

ENDING STATELESSNESS: “THE RIGHT TO HAVE RIGHTS”

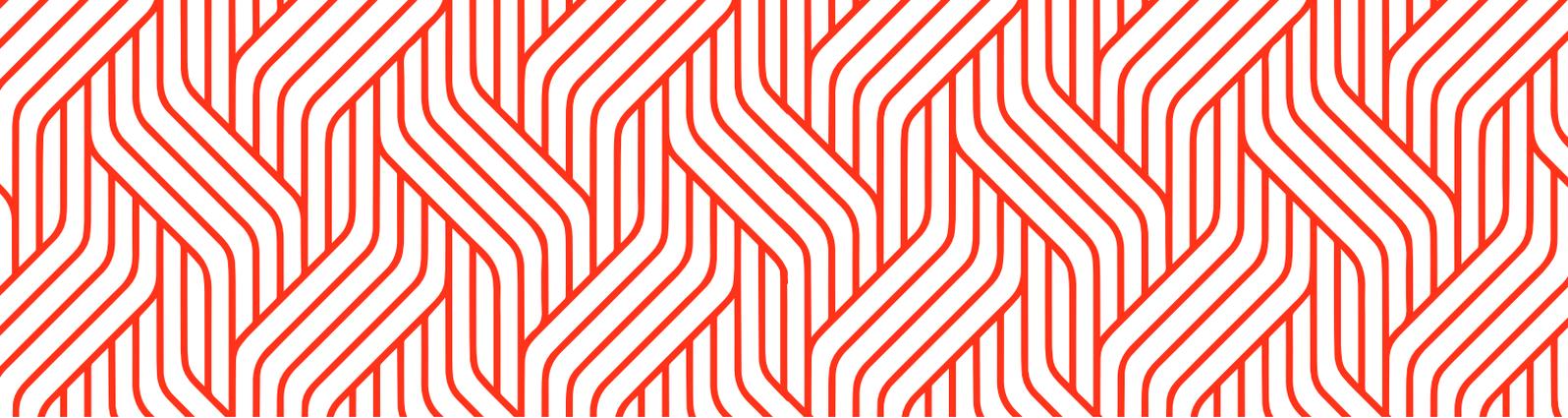
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On the 6th of June 2018, the Rosa Luxemburg Stiftung-Southern Africa (RLS) and the United Nations High Commissioner for Refugees (UNHCR) hosted a seminar on “Ending Statelessness” at the Johannesburg Holocaust & Genocide Centre (JHGC). This discussion formed part of the UNHCR Global Action Plan Campaign to end statelessness by 2024, whose greater effort is to attempt to ensure parliamentarians recognize the “right to have rights” in Southern and South Africa.

The welcoming remarks were delivered by Jan Leidecker, the Regional Director of RLS, Tail Nates, Founder and Executive Director of the JHGC, and Matthias Reuss, Senior Regional Protection Officer of the UNHCR. The first speaker, Gábor Gyulai, President of the European Network of Statelessness, began by articulating the meaning of “statelessness” and the existing challenges and opportunities for the global community to address. The second speaker, Davina Wadley, the Coordinator of the Statelessness Network Asia Pacific, presented concrete examples from the Asia-Pacific region. And finally, Wayne Ncube, a Refugee and Migrant Rights Attorney from the Lawyers for Human Rights, highlighted the extent of statelessness in Southern Africa and the available legislative framework.

Statelessness is especially important in the Southern African context. Reuss argues that the concept of statelessness is mostly still surrounded by resentment and misconceptions in the region. He adds that awareness on the topic is also important as statelessness is becoming a global challenge. Ending statelessness goes beyond the refugee or migration

discussion. According to Reuss, it is rather a discussion about marginalization and exclusion of those, he says, “who are born without a nationality and die without a nationality”. Indeed, refugees and migrants account for the smallest portion of people who are stateless. However, most stateless people have never been able to exercise the freedom of movement beyond borders. Reuss also explained that statelessness denies children, women, and men the right to access essential human rights. For example, a stateless person is denied the right to have birth registration, a passport, and an Identity Document (ID). This leads to the inability to access key public services such as the public health system and the formal labour market. Ultimately, it denies people cultural, civil and political human rights. Furthermore, the impact of statelessness is far-reaching, especially on women and children such as when the law discriminates against the passing of citizenship to an accompanying spouse and the children. It can also be deployed for political purposes to reinforce discrimination against certain ethnic groups or segments of society. These groups urgently need protection from states and the international community.



To end statelessness, Gyulai argues that it begins with the collection and capturing of data on stateless persons. It then requires states to adopt a legal doctrine which is provided for by the UNHCR. Gyulai furthers his argument and calls for the “denationalization” of human rights which requires a paradigm shift away from the exclusive rights of “citizens”, towards the rights of “human beings”. Therefore, he concludes, the key to ending statelessness is ensuring that all persons have a nationality. This means that governments have to develop processes and procedures that can lead to the recognition of stateless persons by using two possible approaches.

According to Gyulai, the first approach can rely on proxy variables whereby government identifies specific features that resemble or accompany statelessness. For example, family names and type of work that stateless persons engage in. This will require a proactive outreach by the state through data collection or research. The second approach involves a more individualized approach and occurs usually when persons have no intimate ties with their country of origin and in a situation where a state is reluctant to grant nationality to an individual. In this case, individuals should be granted the same protection status as refugees.

To contribute to the ending of statelessness, Wadley and Ncube argue that it is also important to remove discriminatory administrative practices which contribute to statelessness. These practices range from the creation of language or educational barriers - whether deliberate or not - by the state, to disallow certain minority groups from accessing key documentation. Furthermore, these practices include the inability of the state, whether through the lack of capacity or through deliberate means, to provide facilities for birth registrations in rural and poor areas. For example, Ncube reveals that 1 in 5 children in SADC do not have birth certificates at the age of five (5). This example illuminates that the state is also a contributor to the statelessness of people who are undeniably its own nationals and should therefore take responsibility and accountability in ending it.

It was concluded that in order to contribute to the UNHCR Global Action Plan Campaign to end statelessness by 2024 and to ensure that stateless persons receive international protection, there are opportunities for states to ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention sets out the basic level of protection to which a stateless person is entitled. These rights include security and welfare rights. The 1961 Convention requires states to grant nationality to individuals who have an effective link to the state by birth or descent. It also sets out the conditions for granting nationality to those who would otherwise be stateless. These Conventions are important to create a legal obligation and political momentum for a state. Thereafter, it is an imperative of the state to develop procedures on how to overcome statelessness to provide a durable solution for stateless persons. Furthermore, the collection of data is also necessary to identify the gaps in the law that create potential disadvantages for stateless persons.

Moreover, the state must also determine how much of the population is affected by statelessness to confront political fear. As it currently appears, there is fear on the part of governments to handle this matter, in lieu of the large number of persons which statelessness affects. Additionally, governments may try to avoid the matter altogether for fear of a potential crisis. This fear is evidenced by the fact that many African countries have not ratified the 1954 Convention, including South Africa, amid xenophobic sentiments, labour migration and the African diaspora - which refers to the large number of people living outside their countries of origin. South Africa should therefore take this opportunity to become a pioneer in the global “Statelessness Renaissance”, following efforts to ensure that all human beings have access to basic human rights which come with having a nationality or registration.