UNDERSTANDING & SCREENING FOR STATELESSNESS IN THE U.S.

- What is Statelessness?
- What Happens to Stateless People?
- Screening for Stateless Persons
- Possible Relief

June 25, 2021 | 2:00 - 3:30 pm (et)

TODAY’S PRESENTERS

UNITED STATELESS
Karina Ambartsoumian-Clough
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CLINIC, DEFENDING VULNERABLE POPULATIONS
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United Stateless is a national organization led by stateless people whose mission is to build and inspire community among those affected by statelessness, and to advocate for their human rights to a nationality.
CLINIC’s Mission Statement

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs.

cliniclegal.org

USL-CLINIC-UNHCR: PARTNERSHIP

- Increase awareness of statelessness
- Mentor attorneys
- Provide resources for practitioners
- Listserv for legal practitioners: email vneilson@cliniclegal.org

WHAT IS STATELESSNESS?
HOW IS CITIZENSHIP / NATIONALITY ACQUIRED?

- Generally at birth in two different ways: 
  *jus soli* (soil) and *jus sanguinis* (blood)

In some cases, a person can acquire citizenship by naturalization (requirements for naturalization vary by country)

- *It is a gateway right to other rights.*

UNIVERSAL DECLARATION OF HUMAN RIGHTS

**ARTICLE 15: HUMAN RIGHT TO A NATIONALITY**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Nationality:** “membership in a nation or sovereign state”

**Citizenship:** “relationship between an individual and a state to which the individual owes allegiance and in turn is entitled to its protection” (understood as interchangeable)

CONVENTIONS ON STATELESSNESS

**1954 Convention Relating to Status of Stateless Person**

- Ensures Stateless person are accorded fundamental rights & freedoms without discrimination
- Defines ‘stateless’
- States must identify stateless, issues IDs, travel documents and path to naturalization

**1991 Convention Reduction of Statelessness**

- Aims to avoid statelessness at birth
- Prescribed standards relating to acquisitions or loss of nationality
  - Safeguards to prevent statelessness
- Disputes can be submitted to Intern’l Court of Justice
A stateless person is a person who is not considered as a national by any State under the operation of its law.

Article 1(1) of 1954 Conv. rel. to Status of Stateless Persons

In simple words, a person who is not a citizen of any country.

15 million Stateless people worldwide

A child is born stateless every 10 minutes
A child is born stateless every 10 minutes. The most acute and invisible human rights violation.

Statelessness is almost always caused by some nation’s laws or practices rooted in racial, gender, ethnicity or religion-based discrimination.

The UNHCR estimates that 75% of stateless people are from ethnic or racial minority groups. There are at least 25 countries where mothers cannot pass on their citizenship the same way that fathers can.
CAUSES OF STATELESSNESS

Conflicting and Discriminatory Nationality Laws

Migration and Genocide

Wars, Border Disputes, State succession

Administrative Obstacles

WHAT HAPPENS TO STATELESS PEOPLE?

EMPLOYMENT  NO RIGHT TO WORK LEGALLY

HIGHER EDUCATION  UPWARD MOBILITY LIMITED

HEALTHCARE  MENTAL/PHYSICAL HEALTH ISSUES

TRAVEL  FAMILY SEPARATION

DEPORTATION  REPEATED & PROLONGED DETENTION

EMBASSY  UNPROTECTED

ADJUSTMENT-OF-STATUS  LIMITED PATH TO REMAIN IN THE U.S.
FROM 1980-2011, AT LEAST

70

U.S. COURT CASES MENTION STATELESSNESS

There is NO official data or effort from U.S. gov to quantify statelessness.
MANY stateless people remain invisible, unprotected, unidentified, possibly detained. There is NO official data or effort from U.S. gov to quantify statelessness.

The U.S. does not adhere to international human rights standards. The U.S. does not address statelessness as a domestic issue. Stateless people in the U.S. continue to live in the shadows, unprotected.

The public remains in the dark, unable to advocate for stateless people.

The U.S. adheres to and ratifies international human rights standards.

The U.S. creates laws and policies that address and prevent domestic statelessness.

The public is empowered and mobilized to advocate for stateless people.

CHALLENGE

SOLUTION

And ALLIES
I was born in the former Soviet republic of Ukraine of Armenian & Ukrainian ethnicity. I came to the U.S. in 1996 at 8 years old seeking asylum. At 13 years old, my 3rd asylum claim was denied and I was put into removal proceedings to self deport with no country designation. When the Ukrainian embassy would not issue me travel documentation, I discovered that I am a stateless person, a ghost, a citizen of Nowhere.

