Case Studies of Statelessness: North Koreans Born in China, Rohingya in Myanmar, and Palestinians under the Arab League

Kyle Van Fleet* & Dr. Shin Ji Kang**

Abstract: Statelessness is an ongoing issue where millions of people lack citizenship or legal residency in any country. Most importantly, being stateless affects the scope of human rights that people enjoy. This paper analyzes in greater detail the legal definition of statelessness and current phenomenon of statelessness by presenting three cases of stateless groups: North Korean children born in China, Rohingya in Myanmar, and Palestinians under the Arab League. We will then provide potential solutions to each of their specific contexts, as well as discuss the importance of the state’s role in ending statelessness.

Introduction

As defined in Article 15 of the Universal Declaration of Human Rights, “everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” While nationality is a UN-declared universal human right, there are millions of people who lack an officially recognized nationality.1 This is known as statelessness. As defined by the United States Department of State, a stateless person is “someone who, under national laws, does not enjoy citizenship – the legal bond between a government and an individual – in any country.”2 In 2011, the UN High Commissioner for Refugees (UNHCR) announced that there were over 3.5 million stateless persons in 64 countries as of 2011, but the actual number could be as high as 12 million.3

It is possible to be stateless as well as a refugee or asylum seeker. But it is also very possible to be stateless and have never crossed any international borders. Stateless individuals have few to no legal rights within the borders where they live. This reality makes life difficult for stateless individuals and often leads to impoverishment and a lower standard of living.

*Kyle Van Fleet is a student at James Madison University majoring in International Affairs and minoring in Political Communication. He has been active in his writing and speaking to improve human rights and security and has served on Amnesty International Student Chapter as Treasurer and Vice President.

**Dr. Shin Ji Kang serves as Associate Professor in the Department of Early, Elementary, and Reading Education and Fellow of the Center for Interdisciplinary Studies of Terrorism and Peace at James Madison University. Her scholarship involves working with North Korean refugee students and South Korean service providers to address diversity and justice.


While stateless people share many similar experiences and problems, legal situations differ widely between the varying groups of stateless people. The topic of statelessness is therefore a complex and context-specific issue, which further complicates efforts to assuage its harmful conditions. The purpose of this paper is to explore three different stateless groups (North Korean children born in China, Rohingya in Myanmar, and Palestinians under the Arab League) and discuss unique policies by and possible responses from individual states.

Definition and Status of Statelessness

The concept of statelessness can be understood in at least two different ways. First, those who are stateless de jure are not considered a national by any state. Second, individuals who are stateless de facto “are nationals of some state by law but are not treated as citizens”. The latter definition is problematic since it encompasses various interpretations. Some include “ineffective citizenships,” the inability to prove one’s nationality, and those who cannot rely on the state. Most people are, in legal terminology, born jus soli and/or jus sanguinis, which translates to the "law of the soil" and the "law of blood." People are given citizenship from the country in which they are born or from their parents’ nationality. Most states offer naturalization opportunities, and some have simpler processes such as “registration” or “declaration” in cases that children are not born under jus soli or jus sanguinis jurisdiction.

While most states maintain formal systems to grant citizenship or legal residency, certain groups of people are deprived this opportunity, which presents a significant human rights challenge. Documented causes of such denial include “administrative oversights, conflicts of law, procedural problems such as excessive fees or unrealistic deadlines, renunciation of one nationality before acquiring another, failure to register a child at birth, and being born to stateless parents.” But more often than not, it is the arbitrary deprivation of nationality by the state based on one’s race, ethnicity, religion, and sometimes gender that ultimately hinders one’s ability to earn citizenship. Arbitrary deprivation is also done for political reasons, regardless of an individual’s social markers.

International support to solve statelessness has been strengthened through different legal instruments, including the Convention Relating to the Status of Stateless Persons in 1954, the Convention on the Reduction of Statelessness in 1961, the Convention on the Elimination of All Forms of Discrimination against Women in 1979, and the Convention on the Rights of the Child in 1989. Despite these improvements, not all states have ratified the aforementioned agreements. This reality makes the issue of statelessness more complicated and perpetuates the absence of human rights protections.

Challenges of Being Stateless in the Human Development and Rights

The Universal Declaration of Human Rights identifies universal rights for every human being in the form of 30 articles. Implementations of these rights, however, are decided by and

---


5 Ibid.


7 Kingston, “A Forgotten Human Rights Crisis': Statelessness and Issue (Non)Emergence."
dependent on each state. International human rights law is limited in its ability to protect those who are not nationals of a state. Consequently, the gap between human rights law and its actual operation heavily affects the livelihood of stateless individuals.

