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“COVID 19, its effect on stateless persons and the response of the international community”

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ABSTRACT

A good number of research has been carried out on how COVID-19 has affected the State in terms of population, economy and health services of different countries. However, a group that is often excluded from these statistics is the “stateless person”. This article critically examines the presence of stateless persons in states and the different categories of these that exist. These stateless persons are made up of refugees and migrants and people that have come from very poor conditions of living. In both developed and developing countries, these persons are the most vulnerable and exposed to the pandemic. This article expounds on how stateless persons are most likely to suffer the consequences of a global pandemic more, and how this has a ripple effect on the citizens of the states. Being highly contagious, the spread of the virus amongst migrant and refugee communities could not be properly controlled. This is coupled with the fact that such persons have a shorter life expectancy. Saddled with the responsibility of making daily income, stateless persons are exposed to overcrowded environments where it is difficult to achieve social distancing. For them, it is a decision of dying by the fastest disease, poverty or COVID 19. This article analyses how the pandemic affects stateless persons and how these stateless persons increase the spread of the virus amongst the state citizens.

This article adopts the use of analytical research methods to explore the research topic.

INTRODUCTION

The international community is not only made up of legal citizens of countries but also migrants, refugees, internally displaced persons and stateless persons. Although these groups of people are most times not recognised by their states of residence or any state, they are part of the international community and are affected by global issues like the COVID-19 pandemic. This article aims to analyse what statelessness is and why it is a problem. While the term statelessness could sometimes be mixed up with refugees, this article clearly differentiates both. It further exposes how these stateless persons have become exposed and vulnerable to different forms of violation including human rights violation, violation of the right to liberty and sexual abuse. To resolve the problems experienced by stateless persons in the COVID-19 pandemic, this article emphasises the United Nations Refugee Agency (UNHCR) guidelines on government’s response to the pandemic as it regards this group of people. It also suggests other recommendations that could be adopted by the governments of countries and civil societies.

STATELESSNESS AND WHY IT IS A PROBLEM

According to Article 1 of the 1954 convention, a stateless person is defined as “a person who is not considered as a national by any State under the operation of its law” (UNHCR). This definition is binding on all States and has been made part of international customary law. To however determine if a person is stateless according to the definition provided, it is necessary to analyse how a State applies its nationality law in practice to individual cases. Some countries grant nationality at birth to children who are born within their territories while others grant nationality to children born to parents who hold the citizenship of the State (Karahiaur, 2020; UNHCR, 2005). For some, statelessness occurs when a person falls in between the cracks of these grants of nationality (UNHCR, 2005).

Several situations and contexts lead to a state of statelessness in the international community. Presently, there are over 15 million stateless people worldwide (UNHCR, 2020). Some of these causes are; i) State succession- where a new state has to define who becomes its citizen, and how this question is answered could lead TO the exclusion of a part of the population, eg Latvia; ii) the enforcement of discriminatory criteria in their nationality legislation sometimes based on race, ethnicity, etc, which excludes a certain group of persons from attaining nationality or having their nationality revoked, eg, thousands of black Mauritians were expelled by the Arab dominated government, iii) conflict of law, i.e. an individual or group having links with more than one state and still fail to qualify as a national of any of those countries (International Law Commission, 1999; UNHCR, 2013).

While some stateless persons could be refugees, not all refugees are stateless persons. Refugees who are not stateless are those who are unable or unwilling to present themselves to the protection of the country of their nationality (O’Neil Institute, 2016). Sometimes they are unable to do this because of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (Krieken, 1979). Though statelessness could seem harmless for a while, it renders people invisible and excludes them from the society. Being a national of a State “offers people protection, a sense of belonging and access to rights” (Martinez-Juarez *et al*, 2020). Statelessness on the other hand excludes people from these rights and sometimes is a catalyst for further violation of human rights (Martinez-Juarez *et al*, 2020). It exposes them to crimes and makes them victims of exploitation and abuse. Statelessness is therefore a global human rights issue that is affecting millions of people worldwide.

THE VULNERABILITY OF STATELESS PERSONS DURING COVID

Stateless persons are very vulnerable in the international community especially when it comes to services provided by a State to its nationals. Some of these services are education, healthcare and sometimes employment. A stateless person has no nationality and therefore remains outside the protection of any government. Because these persons have no legal status or recognition in the government system, they are excluded from medical healthcare and other rights enjoyed by citizens including being able to register for birth, death or marriage. Stateless persons may also suffer from social exclusion which includes travel restrictions, and exposure to physical and sexual violence, human trafficking, exploitation and forced displacement (Roberts and Gallagher, 2016).

