

Discrimination and the human security of stateless people

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Exploring the interconnections between statelessness and discrimination offers useful insight into the multiple vulnerabilities associated with statelessness and provides a framework through which these vulnerabilities can be addressed.

Statelessness has a significant impact on human security, access to development and enjoyment of human rights. The Equal Rights Trust approaches statelessness from an equality and non-discrimination perspective. The right of all human beings, including the stateless, to be free from discrimination in

all aspects of their life is protected in all the major international and regional human rights treaties. The right to non-discrimination does not only require states not to discriminate against individuals but imposes certain positive duties on states to take measures to protect the right; these duties include

May 2014



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The photographer's guide, Abul Kalam, points toward his home on the other side of the river Naaf, which divides Burma and Bangladesh. Kalam, a stateless Rohingya, was born in Burma but has lived in a refugee camp in Bangladesh for years. Cox's Bazar, Bangladesh, 2009.

identifying and tackling discrimination by individuals against stateless persons through appropriate legal and policy measures to prevent and punish such acts.

In addition, in order to ensure the full equality of stateless persons, states must take positive action to rectify the disadvantages they suffer. This means that states should look at the particular needs of the stateless population and take measures to meet them – ensuring full liberty and security, education, health care and access to employment as necessary. There is a long way to go before any state in the world can be held up as an example for meeting its obligations in this respect.

The relationship between statelessness and discrimination is clear. For a start, statelessness often occurs as a result of direct discrimination, that is, less favourable treatment of a person because of one or more 'protected characteristics' such as their race, ethnicity or gender. Then, once stateless, a person is especially vulnerable

both to direct and indirect discrimination, that is, being put at a disadvantage by a particular provision, criterion or practice which cannot be objectively justified.

There are several examples of how discrimination causes statelessness. Firstly, statelessness may result from discriminatory laws which prevent a woman from conferring her nationality on her children. State succession is another cause of statelessness. While historically this has been seen as a 'technical' cause of statelessness, closer analysis reveals that discrimination plays a significant role. The majority of persons made stateless as a result of state succession belong to ethnic minorities such as the ethnic Russians in Latvia or Eritreans in Ethiopia.¹

Case study: the Rohingya

Statelessness may also be caused by direct racial or ethnic discrimination as in the case of the Rohingya. The Rohingya are considered by their home country, Myanmar, to be illegal immigrants from Bangladesh, despite having lived in Myanmar for many generations.

The Rohingya have been stateless since Myanmar stripped them of their nationality in 1982 on grounds of their ethnicity. They are subjected to discriminatory treatment and persecution affecting every aspect of their lives from their ability to move freely, marry and earn a living, to the imposition of arbitrary taxes, arbitrary arrest and torture.

Consequently, hundreds of thousands of Rohingya have fled Myanmar in search of security. They have then faced the reality faced by most stateless people living in a migratory context, namely further discrimination. A stateless person, as a member of a minority and 'outsider' in the host country, both faces discriminatory persecution from others and is subjected to discriminatory laws, policies and practices. It is standard practice for states to restrict access to a wide range of rights such as education, employment and health care for non-nationals. It is a common misunderstanding that states are entitled to discriminate as they want in this respect; in fact, any such discrimination must be objectively justifiable in order to comply with human rights law. Furthermore, even when access to such rights is in principle available to the stateless, practices may bar this access in reality so as to indirectly discriminate against stateless persons. For example, a requirement that identity documents be provided in order to see a doctor causes a particular disadvantage to stateless persons who are less likely to have such documents.

"We do not have any legal document. We do not have any country."

Tarik is a stateless Rohingya who fled Myanmar in 1989 and was trafficked into Malaysia in 1991.² He was in bonded labour in Thailand for three months until he paid off his debts. He continued to suffer discrimination in Malaysia, affecting his enjoyment of fundamental rights including liberty and security of the person and various socio-economic rights. Treated as an 'illegal immigrant' under Malaysian law, Tarik is not allowed to work, leading to his arrest for working illegally, detention

and 'deportation' into the hands of traffickers on three separate occasions.

"Police can arrest us whenever they wish." Tarik sees this as a question of security, belonging and identity: "We Rohingya do not have any security in this country. We do not have our own country. Everybody oppresses us. Life is very hard for us both in Malaysia and Burma... The place where I was born is now foreign to me. We cannot claim our birthplace as our own land... I am worried about the future of my children. They are neither Malaysian nor Burmese. I do not know what will happen to them."

Tarik's vulnerability as an undocumented stateless person has been transferred to his family. His status has also affected his children's education who were enrolled in a Malaysian school for two years but were then expelled because they had no documentation. Consequently, Tarik and a few Rohingya neighbours started an informal *madrasa* (religious school) for their children.

Tarik was made stateless in Myanmar. His children continue to be stateless in Malaysia. Unless a sustainable rights-based solution is found, there is every likelihood that his grandchildren will be stateless as well. Tarik is literate but his children have no access to formal education, and it is only due to his extraordinary efforts that they receive any education at all. Tarik's children may not be as able as he to compensate for the lack of formal schooling if their own children too are excluded from education. Similarly, Tarik enjoyed basic socio-economic security growing up. His children are growing up in poverty. It is likely that their children will face even greater poverty and will not possess the tools to climb out of it. Such is the effect of inherited statelessness.

Conclusion

From a human rights perspective, it is easy to draw up a list of rights that Tarik and his family have been denied access to. These would include civil and political rights, such as freedom of movement and the right to liberty and security of the

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person, and socio-economic rights, such as the right to an education and the right to a livelihood. In development terms, the achievement of equality is central to the post-2015 development agenda. From a human security perspective, the preoccupation of states with national security – seeing the irregular migration of vulnerable, often persecuted, people not in terms of their protection but in terms of border control – exacerbates and entrenches the vulnerabilities of stateless persons such as Tarik.

Although some work has been done in the human rights field, there is a need for the impact of discrimination to be explored more fully by those approaching the issue of statelessness from a human security perspective. The same is true for those in the development community – indeed The Equal

Rights Trust is actively involved in seeking to ensure that the achievement of equality is central to the post-2015 development agenda. But regardless of the lens through which one seeks to tackle the disadvantage faced by stateless persons – be it that of human security, development or human rights – it is critical that the central relevance of discrimination in their story is addressed so that the cycle of disadvantage can be broken.

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1. See Southwick K (2009) 'Ethiopia-Eritrea: statelessness and state succession', *Forced Migration Review* issue 32. www.fmreview.org/en/FMRpdfs/FMR32/15-17.pdf
2. Not his real name. He was interviewed by The Equal Rights Trust in October 2012.