By not having a nationality, one’s access to freedom is significantly reduced. Basic rights such as legal protection, voting, healthcare, and education are not guaranteed and the freedom of movement is also restricted since it requires legal documentation, such as a passport. Another significant obstacle is the freedom to be legally employed. Since employment requires a certain form of legal status, this leads many stateless individuals to do illegal work. As a result, they inevitably find themselves exploited and impoverished. Stateless people, due to lack of economic freedom and access to other supposedly guaranteed human rights, also face significantly lower levels of income, education, and health.

In addition to being denied human rights, stateless individuals also suffer from social and emotional stress stemming from a lack of acceptance. If the attitudes of a host community and ideologies of its culture are counter to stateless individuals based on social membership such as race, ethnicity, or religion, the daily interactions of stateless individuals are significantly impacted. Recent research conducted in United Kingdom found inequality in mental health among various ethnic groups that were caused by their experiences of racism.

Similar results stem from other studies: North Korean refugees living in South Korea are discriminated against, as they are often called "commies" or accused of being spies. Thus, they attempt to hide their true identities to protect themselves. Unjust treatment and feelings of loneliness and homesickness add another layer of mental burden.

In another study examining mental health issues in the stateless Rohingya community, researchers found that 36% of respondents had symptoms of Post-Traumatic Stress Disorder, 89% had symptoms of depression, 67% had headaches, 55% had back pain, and 49% had pain all over their bodies. The research indicates that both mental and physical health issues are prevalent among stateless populations and are mainly caused from the violence and trauma associated with their stateless statuses. In the following section, three stateless groups will be analyzed in depth through the inclusion of unique geopolitical contexts of each case and examinations of how human development and rights are affected by stateless status. Moreover, the implications of statelessness and the potential responses of each state will be included in the following section.

Three Cases of Statelessness: Undocumented North Koreans Born in China, Rohingya in Myanmar, and Palestinians under the Arab League

There are many different communities around the world that are considered stateless. While they share similar challenges in the scope and quality of human rights, each stateless community has unique geopolitical backgrounds which might suggest different approaches to the

---

8 Ibid.
potential alleviation of their problems. Understanding unique contexts provides critical insights into how complicated and diverse issues actually are. In this section, three stateless groups will be reviewed.

**Undocumented North Koreans Born in China**

Undocumented North Koreans born in China are considered stateless from their birth; they are neither North Korean nor Chinese citizens. In particular, stateless children are born in China during their North Korean parents’ (mostly mothers) undocumented stay in China. Since the conclusion of World War II, the Korean Peninsula has been divided into two countries: North and South Korea. While South Korea has joined the Organisation for Economic Co-operation and Development (OECD), enjoying both capitalist and democratic success, North Korea has remained the most strictly-controlled and closed society in the world. Following their *Juche* ideology (i.e., the idea of self-reliance), North Korea has operated a command economic system that leaves little room for upward mobility. After the fall of the Soviet Union, a series of natural disasters, and general political instability in the early 1990s, an economic crisis further plagued the North Korean people. Such economic crises led to the deaths of an estimated 200,000 to four million North Koreans.

As a result of the great famine that occurred in the early 1990s, an increased number of North Koreans have chosen to leave their home communities and cross borders searching for economic means and political freedom. This journey almost always consists of traveling through China to places like Thailand, Mongolia, or other neighboring countries. As undocumented migrants, North Koreans cannot be protected and, thus, become easy targets for human trafficking and violence. Some North Korean women become wives for Chinese men voluntarily under the condition of protection and shelter. These marriages, however, often remain unofficial, resulting in Chinese husbands’ fear of marital abandonment.

Although international law regards North Korean refugees as political refugees, the Chinese government denies this population legal protection due to political reasons. In fact, China deports these refugees if they are caught — which could result in imprisonment, brutal punishment, or death.

Most of the children attempting to flee North Korea are the result of forced marriages. It is estimated that approximately 80 to 90% of North Koreans in China end up being trafficked according to a report by the Catholic Relief Services. The human traffickers approach the “hungry, desperate and often unaccompanied [women, and] promise them food, shelter, employment and protection before forcing them to ‘marry’ or become the concubines of Chinese men.” Making the North Korean context more unique, the community of these migrants is

---

15 Kang, Emery, & Lee, Life after the pan and the fire: Depression, order, attachment, and the legacy of abuse among North Korean refugee youth and adolescent children of North Korean refugees.
16 Ibid.
predominantly made up of women.¹⁸ Because a large portion of refugees are women, an overwhelming portion of the undocumented North Koreans in China are more prone to being forced into fraudulent marriages and sex slavery. Thus, a significant number of stateless children are born who cannot be protected or educated in China.

