Facultad de Ciencias Humanas y Sociales
Grado en Relaciones Internacionales

Trabajo Fin de Grado

The legal figure of Statelessness and its impact on Fundamental Human Rights

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Madrid, junio 2021

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1. INTRODUCTION

1.1 Purpose and motivation

To have nationality means to be part of the social contract, whereby an individual is recognized by a state that grants him/her rights and obligations. This concept has evolved to the point of being defined as a Human Right in International Law, demonstrating that it is a key aspect for the development and wellbeing of every person. Stateless persons are not nationals of any place and therefore cannot enjoy basic rights such as access to education, healthcare services, decent housing, employment and legal protection. The motivation for the subject of this study stems from the interest in the interrelation of human rights, and how the denial of nationality has a direct impact on the deprivation of other human rights.

Moreover, this issue is of great importance to the research community because it affects a large number of people; the exact figure is unknown at present, but according to the United Nations High Commissioner for Refugees it is estimated that there are more than 10 million stateless people and at risk of statelessness in the world (UNHCR, 2021). Despite the seriousness of the situation, the protection of the right to nationality has not been given sufficient priority. There are international instruments that attempt to alleviate the challenges faced by stateless people, such as the *Convention relating to the Status of Stateless Persons* adopted in 1954 and the *Convention on the Reduction of Statelessness* adopted in 1961. However, the function of granting nationality and regulating its protection corresponds to the domestic law of each state, creating a controversial situation with respect to the rules of international law. There are also major differences between the norms for nationality in each state; some allow dual or multiple nationality, some have stricter requirements than others, and in other cases the rules are even discriminatory. For instance, in 25 states women are not allowed to transfer nationality to their children, which deprives many children of their right to nationality and access to other basic rights (UNHCR, 2021).

There is still a long way to go, starting with a more accurate measurement of the number of stateless people and those at risk of statelessness. If the states do not have a good population census system and do not constantly provide information on the number of

stateless persons, it is difficult to determine the actual magnitude of the problem. State cooperation is key, both to provide information on an ongoing basis and to be more flexible in modifying or adapting their internal rules on nationality to help prevent, identify and reduce cases of statelessness around the world.

1.2 Objectives and methodology

This study pursues three objectives:

First, to analyze the evolution of the problem and the current data on the number of stateless persons and the groups and places most affected.

Second, to gather and examine the existing universal and regional instruments for the protection of the right to nationality and stateless persons, as well as the role of International Organizations. Thanks to the development of International Law and the work of International Organizations, statelessness has become increasingly relevant, greater attention has been paid to its study and more instruments and projects have been created. Instruments for the protection of refugees have also been used to meet the needs of stateless persons, but as it is a different situation, it needs its own protection mechanisms.

Third, to show the direct relationship between statelessness and the deprivation of other human rights. People who are denied nationality are socially and legally unprotected, which makes it impossible for them to lead a dignified life in the place in which they live.

Two research questions arise from these objectives: What measures are missing to ensure the protection of stateless persons? Is it possible to reduce in great extent and even eradicate statelessness in the near future?

Theoretical information and statistical data have been compiled from secondary sources such as books, articles, organization and governmental websites. The texts of international treaties and conventions, international jurisprudence on nationality have also been used. In addition, reports from organizations have been used to develop the cases of specific stateless groups. Regarding the structure of the study, first, the concepts of nationality and statelessness are defined, as well as issues such as the ways of acquiring nationality and the causes that lead to statelessness, in order to understand the root of the matter. This is followed

by an analysis of the legal instruments that exist for the protection of the right to nationality and stateless persons at both the universal and regional levels. Then, through the analysis of data on statelessness, the seriousness of the problem is shown. The role of the initiatives of the United Nations, the Council of Europe and the OSCE is also analyzed. Finally, the situation of one of the biggest stateless groups, the Rohingya, is described, highlighting their vulnerability to human rights violations and the urgency of implementing more effective protection measures.