WE URGE THE U.S. TO
ADOPT FEDERAL LAWS that allow a path to lawful permanent residency and citizenship.
ESTABLISH A STATELESS DETERMINATION PROCEDURE or restrictive reporting requirements.
STOP UNNECESSARY DETENTION or restrictive reporting requirements.
ISSUE TRAVEL DOCUMENTS
COLLECT AND ASSESS DATA
SIGN THE INTERNATIONAL STATELESSNESS TREATIES
SCREENING FOR
STATELESSNESS
- All former Soviet Republics
- Palestinians from various countries
- Roma in Italy and Germany
- Bidoon from the Middle East
- South Sudanese
- Rohingya
- Hmong from Laos and Thailand
- Nepalese born after 1990
- Zimbabweans with foreign parent
- Black Mauritanians

- Ethiopians and Eritreans
- Tibetans
- Former Yugoslavians
- The Americas:
  - Dominicans of Haitian ancestry
  - Bahamas of Haitian ancestry
  - Venezuelans
  - Cubans
  - Mexicans
  - Chile

- Spain
- Saudi Arabia
- Kuwait
- Greece
- Bahrain
- Morocco
- Lebanon

- Somalia
- Thailand
- Macedonia
- Western Sahara
- Iraq
- Vietnam
- Jamaica

- People born overseas to a US citizen and a noncitizen
  - 8 USC 1401(a)
  - 5 yrs physical presence in US

- Indonesia
- Pakistan
- Iran
- Ghana
HOW STATELESS PEOPLE APPEAR IN U.S. IMMIGRATION SYSTEM

- Visa overstays
- Failed consular registrations or lapse in travel document validity
- Undocumented (doubly undocumented)
- Asylum denials
- Resettled refugees, as well as permanent residency or refugee status loss due to certain types of crimes
- Denaturalization / Denationalization
- Adoptees, UAMs, and others who entered as minors and never naturalized
- Order of supervision for decades

SCREEN FOR NATIONALITY / STATELESSNESS

When should we screen?

- No enabling documents (birth cert., ID, passport), or person possesses a non-citizen travel doc.
- Inability to be deported/return to COO
- Born in country without jus soli (to foreign parent(s))
- Mixed nationality parents
- Member of groups known to have high risk of statelessness:
  - Minority ethnic groups
  - Born in border/disputed region
  - Nomadic group
  - Born in refugee camp
- Born to a foreign parent in country prohibiting dual nationality
- Passport or other IDs taken away by issuing country

INTAKE SCREENING QUESTIONS

1. Enabling Documents: Have you ever had problems accessing a birth certificate, ID or passport / travel doc.?
2. Right of Reentry: Have you ever been detained by immigration/ICE, but they could not find a country that would accept you for deportation?
3. Citizenship Access: Have you ever had problems accessing citizenship or nationality?
   a. i.e. voting rights, travel rights, access to loans, education, medical care, vaccines
IN DEPTH INTERVIEW

→ If client presents a stateless risk factor:

In depth interview to gather info on:

1) Family history
   a) Place of birth, parents’ nationality, parents’ marriage, adoption
   b) Parents alive? Parents’ documentation accessible?

2) Personal history
   a) Marriage, ordinary or habitual residence

3) Documentation
   a) Level of documentation, attempts made, responses from auth.

4) Immigration history overseas and in US

POST-INTERVIEW RESEARCH

Nationality is acquired -

1. At birth – automatic
   - Birth on a State’s territory (jus soli)
   - By descent through one’s parents or grandparents (jus sanguinis)

2. By declaration – non-automatic, non-discretionary
   - Through birth registration and/or declaration of loyalty

3. Upon application – non-automatic, discretionary
   - Marriage to a citizen, Long-term legal residence, Birth on territory + long-term residence

APPLYING THE “STATELESS” DEFINITION

“a person who is not considered as a national by any State under the operation of its law.”

● What constitutes a “State”?
  ○ “State” defined, 1933 Montevideo Conv./international law
  ○ Is the only entity the person has link to a non-State?

● Which States?
  ○ States to which person has a relevant link
APPLYING THE “STATELESS” DEFINITION

“a person who is not considered as a national by any State under the operation of its law.”

