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Recognising stateless refugees

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The experiences of stateless Kurdish refugees from Syria in Iraq highlight the importance of identifying statelessness during RSD, and the benefits this can offer for refugee protection.

In recent decades, the protection of refugees and the protection of stateless persons have largely been considered independently of each other. This is reflected in the development of separate legal instruments: the 1951 Refugee Convention and the 1954 Statelessness Convention.¹ While it is true that being a refugee and being stateless are distinct phenomena, for an estimated 1.5 million 'stateless refugees' worldwide they overlap. Indeed, the 1951 Convention explicitly acknowledges that a refugee may simultaneously be a stateless person. However, limited structures currently exist for the identification and recognition of stateless refugees within refugee status determination (RSD) procedures, despite the likelihood that such individuals may face heightened vulnerability and obstacles due to their unique legal status.

Article 1 of the 1951 Convention states that a refugee must be outside the country of their nationality. It adds, however, that in the case of a stateless person, the refugee should be outside the country of their 'former habitual residence'. Thus it is clear that according to international law a stateless person may also be a refugee, if the other necessary conditions of the refugee definition apply.² The 1951 Convention does not, however, outline any specificities relating to the identification or recognition of stateless refugees.

A number of countries have developed statelessness determination procedures (SDP) that operate in parallel to, and largely independently of, RSD procedures. Many other countries lack any such mechanism, nor do they have any corresponding status for stateless persons within their national legal framework. The refugee protection regime typically offers a higher level of protection than does the statelessness framework (the former notably protecting refugees from *refoulement*). In practice,

therefore, many stateless refugees seek recognition as refugees, and would consider protection as a stateless person to be a less favourable solution. In such cases, their statelessness and associated vulnerabilities may remain unacknowledged.

In addition to having responsibility for refugee protection, UNHCR holds a global mandate for statelessness, which includes responsibility for identifying stateless persons. In situations where UNHCR is conducting RSD, there might therefore be unharnessed opportunities for UNHCR to engage in more active identification of statelessness among the refugee population it is in the process of registering.

Recording refugee statelessness

Recognising the statelessness of affected refugees during the RSD procedure could provide greater protection to such individuals. However, reservations about creating a differentiated protection status need to be addressed, as do certain operational practicalities. The primary reservation relates to concerns that this could lead to differentiated treatment of refugees and, at worst, perpetuate discrimination within the country of asylum against those who are stateless, a concern expressed by registration staff from UNHCR and partner organisations working with stateless Kurds from Syria in the Kurdistan Region of Iraq (KRI).³ In Iraq, where UNHCR is responsible for RSD, there is no SDP, and yet there are refugees in the country who are affected by statelessness.⁴ Registering these refugees differently from other Syrian refugees could, the registration staff fear, render them 'second-class refugees'.

Another concern is that recording the statelessness of refugees could produce statistical incompatibilities in the agency's figures for Persons of Concern. Indeed, UNHCR has sought to avoid double counting

individuals (once as a refugee and again as a stateless person).⁵ However, it is unclear why, if for statistical purposes stateless refugees are to be solely included in the category of refugees, their statelessness could not still be recorded internally, enabling UNHCR staff to see the extent and dynamics of statelessness within the refugee population. This would eliminate misleading statistics caused by double counting while also allowing the agency to determine what percentage of a given refugee population is affected by statelessness.

Finally, staff responsible for RSD conducted by UNHCR report that the present proGres database system does not facilitate the capturing of a statelessness status while registering refugees. Many are unsure whether they should record statelessness within the RSD process and, if so, how this can technically be accomplished. As such, technical review of the system and/or capacity building training are needed.

Institutional resistance to recognising statelessness within the RSD procedure, then, appears to be based on a combination of operational limitations and perceived protection concerns. Certainly, these concerns must be accommodated in order to ensure an operationally appropriate mechanism that would not expose stateless refugees to stigmatisation or discrimination. A technically well-designed approach, however, would have significant benefits for refugee protection.⁶

Missed opportunities

The vulnerabilities that refugees face are often identified during RSD. Many refugees have little sustained contact with protection actors following RSD, sometimes attending only short appointments to renew their documents and receive aid distributions. The recording of special needs and vulnerabilities, as required by UNHCR procedural standards,⁷ may facilitate referral to specific services and assistance. Statelessness could operate as another such vulnerability, whereby the recording of such a status on the RSD Application Form could, in a similar manner, trigger referral to

targeted services. Often, for instance, specific vocational and educational services can respond to the obstacles stateless refugees have faced in acquiring formal qualifications for their skills in their country of origin.

Shivan Ali, a lawyer working closely with stateless Kurds from Syria who have sought asylum in the KRI, considers that it is “positive that the authorities do not distinguish between citizens and stateless persons among the refugees. All are considered the same, with the same rights”. However, his work has revealed that stateless refugees nonetheless experience underlying vulnerability and may face particular challenges. For instance, they might take risks to return to Syria in order to try to obtain documentation or to reclaim property that is often not registered in their names. Many of those who have later left the KRI also incurred significant risks in transit, and had their status misunderstood within European asylum contexts. Recognising statelessness early is important in order to anticipate problems that might arise later, including in return and onward movements. Greater visibility of statelessness within a refugee community may also help actors to identify issues for advocacy. For example, children born in Iraq to stateless Kurds who fled Syria after an uprising in 2004 have themselves become stateless. Were the statelessness of the children and their parents to be more visible in data, it would be easier to advocate for a solution since Iraqi law permits naturalisation following a period of ten years’ legal residency.

The policy implications of the failure to record statelessness among refugee populations can be far-reaching. Were UNHCR to have internal data on statelessness, it would be in a better position to support and advocate for stateless refugees, wherever they are located. Individuals, such as lawyers working closely with the refugee community, are presently identifying statelessness. Institutionally embedding these good practices while ensuring non-discrimination on the basis of nationality status (and statelessness) would serve the best interests of refugees, and the organisations

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who are mandated to protect them. It is, therefore, time for serious policy solutions to be implemented in order to establish an effective operating procedure for recognising statelessness during the RSD process.

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2. UNHCR (2014) *Handbook on Protection of Stateless Persons* bit.ly/UNHCR-stateless-handbook-2014

3. McGee T (2016) 'Statelessness Displaced: Update on Syria's Stateless Kurds', *Statelessness Working Paper Series*, No 2 https://files.institutesi.org/WP2016_02.pdf

4. European Network on Statelessness and Institute on Statelessness and Inclusion (2019) *Statelessness in Iraq: Country Position Paper* bit.ly/ENS-Iraq-2019

5. Although in 2017 UNHCR "exceptionally" decided to report stateless Rohingya refugees and IDPs in both the stateless and displaced counts, the same has not been applied to other stateless refugees. See UNHCR (2018) *Global Trends: Forced Displacement in 2017* www.unhcr.org/5b27be547.pdf pp 51-2

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