2. STATE OF ARTS

2.1 Concept of nationality

Nationality establishes a legal and political link between the individual and the state, it entails the diplomatic protection of the country of nationality and it is a prerequisite for the exercise of human rights (International Justice Resource Center, 2021). Hannah Arendt already referred to this concept as "the right to have rights" (Arendt, 1958), which highlights the importance of having a nationality for daily life within a state, as well as for the development of freedom and human rights of individuals.

The origin of the concept of nationality dates back to classical Greece, 2500 years ago. According to Aristotle, the human being is a social being, and therefore there is a need to live in community. The concept of citizenship arises from the coexistence and relationships established in society. At first, women, metics (foreigners) and slaves were not considered citizens and did not enjoy political and civil rights. Later, the Roman model considered different degrees, which made it possible for even slaves to have the possibility of enjoying the rights of citizenship. This concept started to imply an active defense of rights and the extension of its limits. Although the concepts of nation and citizenship are different, from the 18th century onwards they began to be interpreted as related concepts. For example, in the French Revolution, the nation is interpreted with political criteria and it is believed that the nation is the depository of sovereignty (Horrach, 2009).

As a general rule, questions of nationality fall within the domestic jurisdiction of states, but their action may be limited by the actions of other states or by international norms. As the Permanent Court of International Justice determined in 1923 in the Advisory Opinion on the Decrees concerning the Nationality of Tunisia and Morocco, *"the question whether a matter is exclusively within the domestic jurisdiction of a State is essentially a relative question; it depends on the development of international relations"* (UIP-ACNUR, 2014). The relative question of nationality continues at present, it is not possible to determine exactly to whom it corresponds to resolve each particular case, but it is a matter of ensuring that the actions of the states do not go against what is established in international legal instruments.

2.1.1 Right to nationality

Having a nationality is a fundamental human right, and everyone has the right to acquire, change or maintain his or her nationality. According to international law, states do not have all the power to grant or withdraw nationality but must respect human rights (UNOHCHR, 2021). One of the first advances towards the recognition of nationality as a human right was the adoption of 1930 *Hague Convention on Certain Questions Relating to the Conflict of Nationality Law*. This is the first time that limits have been set internationally to decisions on nationality issues by states, which had always been omnipotent in this respect. After the end of World War II, the creation of multiple international and regional human rights instruments also contributed to consolidate and highlight the right to nationality (Mekonnen, 2020). The most prominent of these instruments is Article 15 of the Universal Declaration of Human Rights of 1948. This article states:

> *"1. Everyone has the right to a nationality.*
> *2. No one shall be arbitrarily deprived of his nationality nor of the right to change his nationality"* (Universal Declaration of Human Rights, 1948).

The case of Anudo Ochieng Anudo v Tanzania further drives the presence of this Article 15. It is the first case in which the African Court on Human and Peoples' Rights contemplates the right to nationality. The Court determined that Tanzania arbitrarily deprived an applicant of nationality and expelled him. It interpreted several instruments such as the *African Charter on Human and Peoples' Rights*, t*he International Covenant on Civil and Political Rights* and

the article 15 of the *Universal Declaration of Human Rights*. The most important thing to note about the case is that the African court elevated the status of Article 15 to customary international law (Manby, 2018).

2.1.2 Conferral and recognition of nationality

The rules of each state differ with respect to the conditions for acquiring and granting nationality, but there are mainly two systems for acquiring nationality by birth, *ius soli* and *ius sanguinis.* In states where *ius soli* applies, nationality is acquired by birth in the state's territory and the status of the parents is not taken into account. On the other hand, when *ius sanguinis* is applied, nationality is acquired by descent from at least one of the parents who is national of the state, regardless of the birth's territory. In some cases, such as in the United States, both criteria are applied (International Justice Resource Center, 2021).

