimes, travel documents were for one-way travel only. Whilst it was true that some people were content with residency rights, family reunification was often not possible without nationality.

Finally on the problem areas, it was pointed out that there was a potential **negative factor** in the reduction of statelessness, namely the question of admitting possible security risks to the ranks of citizens.

Potential solutions

In discussing potential solutions to these issues, the UNHCR representative indicated that it would be helpful to widen the mandate of her organisation so that it could assist stateless people. The refugee agency had a mandate under article 11 of the 1961 Convention and had a stateless unit but it was too small to do justice to the problem. There was potential in the organisation but it needed resources and financing to be more proactive. She suggested that possibly the EU could help in this respect. However, on an individual basis, for example, in the case of the

Rohingias both inside and outside Myanmar, the UNHCR had been able to offer substantial assistance. She pointed out that on the fiftieth anniversary of the 1951 Refugee Convention, a panel was appointed on the impact of long-term statelessness that looked at the root causes of the phenomenon.

Several speakers indicated that there was a need for assistance in drafting legislation to overcome the problem of statelessness and called for a coordinated effort.

Some speakers said that gradual acquisition of rights to nationality, first through residence, could be a helpful way forward.

It was pointed out that the Convention on the Rights of the Child requires that all children born on a territory must be registered. More should be done to ensure that such children acquire nationality.

Speakers generally agreed that international pressure should be applied to countries that are disinclined to solve the problems of statelessness. This can take the form of ‘carrots’ or ‘sticks.’ One incentive was admission to regional bodies such as the EU or the African Union. It was agreed that more analysis should be carried out to see why and how countries that had made progress in this field had managed to advance.

Conclusions

The Chair asked participants to indicate possible the next steps. He said that the recommendations in the Sokoloff report were a good beginning. They were not addressed to a fixed audience but to actors who could influence positive outcomes. It was proposed that the next steps should be formulated with the aim of improving **human security**. The suggestions made can be summarised as follows:

- Those concerned should take stock of what has been achieved and how. Best practice should be set out clearly so that there are guidelines, even if they are only informal. Training should be included in best practice.
- Funding should be mobilised and coordinated. EU budget lines could be available. The UN has a Trust Fund for Human Security that could also be used.
- Regional bodies should be made more aware of the issues and pressure built with their assistance for countries to accede to and implement existing treaties. The EU, the AU, ASEAN, the Council of Europe should together see how progress can be made.
- Further cooperative research should be undertaken in this field perhaps with cooperation between public and private bodies. International pressure should be built up. One way to achieve this would be through an observatory to provide a flow of data. The research information should be given media exposure.

- UNHCR might be able to play a greater role but it would require a change of mandate. Other bodies could also be expected to play a larger role. It was not at this stage considered that a new international body should be created
- Steps should be taken to encourage accession to the 1954 Convention and arm it with the same oversight as UNHCR has for the 1951 Convention, namely the equivalent of article 35.

The Chair advocated a further meeting or meetings involving the UNHCR and the regional bodies, perhaps to be organised by the European Policy Centre (which is interested in pursuing work on human governance) with the aim of producing binding rules. It was also suggested that regional meetings might be organised. It was noted, in this context, that the EU was able to exert pressure through conditionality in its agreements with third countries coupled with conflict prevention and human security measures, in other words, a multi-faceted approach.

Finally, the Chair urged that the experts' group should remain in networking contact and continue to provide synergy for developments in the field.

Richard Lewis, Vrije Universiteit Brussel.

¹ *Human Security Now: Protecting and Empowering People*, New York, 2003

² Article 2.a. of the European Convention on Nationality, 6 November 1997, European Treaty Series - No. 166 <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>

³ The term 'denationalization' is used to mean the withholding or deprivation of a person's nationality and the rights that flow from it (not in the usual sense of privatization of an industry)

⁴ The term 'disenfranchisement' is used to mean the withholding or deprivation of rights as a citizen in general (not in the usual sense of depriving a person only of the franchise or voting rights to which he or she may be entitled)

⁵ The term of State succession is disputed and controversial in the case of the Baltic States. However the process undergone by these countries during their accession to independence is similar to State succession.

⁶ Denial of Citizenship: A Challenge to Human Security, chapter V.1, p. 28. The term of "legal norm" is a unifying one since restrictions in access to citizenship could precede, accompany or be part of a law arbitrarily stripping large groups of citizenship rights. Legal norms comprise: language requirements, lineage and ancestry, residency requirements, electoral laws, naturalization laws and income requirements.

⁷ This assistance formally extends only to persons who can prove they are *de jure* stateless and only in relation to signatory states.

Carol Batchelor – Developments in International Law: The Avoidance of Statelessness through Positive Application of the Right to a Nationality, UNHCR Report, 2003.

⁸ This meeting was held on February 25, 2005.

⁹ There will shortly be a draft protocol of the Council of Europe on state succession.