Though stateless persons are easily ignored in the international community, the vulnerability of these individuals was first recognised and addressed at the international level through the 1948 Universal Declaration of Human Rights (UDHR). Article 15 of the Declaration states that “everyone has the right to a nationality”. While this could seem vague, two other international conventions specifically address the vulnerabilities of the stateless persons; the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Stateless, both of which have been cited in this article. Despite these conventions, there are still some States who have not signed these conventions and over 10 million stateless persons who are forced to live outside the protection of any state (Roberts and Gallagher, 2016). The COVID-19 pandemic clearly shows how statelessness is a problem and the vulnerabilities around it.

In the absence of being citizens of any State, stateless people do not have access to essential services like health care, which presents an obstacle in accessing testing and treatment for the coronavirus. It is groups of people like stateless persons that are vulnerable to the virus and left behind by the State's responses to it (Karahiaur, 2020). Aside from being exposed to vulnerabilities in the international

community, “the condition of statelessness adds a layer of vulnerability, exclusion and complexity to the experience of minorities, refugees and the poor (Karahiaur, 2020).

As a response to the pandemic, some governments put measures in place to protect their citizens and fix the cracks in the healthcare system. Some others use the opportunity to abuse civil liberties and hustle for political power. De Chikera opines that both sides pose danger to stateless persons. “With the former, the stateless risk not being factored into decision making, or being afterthoughts at best. with the latter, they have targets on their back” (2020). The problem of the stateless with the COVID-19 pandemic is in different sectors, as seen in the subsequent paragraph.

In many countries of the world, stateless people live in substandard environments and under very poor conditions based on the fact that they are not legal residents of a country nor is there a particular country to deport them to. They are therefore victims of human rights violations and face increased risk of the virus as many medical practitioners have raised concerns on the spread of the virus among the group of people (UNHCR, 2020). Even though this has been seen as a problem, stateless people still do not have access to healthcare. Some stateless persons fear accessing healthcare services for fear of being reported to the immigration services (Karahiaur, 2020). Mental illnesses have also been a common factor with the COVID-19 pandemic. The inaccessibility to mental health care means an increase in unaddressed mental health issues for stateless persons. They also lack access to the relief packages and support provided to countries by international and non-governmental organisations because they do not have the identification documents required to access these (Karahiaur, 2020).

RESOLVING THE PROBLEM OF STATELESSNESS

Protecting stateless persons, as well as refugees and internally displaced persons is a responsibility that lies first with States. Under both international human rights law and customary international law, all States are obligated to provide protection for these persons on their territory (UNHCR, 202). In 2006, the UN General Assembly expressly requested that UNHCR coordinate with State and governments on the issue of statelessness after it had been mandated to help States prevent and reduce statelessness and protect the rights of stateless persons globally (Albarazi and van Waas, 2014). The UN High Commissioner for Refugees, Filippo Grandi stated that “This virus is exposing both the devastating consequences of statelessness and the urgency of the need to resolve it. The right to a nationality is a fundamental human right and in this time of crisis it can mean the difference between life and death” (UNHCR, 2020).

To therefore ensure the protection and inclusion of stateless persons in the response of the public sector to the virus, UNHCR issued guidance on what states should do. Some of these recommendations are:

- Making health services, including COVID-19 testing and treatment, accessible for all regardless of citizenship status or legal resident status.
- Creating a firewall between health and immigration services during this period to enable stateless people to access services without fear and risk of arrest or detention.
- Ensuring stateless people’s inclusion in COVID-19 information campaigns, considering location, language and communication preferences.

- Designating civil registration activities, including birth registration, as ‘essential’ services, allowing their continuation and minimising the risk that people may end up stateless owing to a lack of legal proof of identity or entitlement to nationality.
- Refraining from placing stateless people in pre-removal detention and considering the release of those detained for reasons related to their stateless status.
- Ensuring that response measures do not fuel xenophobia and racial discrimination.
- Extending financial support packages to all who are resident on the territory who meet the vulnerability criteria, regardless of legal status.

(UNHCR, 2020)

RECOMMENDATION AND CONCLUSION

While all of these are vital points to aid stateless persons in States, other factors should be put in place.

- Governments should recognize statelessness as an existing problem that it is, and seek solutions to reduce their vulnerabilities in the world of COVID-19.
- More discussions and awareness should be created or included in policy debates and decision making processes, training and building capacity for authorities and civil societies on how to solve the problem.
- Though statelessness is an immigration problem, governments could use this as an opportunity to review their immigration and asylum procedures to assist stateless persons reach legal status in their country of residence.

Statelessness is a long existing problem in the international community. However, the coronavirus has brought it to limelight once again. Overcoming the pandemic will not be achievable by excluding some groups of people in the community. It would rather be attainable by including every part and group of the community and seeking lasting solutions for all.

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