Some Chinese fathers pay a large bribe to the state officials to “look the other way” when enrolling their children in school, while other families save money to purchase legal documents for their children. These bribes can be as large as a year’s worth of salary, and a failure to provide the officials with the money would mean termination of educational opportunities as well. In addition, these children are often excluded from receiving basic health care benefits. According to the information gathered from vaccination cards and caregivers’ self-reports, stateless children received significantly lower rates of vaccination for diphtheria-tetanus-pertussis, hepatitis B, measles-mumps-rubella, and polio in comparison to their Chinese and North Korean refugee children counterparts.¹⁹ Because these children are stateless, they cannot seek medical care for fear of being caught by the Chinese officials.

Hoping for a better future, North Korean mothers attempt to bring their children when they seek asylum in South Korea, where citizenship and resettlement support are granted. However, this does not always solve the statelessness problem. Since the children are not North Koreans themselves, they are not treated as refugees in South Korea, thus citizenship and resettlement support are not applied to these Biboho – “un-protected” in Korean – children.²⁰ Separation from their fathers and placement into different linguistic and cultural environments following the mothers’ plans serve as major stressors and increase risks of physical and mental health issues. Because of these potentially harmful experiences, many have decided to stay undocumented in China despite the fact that being caught would mean deportation.

To solve this, China would eventually have to amend its laws to accept North Korean defectors, as well as their children, and recognize them as refugees. However, this is idealistic and unlikely, as it would likely result in the destabilization of relations with North Korea, affecting other pressing issues such as denuclearization. A more realistic solution is for China to quietly reduce deportations and restrictions for North Koreans. China could shift toward a more relaxed and tolerant approach to the North Koreans living in China. This approach would be least likely to provoke North Korea and would allow safer passage for the North Koreans as well as their stateless children.

As for South Korea, in 2017, the South Korean government amended the North Korean Refugee Resettlement Support Law, granting additional child reading funds to the families of “children born in the third country with North Korean backgrounds.” South Korea also expanded educational support by providing one-semester tuition for students entering college.²¹ There are still many other issues these children face when coming to South Korea, but progress has been made.

The Rohingya are an ethnic group that have been living in Myanmar for centuries, and reside in the Rakhine (previously called Arakan) region. The origin of the Rohingya is a point of contention, but most scholars agree that they are indigenous to the Arakan region, and once lived side by side with Arakenese Buddhists in peace. However, this is not what the Myanmarese government chooses to believe. Instead, its narrative states that they were transported during the British Colonial era as laborers starting in 1823. Building on this belief, the Myanmarese government amended its citizenship law in 1982 to specify that citizenship is for those from ethnic groups that have made Myanmar their permanent home before 1823. This specifically targets the Rohingya people, excluding them from being one of the country’s recognized 135 ethnic groups, effectively rendering them stateless. More significantly, not only have they been stateless for decades, “they have had their land removed from them, their civil rights have been rendered meaningless, their livelihoods have been destroyed, and they have been forced into detention camps.” The military has systematically burnt down homes, raped and killed members of the Rohingya community, and the government has ignored these abuses. In fact, some make the argument that Myanmar’s government is completing an organized genocide. State Counselor Aung San Suu Kyi, a Nobel-Peace Prize recipient, has also been criticized for her inaction and startling indifference on the issue.

The Rohingya people not only face excruciating challenges in Myanmar, but also in surrounding countries. Over the last several years, there has been a significant increase in the amount of Rohingya people trying to escape Myanmar. Bangladesh has accepted 30,000 Rohingyas as refugees, but as of December 2017, an estimated 600,000 have fled to Bangladesh as undocumented immigrants. This overwhelming influx has not been welcomed by local Bangladeshis and ultimately exacerbates tensions between the two parties. For example, Ukhia and Teknaf have become more overcrowded and poor by hosting the unregistered Rohingyas. In response, surrounding countries such as Malaysia and Indonesia have refused to accept Rohingya people as refugees. Some Rohingyas that successfully escaped to Thailand “have been victimized by human traffickers, or even set adrift again on the sea by Thai military forces. [Even] Australia has adamantly refused to accept any Rohingya on its shores, as well.” While the Philippines, Saudi Arabia, and the United States have accepted some Rohingya refugees over the past few years, the genocidal behavior of Myanmar’s government and other

---

24 Ibid.
26 Ibid.
countries’ reluctance to take a bigger role in aiding the Rohingya keeps this stateless group one of the most at-risk in the world.

