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A perilous realm: The stateless/migrant nexus

Presentation by Jane E. Bloom, US Liaison Officer

Thank you, it is an honor to participate in today's panel discussion in commemoration of International Migrants Day. Thank you too to Bangladesh Ambassador Momen for sharing the news of your country's good progress in reducing statelessness.

I was especially pleased to learn that our session is jointly presented by three NGO Committees—not only the Migration Committee, but also the Committee on the Status of Women and the Committee on the Family; indeed, it is particularly apt for the three of us to join forces on this topic. For one thing, **migration is typically a family strategy**—for survival, protection, unity—and migration decisions will affect every member. To acquire basic rights elsewhere, stateless families are often forced to separate.

Other families are not given the choice; for example, when Ethiopia denationalized many people of Eritrean origin who then became stateless, about 75,000 were deported to Eritrea, forcing those family members remaining in Ethiopia to hide their identities and family ties. Second, **gender discrimination in national laws is rampant**, rendering many women stateless and extremely vulnerable. Third, **the children of those women may face a similar dilemma**, because in the majority of instances in this world, citizenship is conferred through the nationality of the father.

So the family and gender dimensions loom large; in fact they are the most prevalent cause of statelessness in the last 20 years, and I heartily welcome fellow panelist Ada Prince from the Women's Refugee Commission for her agency's advocacy on this issue.

You will also hear from another panelist, UNHCR's Wei-Meng Lim-Kabaa. UNHCR is the agency charged with the stateless protection mandate. It has made significant progress in recent years; for the first time, statelessness has gotten its own pillar and budget line for 2010 within HCR, no small feat.

In preparing my remarks for you today, I was reminded of a recent outing I took to the park with my two granddaughters. As we excitedly approached the carousel, we came upon a vertical yardstick-type sign, proclaiming that any child over 3 and 1/2 feet tall could pass through the gate and ride the merry-go-round. But any child under that height was barred entry. Well, my older granddaughter scurried on while the little one was left out in the cold, not happy.

Having a nationality is much the same: It is that access point, that yardstick sign, that gateway and link between state and individual. It becomes your ticket of admission in, if you will—and without it, you are barred entry to a whole host of your country's benefits, such as: owning property, opening a bank account, voting, legally working, legally traveling, accessing health care, accessing public education for your children, and having your marriage and your children's births legally recognized.

The right to a nationality is embedded in a number of international human rights instruments, including Article 15 of the Universal Declaration, Articles 7 and 8 of the Convention on the Rights of the Child, and Article 9 of CEDAW. In addition, there are two statelessness treaties: one (1954, 1961) centers on reduction of statelessness (1954), with a focus on the civil rights of stateless, including freedom of movement and right to due process; the other (1961) centers on prevention of statelessness, requiring countries to recognize as citizens those persons born in their territory.

Unlike the Refugee Convention, however, the stateless treaties have not been ratified by significant numbers of countries. This is largely because citizenship hits at the very heart of sovereignty, it is the sovereign prerogative of the state to decide, and international law gives the states wide discretion in making that decision, in defining who can be granted nationality within their territorial boundaries. So, for example, I just mentioned Article 15 of the Universal Declaration; the Catch 22 here is that while it grants the right to nationality, "it gives no clue as to how responsibility for granting citizenship should fall on a particular state." (*Forced Migration Review, April 2009, p5*)

As we are commemorating International Migrants Day today, the Migrant Workers Convention deserves special mention. Article 29 reads: "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality." Article 3, on the other hand, specifically excludes the stateless, stating: "The present convention shall not apply to...(d) refugees and stateless persons..."

This brings me to the focus of ICMC's work in this arena and to my perspective, or "lens", on this panel: the migration/stateless nexus. ICMC, particularly our Indonesian regional office, is on the front line in trying to close the huge protection gaps for stateless. On the policy side, we are chairing this year the International NGO Platform on the Migrant Workers Convention, a group of 22 international and national NGOs. Migration is, quite literally, our middle name.

But permit me to start with a disclaimer: most of the 13-14 million stateless in this world continue to live in their country of birth; that is, most stateless are not migrants. However, the link between the two is undeniably strong: statelessness is indeed a root cause of refugee movements and migratory movements. **The very act of migration puts the stateless into an even more perilous realm.** Here are four examples.