The 1961 *Convention on the Reduction of Statelessness* recognizes other scenarios in which the states should grant nationality. For instance, in the case of birth on board a ship or an aircraft, it is considered the territory of the state whose flag the vessel flies or the territory of the state in which the aircraft is registered. In the case of foundlings (abandoned children), they are considered nationals of the territory in which they were found. Moreover, individuals who were born outside the territory of the state, but who have parents with the state's nationality at the time they opt for it, may acquire it by *option*, and individuals who have regularly lived for a certain period of time in the territory of another state may acquire nationality by *naturalization* (Lepoutre and Riva, 1998). Among the requirements for *naturalization* are, for example, a minimum period of residence, knowledge of the language or even an oath of allegiance. States look for a certain commitment and affinity to consider someone as one of their nationals. In the *Nottebohm judgment* of 1955, the International Court of Justice already declared the importance of the existence of an effective or genuine link as justification for granting nationality, between the person who opts to acquire nationality and the state in question, in addition to having to be respected by the other states (Henrard, 2018).

2.2 Concept of Statelessness

The *Convention relating to the Status of Stateless Persons* of 1954 defines the term stateless person as *"a person that is not considered national by any State under the operation of its law"*. It also considers the cases when the provisions of the Convention should not apply:

> *"(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance:*
>
> *(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country:*
>
> *(iii) To persons with respect to whom there are serious reasons for considering that:*
>
> *(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;*
>
> *(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;*
>
> *(c) They have been guilty of acts contrary to the purposes and principles of the United Nations."*

In Article 2, it establishes the general obligations that stateless persons must comply with:

> *"Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order"* (Convention relating to the Status of Stateless Persons, 1954).

There are two types of statelessness in theory, *de iure statelessness* and *de facto statelessness*. *De iure statelessness* is that which is included in the 1954 Convention, however *de facto statelessness* has been constantly questioned (Massey, 2010). This last term is normally related to the concept of "effective nationality", according to the UNHCR "*de facto stateless* persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country". It also contemplates the case of persons who have more than one nationality; they are *de facto stateless* if they are outside all the countries of their nationality. For example, some valid

reasons are the situations in which undocumented migrants find themselves, when the state to which an application is made does not identify the person as a national, and does not allow the person's return, or refugees who are outside their country of nationality and are unwilling to avail themselves of its protection because of the fear they are subjected to. It should be noted that the 1954 and 1961 Conventions are legally binding only with respect to *de iure stateless persons*, and it is therefore of great importance to clearly define the conditions that lead to *de facto statelessness,* as well as the mechanisms that should be used to provide protection to these persons. The Final Act of the Conference that drew up the 1961 Convention, recommends that "*de facto stateless persons* be treated as *de iure stateless persons* as far as possible, so that they can enjoy effective nationality" (Massey, 2010).

2.2.1 Causes of Statelessness

There are several causes that can lead to statelessness, and among the most common are the following:

a) Conflict of laws and administrative practices:

Statelessness is often the result of a lack of coordination of legal and administrative aspects. The conflict of nationality laws between two states can deprive the individual of nationality, when for example a person is born in a state where *ius sanguinis* applies, but the parents are nationals of a state where only *ius soli* applies. Another case of conflict of laws occurs when one state requires the individual to renounce his or her nationality before acquiring the new one, but the other state only allows the individual to renounce it when he or she has already acquired other nationality. In the nationality regulations of some states there is also the possibility of automatically revoking an individual's nationality in the event that he or she leaves the country or does not habitually reside in that state (UIP-ACNUR, 2014). If these individuals are not informed of the procedure to be followed to maintain it, they may end up losing their nationality. In addition, administrative hurdles such as excessive fees, time limits and delays and the impossibility of obtaining documents held by the other state also prevent the individual from acquiring nationality (UIP-ACNUR, 2014). The lack of birth registration is also an administrative aspect that puts the individual at risk of statelessness, since without

registration there is no proof of the territory of birth, nor the nationality or birthplace of the parents (International Justice Resource Center, 2021).