The persecution of the Rohingya is an example of how a state utilizes the statelessness of a population due to ethnocentrism. Myanmar should amend its citizenship laws to include all ethnic groups native to Myanmar, which includes the Rohingya. Anti-discrimination laws should also be implemented to ensure that Rohingya individuals are protected from further persecution and given treatment equivalent to that enjoyed by as other citizens of Myanmar. This will all prove difficult, however, because the hatred towards the Rohingya runs deep in Myanmarese society.

Unlike China, where the Chinese people do not necessarily have a dislike for North Koreans, the hatred for Rohingya people is prevalent in Myanmar’s society. In this case, addressing gaps between Rohingya and non-Rohingya members of the community seems fundamental to the agenda. Therefore, the Rohingya Crisis will most likely require pressure from foreign countries according to the international commitment of “Responsibility to Protect” (R2P). R2P is the global and political principle that UN member states must protect their populations against genocide, war crimes, ethnic cleansing, and crimes against humanity. If they fail, the international community must assist or intervene sometimes militarily. Other approaches using smart power should also be discussed to pressure the Myanmarese government into stopping the massacre of the Rohingya. Smart power combines elements of military power with economic or cultural influences. It underscores the importance of mixed and multifaceted interventions through military, economic sanctioning, alliances, diplomacy, and institutions. If countries implement various forms of influences against the Myanmarese government using both hard and soft powers, ideally, solutions will be reached.

There are several actions utilizing smart power that states can use to take initiative against Myanmar’s behavior. One action should be the implementation of a multilateral arms embargo, which has been proved successful in altering targeted policies and would specifically target the weaponization of Myanmar’s military. Another should be the elimination of military cooperation with Myanmar—which countries like Australia have failed to do. Failing to reduce military cooperation with an abusive government sends the wrong international message concerning human rights abuses; it condones the actions of the Myanmarese. A third action should concentrate on international pressure to convince Myanmar to open its doors to international aid organizations. Further, multilateral diplomacy to pressure Myanmar to end its genocidal practices is necessary immediately. Diplomacy by state actors is the most effective form of political problem-solving, and a combination of different diplomacy tracks are important.

Given the immediate needs of the Rohingya people and their life-threatening situation as stateless people, countries with the means to do so should consider accepting more Rohingya refugees. This could include the United States, Australia, Japan, and others. This may be unpopular among citizens within particular countries, but these countries can be most effective in

their resettlement strategies and ensure that both host communities and refugees can create a mutually beneficial relationship. Without refugee resettlement, many Rohingya are trapped in refugee camps which have very poor conditions. In these camps, while individuals might be away from the violence of Myanmar’s military, their suffering is far from improvement. Accepting refugees and resettling them should correspond with the other above diplomatic actions so that Rohingya people can thrive in better conditions as well as create long-term solutions in Myanmar itself.

Palestinians under the Arab League

Never having an official independent state of their own, the nationality of Palestinians has always been ambiguous. After the Arab-Israeli War in 1948, many Palestinians have henceforth been rendered stateless. Israel “gave” citizenship to Palestinians living in Israel proper in an official manor, but in reality, their citizenship is not equal to that of their Jewish counterparts. Palestinians who fled from the violence of the Arab-Israeli War in 1948 and the Six-Day War in 1967 to neighboring countries (e.g., Iraq, Syria, Lebanon, & Saudi Arabia) also did not find any greater or more specific citizenship protections.

In response to the mass influx of refugees, the Arab League established two main principles in Casablanca in 1965: First, the Arab League granted Palestinian refugees full citizenship rights (but no naturalization) and second, issued them Refugee Travel Documents. However, Arab League countries, with exception to Syria and Jordan, did not endorse these agreements. As a result, these actions or inactions have virtually rendered Palestinian refugees stateless to this day. This is because the Arab League members believed in the right for Palestinians to be able to go back to their homeland and were reluctant to allow Palestinians to stay in their own countries. Keeping Palestinians in this position also brought diplomatic benefits to the Arab League; the Arab League portrayed Israel as the aggressor by pushing a political agenda that comes at the cost of Palestinian suffering. It is estimated that more than half of Palestinians in the world are stateless as a result of these conditions.

