

29 November 2018

Item 2: Root causes and consequences of statelessness affecting minorities: preventing statelessness through a human rights approach

Madam Chairperson, Special Rapporteur, Excellencies, Ladies and Gentlemen,

It has been my honour to moderate the panel for this substantive session. In my own independent capacity, I take the liberty to observe the following.

The session featured a wide variety and range of statements of concern and of situations, often only tangentially or not connected with the specific Agenda Item. Evidently, representatives of minorities wish to voice their concerns for which this Forum offers a rare and very limited opportunity. I appreciate the need and effort made to share the concerns.

With regard to the Agenda Item itself, a number of speakers raised recurrent issues such as: the problem of absence or limited access to documentation establishing status; the problem of failures of or obstacles to registrations of births; problems of substantive requirements – sometimes discriminatory – for naturalization to fulfill the right to a nationality; the absence of recognition of certain communities; the absence of data; lack of availability of information, including laws, in minority languages; the problems of intolerance, hate speech and incitement; and failures or frustrations relating to inclusion in public life, including political life, in general and with regard particularly to self-determination claims.

The panelists identified a number of elements relating to the causes of statelessness, including disjunctures of and transitions in political status of territories or groups – often featuring armed conflicts – which generate statelessness. In a number of situations, disputes over ownership of or access to land and other property is closely connected to the creation of statelessness. Often, the victims manifest the effects of intersectional and compound discrimination and inequality.

In response to these and other identified problems, as a general principle it was urged to include the affected persons – the stateless or those at risk of becoming stateless – by means of their effective participation in processes of policy- and decision-making.

Other recommendations from the first session included the following: that States make specific commitments to address existing cases; that States seek technical assistance from relevant UN offices to improve their policies, laws and practices; that investment be made into building the

capacities of affected communities in order that they may advocate effectively for themselves; that laws be translated into minority languages; that naturalization processes be eased for stateless persons; that legal recourses be made more easily available; that a UN special rapporteur on the right to a nationality be established by the Human Rights Council; and that a World Statelessness Reduction Day be established.

On reflection, it may be observed that the problem of statelessness predates the development of international human rights law and was and remains highly problematical for the smooth conduct of international relations. As such, as a matter of General International Law, the reduction of statelessness has been sought and the creation of statelessness is prohibited.

The idea that citizenship is “the right to have rights” was a prevalent notion before the development of international human rights law. A basic purpose of human rights is that nationality is no longer a condition precedent for the enjoyment of basic rights: all human beings have human rights by virtue of being human. Nonetheless, the fulfilment of human rights depends in some degree on legal status, especially with regard to certain social and economic rights and opportunities which may depend on citizenship; the same may apply for the fullest participation in public, including political, life.

Accordingly, the right to a nationality is stipulated in Article 15 of the Universal Declaration of Human Rights, while Article 7 of the almost universally ratified Convention on the Rights of the Child prescribes that children have a right to nationality from birth and that the territorial State should confer its nationality where the child would otherwise be stateless. At the regional level, the European Convention on Nationality places an outer time limit of five years for the conferral of nationality on the otherwise stateless child. Thus, in so far as it is prohibited to create statelessness and children should at least be conferred the nationality of the territorial State of birth, the number of stateless persons should be in decline and not perpetuated. Unfortunately, this is not the case – which can only mean that States are not fully respecting their obligations under international human rights law.

A rigorous application of the human rights based approach would bring to an end the global problem of statelessness. It is in the interest of States individually and collectively – and certainly in the interest of the affected persons – that the international norms and standards be applied fully and that the problem of statelessness comes to an end. Statelessness is a problem which the world can and should finally solve. In doing so, the lives of many minorities would be substantially improved as would be international peace and security.

Thank You.

* John Packer is Neuberger-Jesin Professor of International Conflict Resolution and Director of the Human Rights Research and Education Centre, Faculty of Law, University of Ottawa (Canada).