b) State succession:

The UNHCR defines state succession as *"the transfer of sovereignty or territory between states"*, and four scenarios can occur: a part of a state's territory is transferred to a second state; more than one state joins together to create a state with a larger territory; a state divides into two or more independent states; and finally a part of a state's territory separates to become an independent state (UNHCR, 2012). As a consequence of this change in the territory and sovereignty of states, nationality laws may change and individuals who find themselves in the territory of a new state or who are former nationals of a non-existent state may find themselves in a situation of statelessness. Their ability to acquire a nationality or have their existing nationality recognized depends on the states' decision as to whether the individual meets the requirements or the necessary link exists between the individual and the state, and on subsequent administrative procedures (UIP-ACNUR, 2014).

c) Discrimination:

One of the main problems with respect to statelessness is that there is discrimination in the very laws of the states that regulate the acquisition of nationality. Discrimination exists for example on the basis of race, religion, ethnicity, gender and opinion and states do not always discriminate openly, but it is evident in the content of their laws, or in the result of their implementation. According to a report by the UNHCR on gender discrimination in state nationality laws, in 25 states women are not allowed to transfer their nationality to their children on equal terms with men. In some countries such as Iran, Somalia and Qatar nationality laws do not allow women to transfer their nationality to their children under any circumstances, or in very few cases. In others such as Iraq, Syria and Malaysia the law allows it in exceptional cases where there is no other way to avoid statelessness, and in one country, Mauritania, the state makes it difficult for women to transfer their nationality but proposes other means to ensure that the risk of statelessness is greatly reduced (UNHCR, 2018). In situations of change of civil status, whether through marriage or divorce, there are also laws that discriminate against women; some require women to adopt their husband's nationality

and others automatically revoke their nationality for marrying a person from another state. This implies a high risk of statelessness because those laws do not provide for protection if the husband has no nationality, if the husband dies, or the woman divorces (UNHCR, 2012). On the other hand, minorities are also subjected to many forms of discrimination that jeopardize their right to nationality and further increases the inequality and difficulties they face for being excluded. In 2017 more than 75% of stateless persons worldwide belonged to minority groups; some of these stateless groups are the Karana, the Roma, the Pemba, the Makonde, the Rohingya and the Kurds (UNHCR Division of International Protection, 2017). Discrimination in nationality laws or in the practice of some states not only has consequences for the lives of these women or minority groups, but their children and other generations to come will continue to face obstacles to be recognized as nationals and therefore have access to fundamental rights.

d) International migration and forced displacement:

Statelessness is closely related to migration and to the status of a refugee, an asylum seeker, an internally displaced person and an externally displaced person. When emigrating, a person may be discriminated against in the place where he/she arrives for reasons such as being of a different ethnicity, and the same state may be the one that hinders the granting of nationality. Some administrative practices may also put the migrant at risk of statelessness, in states where the nationality of a person who has been outside the territory for a certain period of time is revoked. Using fake documentation can also put the migrant at risk of statelessness, as states are very strict about this, and end up putting obstacles in the way when the person wants to acquire nationality or enjoy basic rights. Although in other occasions the corresponding authorities automatically assume that the documentation presented is not valid, thus discriminating against the person (Albarazi and Waas, n.d).

In the case of forced displacement, there are numerous situations that can lead to statelessness; loss of documentation in displacement, or even lack of identification prior to forced displacement, deliberate destruction of documentation by the authorities of the country where they were, destruction of documents due to conflicts or disasters in the area where they were. It may also be difficult to obtain documentation because there is no civil

registration system in the area where they have been displaced or because the persons in charge of this registry cannot access the area. The lack of documentation hampers the recognition of nationality, the acquisition of it, or the recognition of some kind of protection, like the refugee status, since it is not possible to prove the link with any state, and in turn the wait and the administrative procedures to recover the documentation can be endless (Manby, 2016). The lack of documentation is not only a problem of displaced people, according to the World Bank data in 2018 about one billion people did not have an official identification document worldwide, with almost half of them living in sub-Saharan Africa, and with many more unidentified women than men (The World Bank Group, 2018). The following image represents the different categories of migration depending on whether the person is living outside the country of birth or changes his/her habitual residence, whether the person is fleeing persecution, natural disaster or violence within or across borders, whether the person is seeking refugee status or the person has already been granted refugee status. As can be seen, in all cases these people may be undocumented, and due to the obstacles that this entails, result in statelessness.