In many of these Arab League countries, the Palestinians are denied the right to work, social security benefits, health services, and access to public education. Many of them are forced to live in camps with inhumane conditions. In Egypt, for example, the Palestinians initially received fair treatment as Egyptian citizens under President Nassar. But following the agreement signed at the Camp David Accords between succeeding head of state President Sadat

and Israeli Prime Minister Menachem Begin, the treatment of the Palestinians was established by more arbitrary standards. This further widened the gap between the Palestinians living in Egypt and Egyptian citizens, especially after the President banned equality in relations between Egyptians and Palestinians.\(^\text{41}\) Moreover, as of 2003, most Palestinians in Egypt still continued living below the poverty line and their ability to continue living in Egypt depended on paying fees and citing sufficient reasons for remaining in Egypt. School, employment, or family ties could be considered for residency, but their ability to travel outside the country was still limited.\(^\text{42}\) The legal limbo of Palestinians is also heavily dependent on the relations and politics of Israel, the Palestinian Territory, and neighboring Arab countries. Changes in leadership and policies can help improve the status of these stateless individuals, but it can also prove detrimental. Until the Israeli-Palestinian conflict is solved, the status of Palestinian statelessness is undetermined and subject to fluctuation.

Similar to North Koreans born in China, this is an example of states utilizing the statelessness of a group of people due to political strategy rather than discrimination. The ultimate solution requires a peace agreement between Israel and Palestine —whatever that agreement might be. But given the immediate needs and low probability that the Israeli-Palestinian conflict will be solved anytime soon, the Arab League is responsible for elevating the living standards of Palestinians living within its borders.

Other Arab League countries may find positive examples from the Syrian and Jordanian cases: These two countries implemented legislation that provides Palestinian residents equal rights as citizens. Of course, Syria and Jordan could possibly improve the current legislation to make it more comprehensive, as equality still remains unaccomplished.\(^\text{43}\) This may happen without “appeasing Israel”; instead, it will better position the countries of the Arab League as “good guys” by giving the Palestinians equal rights. At the moment, by ultimately decreasing their status in society, these countries are plagued by hypocrisy. If the Arab League and international community take measures to grant Palestinians equal rights as citizens in their respective countries, Palestinians will become more economically independent and be better equipped to escape human right abuses. Such results would benefit both host countries and Palestinians.

The Role of the State and International Organizations

It is declared in the Universal Declaration of Human Rights that every human being has the right to a nationality. What makes statelessness an even more severe problem is the fact that every stateless population’s situation is unique and requires context-specific understandings in order to explore solutions.

The United Nations should be more effective in motivating member countries to become signatories to conventions protecting stateless persons. The United Nations must provide legal advice to governments to create legislation to better respond to global issues. They also should continue working with NGOs, human rights groups, and other partners to end statelessness and provide humanitarian aids to stateless people in need because it brings together the greatest

\(^{41}\) Albadawi, “Palestinian refugees: stateless, exiled and excluded.”


amount of resources and finances. Collaboration is invaluable, especially in efforts to protect stateless people from things like trafficking, detention, and violence.

Although global efforts are necessarily involved with the United Nations and other intergovernmental organizations, the well-being of stateless populations is heavily determined by the states within which refugees currently reside. The irony of human rights being guaranteed to all humans is that it can only be truly guaranteed by states, and even then, protections are generally limited to those with particular nationalities. The United Nations is useful, but it does not have direct authority. Governments are the entities that establish who their nationals truly are and ultimately assume the responsibility for making legal reforms that are necessary to effectively addressing statelessness. Thus, it is necessary for states to mend their citizenship laws in order to end statelessness by guaranteeing no child born in their territory is born stateless and that no individual is subjected to broad discrimination. Moreover, states should guarantee a system that provides protection for and supports stateless persons with regard to law and citizenship. Although it did not pass, states can take note of the provisions suggested in H.R. 2185 (112th): Refugee Protection Act of 2011—which would have set up such a system.

But states need not only focus on themselves. States can also implement smart power to pressure other states to make reforms in favor of their stateless populations. Also, able-bodied states must take in their fair share of stateless refugees, as the immediate dangers and needs of these people cannot always wait for institutional and structural reform. States can also help fund groups that are on-site trying to care for and help stateless populations.

Conclusion

While some aspects of statelessness are universal and faced by all stateless persons, each stateless population finds itself in a uniquely precarious situation. The major challenges involved with statelessness concern human rights deprivations, which negatively impact human development. While the United Nations and non-government groups could make positive and constructive impacts, individual states are the most important actors in the movement to end statelessness.

Statelessness has yet to be regarded as a popular topic attracting public attention, but unlike many other topics, international legal frameworks on the issue already exist and can foster solutions. It will take great efforts to enforce the international legal frameworks at the domestic level and put an end to this violation of human rights. But as Hillary Clinton once said, “the challenge now is to practice politics as the art of making what appears to be impossible, possible.” Clinton was not necessarily referring to statelessness in her quote, but this perspective implies important levels of determination that could be applied to the fight to end statelessness.
Bibliography


"Campaigns of violence towards Rohingya are highly organised and genocidal in intent." Queen Mary University of London. October 29, 2015.