1. Law = legislation, ministerial decrees, regs, orders, case law, and customary state practice
   a. Citizenship law on DOB
   b. Relevant amendments to the law/regs; recent orders, decrees

1. State Practice = mixed question of fact and law
   a. “A state may not in practice follow the letter of the law, even going so far as to ignore its substance.”

Viewpoint of the State
- Administrative applications for BC, passport, ID;
- Consular Interviews/Letters;
- Detention Interviews
- Access to Services or Rights Limited to Citizens

“Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country’s laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national.”
APPLYING THE “STATELESS” DEFINITION

Foreign LAW: things to look out for

- **Acquisition:**
  - Check if by operation of law (automatic) vs positive action required
  - Gender specific clauses or regulations
  - Barriers to birth registration (i.e. children born out of wedlock)

- **Loss:**
  - Denationalization through state succession, amendments, courts
  - Loss (automatic) - criminals, traitors, time abroad, marriage to noncit
  - Deprivation of nationality (i.e. by order) due to failure to perform military/alternate civil service, in ‘public interest’, fraud
  - Renunciation without acquiring new nationality, i.e. naturalization

APPLYING THE “STATELESS” DEFINITION

Foreign PRACTICE: things to look out for

- Nonresponse of competent authorities - after reasonable period of time can be evidence of lack of state recognition of citizenship
- Consult country research for similarly situated people from this country/region; consult citizenship law experts and/or history
- Look for discriminatory citizenship laws/practice
  - Gender, race, ethnicity, political motives (Zimbabwe)
- Travel documents are not all made equal
  - Noncitizen/stateless travel docs, do not always have right to renew

HOW YOU CAN HELP

- **Screen for nationality**
- **Consult with the client:**
  - Help client understand nationality status and any nationality options
    - Write to consulates, set up interviews
- Help client apply for any citizenship claims if beneficial
- Encourage your asylee, refugee, LPR clients to naturalize ASAP
- Detention - help people at risk of statelessness to get released
- Identity documents (city/state)
- Connect stateless people to United Stateless community
  - info@unitedstateless.org
  - www.unitedstateless.org
- Advocate for stateless people
- Apply for immigration relief

[info@unitedstateless.org](mailto:info@unitedstateless.org)
[www.unitedstateless.org](http://www.unitedstateless.org)
POSSIBLE RELIEF

POSSIBLE PERMANENT RELIEF

- Asylum and related relief
  - "Or in the case of a person having no nationality, is outside any country in which the person last habitually resided..."
  - Statelessness in and of itself is not considered persecution
  - "Denationalization" on account of a protected characteristic may amount to persecution
- Cancellation of Removal
- Other Humanitarian Visas
  - U visa, VAWA, T visa, SIJS
- Family-Based Immigration

POSSIBLE TEMPORARY RELIEF

- Temporary Protected Status
  - "And individuals having no nationality, who last habitually resided..."
- Deferred Action
- Orders of Supervision
- EADs
PROSECUTORIAL DISCRETION

Immigration and Customs Enforcement Office of Principal Legal Advisor
"Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities " May 27, 2021

- OPLA can:
  - Move to dismiss
  - Not pursue appeal
  - Communicate re: stays of removal

- Positive factors
  - "Compelling humanitarian factors"
  - Length of residence in the United States

UNHCR STATELESS ADVISORY OPINIONS (SAO)

- The UNHCR Multi-Country Office – Washington will issue Stateless Advisory Opinions (SAOs) in certain circumstances for individuals in the United States who believe they may be stateless or show signs of statelessness.
- Be aware that these advisory opinions take several months to complete given the level of research and analysis.
- To be considered for an SAO, please email UNHCR at usawasta@unhcr.org. UNHCR will send you a form to complete in order to be considered for an SAO.
- You may also use this email address for other inquiries related to statelessness and to request UNHCR assistance.

OUR ROLES

USL
- Conduct screenings
- Create community for stateless people in the United States
- Advocate for change

CLINIC
- Mentor cases
- Create practice materials
- Advocate for change
RESOURCES:
- UNHCR Stateless Advisory Opinions
- CLINIC Case Mentorship
- UNHCR Handbook On Stateless Persons
- USL Stateless Services & Legal Expert Allies
- Statelessness Listserv

https://docs.google.com/document/d/1Y68QRODHBY58Lms80ui_hBU
GnLZYEW1BycP1nTg/edit

TUNE IN TO OUR NEXT CLINIC WEBINAR IN FALL 2021,
FOCUSBING ON LEGAL RELIEF!