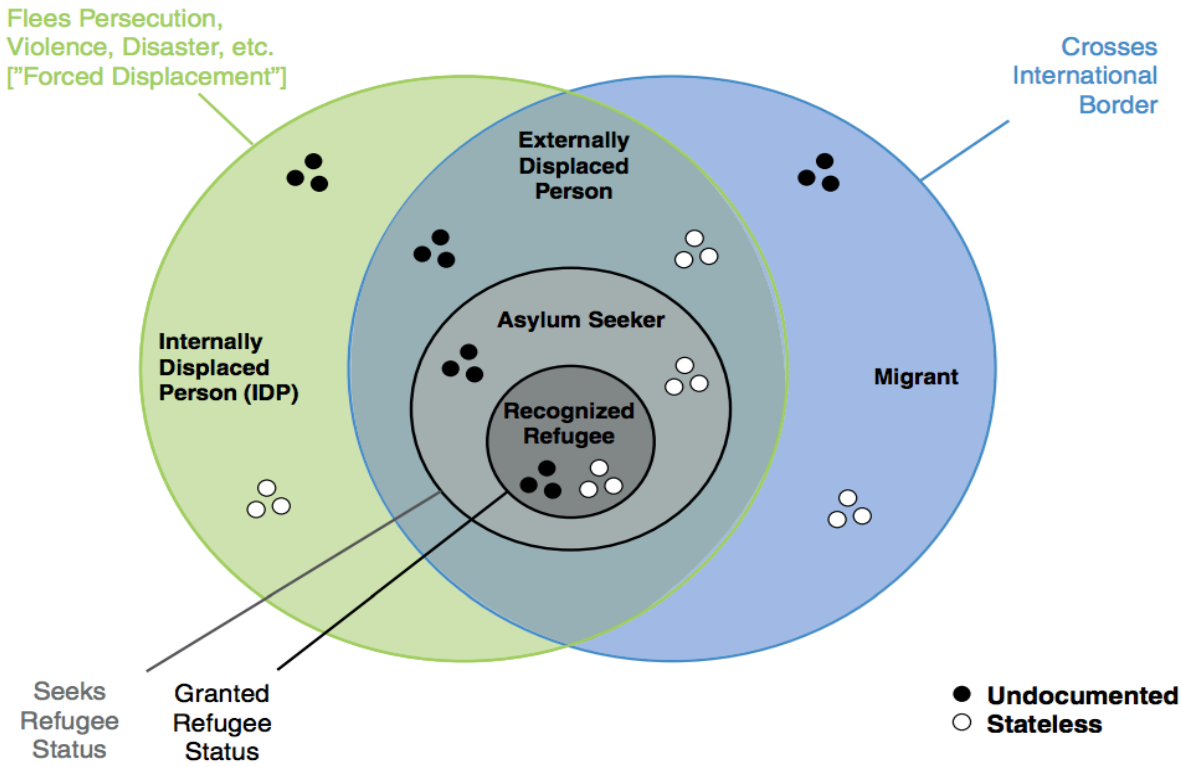

Figure 1. Typology of Migration Categories. (Manby, 2016)

e) Practices that affect children:

