

Statelessness to Citizenship

Up-Country (Plantation Tamils) / Tamils in Sri Lanka

P.P.Sivapragasam (Siva) - Human Development Organization, Sri Lanka.
Sivahdo@gmail.com

“Every one has the right to a nationality” and “No-one shall be arbitrarily deprived of this nationality” (UDHR Art.15)¹. However statelessness continues to be a fundamental cause of discrimination, exploitation, and forced displacement of Minorities in all regions of the world. Statelessness is not only a source of Human insecurity and a cause of forced displacement and conflicts.

Causes of statelessness

- Political upheaval – Internal political crisis among countries.
- Targeted discrimination (often for reasons of race, religion or ethnicity) Differences in laws between countries, laws relating to marriage and birth registration.
- Nationality based on descent (usually that of the father) and abandonment.
- Lack of means to register children. The statelessness interlinked with the refuge problem. During and after the Second World War many people over crossed national boundaries, ultimately this brought refuge, statelessness and citizenship problem to many countries.

Up-country Plantation Tamils - Statelessness Resulting from Forced Movements & Migration

Under the international law, a stateless person is one “who is not considered as a national by any state under the operation of its law.” (Article 1, 1954 Convention relating to the status of stateless persons²). This definition is helpfully concise and to the point. But it is also a very limited and somewhat legalistic of definition.

The Up-country Plantation Tamils are 4.4 percent of the total population of Sri Lanka³. Around 80 percent of the Upcountry Plantation Tamils, are an ethnic minority group concentrated in the tea plantation sector, and most of them are workers in the plantations and residing within the plantation areas. More than 50% are housed in so-called ‘labor lines; 67.8% of them still live in single house/line rooms⁴ which were built during the colonial era. They are descendants of those whom

¹ <http://www.un.org/en/universal-declaration-human-rights> (Accessed on 14 / 11 / 2018)

² UNHCR (2014), The Convention relating to the Status of Stateless Persons, UNHCR Pub, Geneva (Accessed on 14/11/2018)

³ <http://www.seu.ac.lk/researchandpublications/symposium/5th/religiousandculturalstudies/51.pdf> (Accessed on 15/11/2018)

⁴ Department of Censors & Population (2014), [Household Income & Expenditure Survey 2012/2013](#), Colombo.

were brought from South India to work in the plantations during the British colonial period in 1820s, and most of them are of oppressed caste background.

- After independence 1948, Statelessness emerged in 2 ways :
 - 1) Discrimination based on Law & Descent
 - 2) Political marginalization of the minorities.
- Citizenship Act No 18 of 1948, gave birth to statelessness of 975,000⁵ Indian Origin Plantation Tamils in Sri Lanka.

Statelessness produced a number of issues among the minorities / Plantation Tamils, namely:

- Politically they were marginalized and discriminated.
- They were stripped of their right to vote.
- Right to basic documents (such as NIC, birth certificate,...) was denied.
- Right to land and housing was denied.
- They remained a lot with their right to free movement curtailed.
- This situation resulted in their economic rights being denied.

Actions of the Successive Governments of Sri Lanka⁶.

- 1949 – Registration of Indian and Pakistani Residents (Citizenship) Act No 03 of 1949
 - 1964 – Srimala - Sasthira Pact
 - 1974 – Indo – Sri Lanka Agreement
 - 1986 - Sri Lankan Government decided to grant citizenship
- However, the problem had continued unmitigated for over 50 years.

Pro-Active initiations / Good Practices

The discriminatory practices were questioned by the CSOs and the Trade Unions since the issue was arose. The successive governments of Sri Lanka attempted to resolve the problem of around 265,000 stateless persons in Sri Lanka since 2000. In 2003 – Citizenship Act No 35 of 2003 – solved the stateless problem⁷.

Sri Lankan Governments' efforts and interventions of the UN Agencies, CSOs and Trade Unions to resolve the problem were commendable both in terms of approach & outcome.

The Government provided immediate citizenship to the stateless persons based on the new Act.

- Followed a simplified procedure.
- Through a General Declaration.

⁵ Sivapragasam PP (2011), (Brad k Blitz Edt.), Statelessness and Citizenship, Edward ElgarPub., UK

⁶ Nadesan S, (2009), History of Up-Country Tamils in Sri Lanka, Nandalal Pub., Hatton & Sivapragasam PP (2011), (Brad k Blitz Edt.), Statelessness and Citizenship, Edward ElgarPub., UK

⁷ UNHCR (2004), Citizenship for All, The Campaign Against Statelessness in Sri Lanka, UNHCR Colombo Pub.,

- Although there were some weaknesses, an administrative procedures set-up had been putting place
- In this respect UNHCR played an important role with the CSOs and Trade Unions in Sri Lanka to resolve the problem.

Statelessness, Refugees & Asylum Seekers. Northern Tamils of Sri Lanka.

After the independence of Sri Lanka in 1948, ethnic tensions emerged between majority and minority perspectives. Since the 1983, ethnic conflict has made some 800,000 minority Tamils as internally displaced, and forced millions of people to migrate as refugees, asylum seekers⁸. There are also allegations of human rights abuse during the civil conflicts. Over the course of the conflict, the displaced Tamil, in Sri Lanka sought refuge in India and other countries.

Today, around 100,000 Sri Lankan refugees are in India, where 57,000 are residing in government camps in Tamil Nadu⁹. Some stateless persons are refugees and some refugees are stateless. They all lack proper protection. Tamils are either refugees or stateless in other countries. They are often hindered access to the full range of human rights.

Pro-active initiatives:

International community, political entities & CSOs played crucial role to resolve the issue. The successive Sri Lankan governments initiated a few Reconciliation process, Rehabilitation & development initiatives, set up an Inquiry Commission on Disappeared¹⁰. However still political, economic & social rights of the affected minority community are questionable in Sri Lanka as well as the other countries where they reside at present.

Suggestions:

- Encourage states to set up National Minority Rights Commissions in the respective countries.
- Ensure that states enact new laws or reform laws to ensure citizenship rights of minority communities.
- Encourage states to eliminate discriminatory practices against minorities in terms of cultural, social, economic, political and civil rights.
- Declare a Ten Year Global Program of Action on Right to Development of Minority Groups / Communities.
- Ensure rights of the women and children of the minority communities.

⁸ Refugees International (2004), Report, Forgotten People : Up-country Tamils from Sri Lanka living in Refugee Camps in India (<https://reliefweb.int/report/sri-lanka/forgotten-people-upcountry-tamils-sri-lanka-living-refugee-camps-india>)(Accessed on 16/11/2018)

⁹ Ibid

¹⁰ <https://groundviews.org/2018/07/26/impunity-in-sri-lanka-and-the-commissions-of-inquiry-into-disappearances> (Accessed on 17/11/2018)

- Ensure rights of the Minorities with special reference to the political rights and right to livelihood of the refugees and asylum seekers.
- Promote a Global level study on Statelessness & Citizenship Rights of Minorities.
- Promote an Expert Committee on Minority Rights Issues.
- Promote and enhance the International Human Rights Mechanisms available to address issues concerning Minorities.
- Suggest to organize next Session (Session 12 or 13.....) on Minority Rights in the Corporate Sector.

Thank you.