First, the trafficked and smuggled. Significantly, statelessness is both a cause and an effect of trafficking, the dark side of migration. In fact, the UN has reported that "lack of proof of citizenship is the single greatest risk factor for a girl or woman to be trafficked or otherwise exploited." Stateless people are prime trafficking targets, easy prey. There is no record of you ever existing, no pesky identification papers to dispose of. Trafficking is exacerbated by statelessness. Statelessness triggers trafficking. That's the causal side of the equation.

The effect side is equally compelling. It means that once trafficked, a person all too often becomes what is known as *de facto* stateless: he or she formally holds a nationality in the source country, but by the time the victim has reached the destination country, his documents and proof are long gone; he is now

in a situation where his nationality has been rendered “ineffective.” Whether cause or effect, statelessness also impacts the range of durable solutions we can provide to victims of trafficking; for example, it wrecks havoc with the notion of repatriation of victims - even the Palermo Protocol is silent on what to do with stateless victims; it instead confers protection and facilitated return only for nationals or those with the right of permanent residence.

A **second** group that often falls squarely into the migration/stateless nexus: refugees. In many cases, these people have been stripped of their nationality as an element of their persecution, and then they flee as now-stateless refugees. In other cases, refugees flee across a border and, as punishment for fleeing, their native country takes away – removes -- their nationality which renders them stateless upon arrival in the country of asylum.

Third, the children of irregular migrants. Many undocumented people are unable or afraid to register the births of their children in their country of destination, and these children can therefore be made stateless. Immigration laws in many places deny citizenship rights to children born of non-national parents, even if the consequence is statelessness. I have distributed copies of a UNHCR map that shows the countries in this world where statelessness is prevalent. It boils down to the way citizenship is conferred: by geography (*jus soli*) or by descent (*jus sanguines*). In the first case, the baby becomes a citizen of the state in which he is born, regardless of the nationality or legal standing of his parents. In the second case, the child takes on the citizenship of one or both of its parents.

Lastly, a **fourth** group of stateless migrants: I will call them, “The Brides”. The brides, these are the women who move countries to marry someone of another nationality. In many countries, the bride is required to take on the husband’s nationality and renounce her own nationality. She then becomes stateless if: (1) she never acquires her husband’s nationality (because it is too expensive or inaccessible) or (2) she gets divorced and returns to her homeland or (3) her husband becomes stateless. This happens so often it has become known as the “Lose a Husband, Lose a Country” syndrome. So now we have, for example, THOUSANDS of Vietnamese women who moved to marry Taiwanese men over the last 10 years as mail-order brides. When they come home to Vietnam after the marriage dissolves, they and their children have now become stateless, unable to work legally or qualify to get social assistance in Vietnam, ineligible for public education for their children.

But no matter what group these stateless migrants fall into, one thing is certain: they face tremendous protection risks. From a protection viewpoint, the stateless are without safeguards, no police protection, no means of recourse if they are robbed or raped, and no means of remedy if they are exploited as cheap or bonded labor. Detention and deportation are common. They find themselves in a situation where their removal from the country is unenforceable, yet they do not qualify for any protection status. We can truly call the stateless, “The **Un**protected.”

The protection gap at its furthest extreme was actualized with horror earlier this year when 410 stateless Rohingya migrants were taken out to sea on a Thai Navy vessel and forced onto an open barge with little water or food. Four were thrown overboard with their hands and feet tied as a way to encourage the others to board the barge.

There really is but one durable solution, one means of empowerment: acquiring a nationality.

But, as the saying goes, let’s not allow perfect to be the enemy of the good. In other words, let’s also consider some less-than-perfect, less-than-durable interim solutions; for example, we can explore the

so-called “complementary form of protection” whereby the stateless would have access to “tolerated stays” or “humanitarian resident permits.” Some might view these alternatives as “second class protection status,” but the pragmatist in me thinks that such options would afford the stateless migrants at least a degree of stability and human security until they are able to acquire an effective nationality. In short, these alternatives would take them out of the most perilous zone. We should also not forget the variety of “surrogate protection” options, including resettlement for the most vulnerable.

I hope we can harness the considerable commitment, innovation, and expertise represented here today amongst the three NGO Committees to arrive at some workable protection and empowerment strategies for this under-served, often invisible, unprotected, and highly vulnerable group of stateless people.

Thank you.