All of the above situations also jeopardize children's right to acquire nationality. The lack of birth registration prevents proving the child's link to the territory where he/she was born or to the territory of his/her parents. Discriminatory laws that prevent the mother from passing on her nationality put the child at risk of statelessness when the father is stateless or unable to pass on his nationality. Orphans and foundlings sometimes do not have a confirmed nationality, and through adoption in some states, problems can also arise if the children cannot acquire the nationality of the adoptive parents (UIP-ACNUR, 2014). Moreover, migrant children, which Jyothi Kanics refers to as "children on the move", also encounter difficulties when the nationality laws of more than one state conflict, when crossing borders or for being born in another territory. In cases of deportation or forced expulsion of these children, they may have difficulties to be recognized as having some kind of link to the territory where they are, or they may even have been expelled without documentation proving their identity (Kanics, 2017).

f) Arbitrary deprivation of nationality:

Each state has the right to revoke nationality or not to grant nationality, as provided for in its laws. Nevertheless, such actions must be consistent with international law, and in particular respect for the right to nationality. In practice, however, there are still cases in which the state arbitrarily deprives its citizens of their nationality through discriminatory procedures and norms, leaving the person stateless and without access to basic rights. In addition, this can result in the expulsion or forced displacement of people from their country (Amnesty International, 2017).

2.3 Evolution and current data on statelessness

In their joint work T.Bloom, K. Tonkiss and P. Cole consider that the perception of the concept of statelessness has been changing, and three main moments can be distinguished: at the end of the Second World War, it was conceived as an exception of the moment, however at the beginning of the 21st century it began to be seen as a phenomenon, and is now

perceived as a consequence of, or something ingrained in modernity (T. Bloom, K. Tonkiss and P. Cole, 2017).

Attention to cases of statelessness is not something new, but there has been considerable progress in the ways of trying to combat it. At the end of the 19th century, not having a nationality was already seen as a very serious matter. In the 20th century, the problem of statelessness gained more attention from international organizations. For example, in 1922 the League of Nations was already pressing for the issuance of identification for the recognition of nationality (UNHCR, 2014). Moreover, in 1943, in response to the great wave of refugees resulting from World War II, the *United Nations Relief and Reconstruction Administration* was created. Its work consisted in helping displaced persons and refugees, and in 1946 the *International Organization for Refugees* took over its function. In 1952, this organization became the *United Nations High Commissioner for Refugees* (Nervión, n.d). In addition, the creation of the *Universal Declaration of Human Rights* in 1948, and the subsequent conventions on the protection of the rights of stateless persons and the reduction of statelessness, also represent a breakthrough as ways to protect stateless people and put pressure on states (UNHCR, 2014)

The following graph shows the evolution of the number of stateless persons from 2004 to 2019:

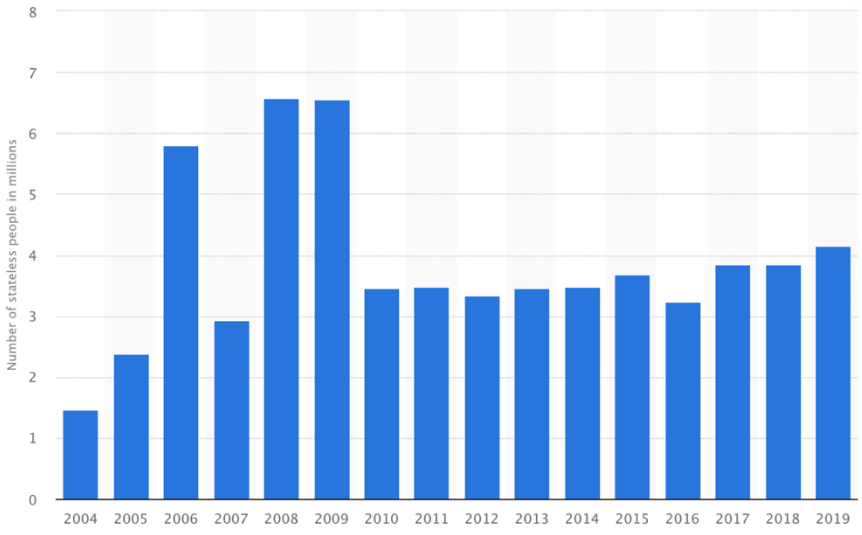

Figure 2. Number of stateless people worldwide from 2000 to 2019. (Szmigiera, 2021)

As can be seen, the highest number of stateless persons was recorded in 2008 and 2009, although in the following years the figures remained considerably lower. In 2011, UNHCR held an important intergovernmental meeting in Geneva, where a large number of countries agreed to fulfill a wide range of commitments regarding the reduction of statelessness in their countries, which may be one of the reasons why the figures remained lower than in previous years (UNHCR, 2011). In mid-2020, 4.2 million people were registered as stateless, although it should be noted that this number does not represent the real magnitude of the problem. In fact, the real number is not registered because a large number of countries do not record or publish the data, which also is one of the main impediments to tackle the problem (UNHCR, 2020).

It is also a relevant problem for the countries of the European Union, where a total number of 399,283 stateless persons, including Norway, were registered in 2018. Although one positive aspect is that children only accounted for a small percentage according to the 2017 data (European Commission, 2020). This is not the case globally, where in 2019 children accounted for 48% and women for 51% of stateless persons (ACNUR, comité español, 2020). In addition, an important fact is that the majority of stateless persons belong to minority groups, representing in 2017, 75% of the total number of registered cases (UNHCR Division of International Protection, 2017).

This map shows the areas of the world most affected by the problem of statelessness:

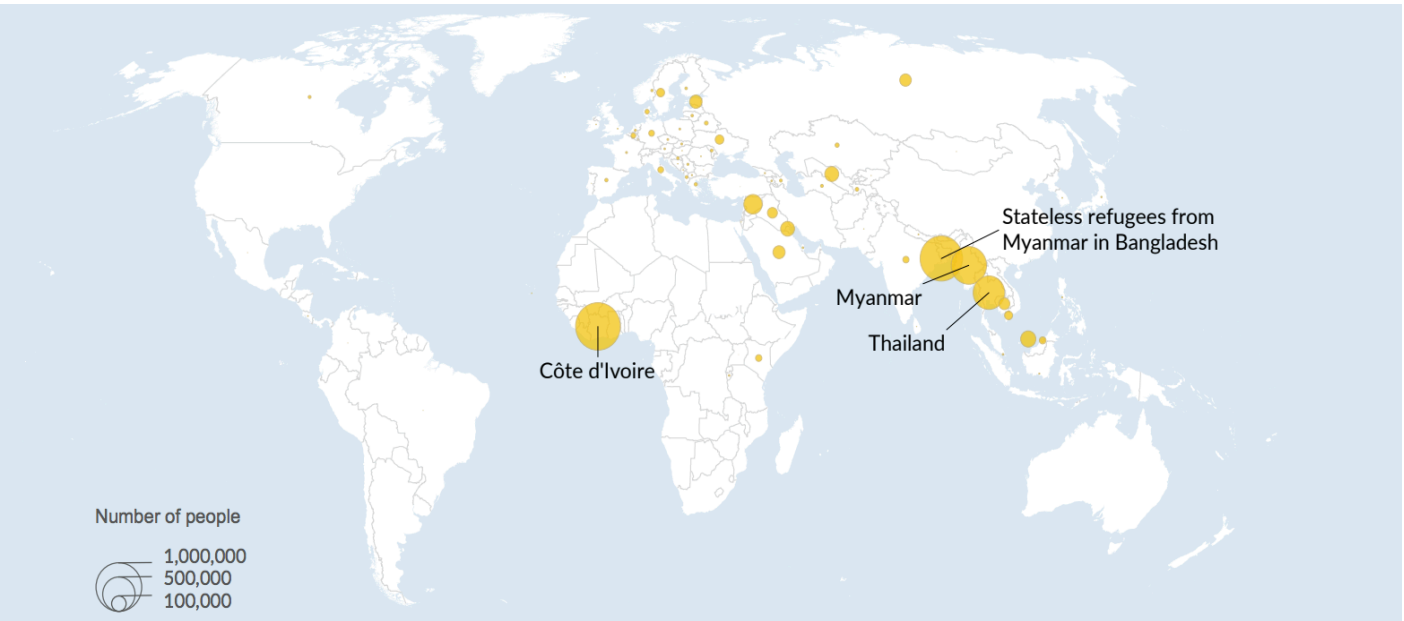

Figure 2. Number of stateless persons by country (UNHCR, 2020)

The map indicates that the countries with the highest numbers are Côte d'Ivoire, Myanmar, Bangladesh and Thailand. In addition, the Rohingya minority in Bangladesh represents the largest stateless population in the entire region, of which 56% were children and young people in 2019, and 52% were women (ACNUR, comité español, 2020).

3. UNIVERSAL LEGAL FRAMEWORK

To ensure the protection of stateless persons and reduce the number of stateless persons worldwide, international law has instruments that limit the actions of states and in turn guide them to ensure that their laws provide for the protection of the right to nationality. These legal instruments are crucial to ensure that stateless persons can lead a dignified life in the place where they live or where they find themselves and provide detailed provisions for the vast majority of circumstances that a stateless person, or a person at risk of statelessness may face. However, they also have certain limitations, and signature and accession or ratification does not always translate into effective implementation of their provisions.

a) Instruments addressing specifically statelessness and refugees:

There are two instruments that deal specifically with the issue of statelessness at the international level. Firstly, the *Convention relating to the Status of Stateless Persons*, adopted in 1954. As stated in its preamble, it was created to define and regulate the status of stateless persons and to establish guidelines to enable them to exercise their rights. Until then, the 1951 *Convention relating to the Status of Refugees* only protected stateless persons who were also refugees. As previously mentioned, the 1954 Convention begins by defining in article 1 the term "stateless person" and stating in which cases the convention does not apply, and in article 2 it explains the general obligations of the stateless person. Article 3 addresses one of the main causes of statelessness, discrimination: *"the Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin"*. The following chapters mainly stipulate that the state must treat the stateless person in the best possible way and not under less favorable conditions than nationals with respect to judicial status, or gainful employment. Articles in chapter 4 dictate

that states must ensure that stateless persons have access to basic services and rights, such as housing and education, as if they were nationals. Lastly, chapter 5 addresses administrative practices, for example article 27 declares *"the Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document"*, article 31.1 prohibits the expulsion of stateless persons except on grounds of security or public order, and article 32 requires states to facilitate as far as possible their naturalization (Convention relating to the Status of Stateless Persons, 1954).

For this Convention to be of real use, the vast majority of states should commit themselves to comply with its provisions; it is only binding when the state ratifies it. It currently has 23 signatures and 95 parties (UN Treaty Series 2021, vol.360 p.117). In addition, the parties may also make reservations (except to articles 1, 3, 4, 16.1, and 33 to 42 included), and therefore not comply with some of the provisions (Convention relating to the Status of Stateless Persons, art. 38, 1954). It should also be noted that the convention does not apply to *de facto stateless* persons as there is no clear definition for their status in international law, nor does it determine the right of stateless persons to acquire the nationality of a particular state, it only requires states to facilitate their protection and naturalization (UNHCR, 2014).

On the other hand, the *Convention on the Reduction of Statelessness* adopted in 1961 was created with the objective of preventing new cases of statelessness and thus reducing it. To this end, it stipulates detailed provisions on granting or non-deprivation of nationality to be implemented by the domestic nationality legislation of each state (UNHCR, 2014). Articles 1 to 4 establish measures to prevent children to become stateless. For instance, article 1 states *"A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless"*. Articles 5 to 7 require that the acquisition of another nationality be guaranteed prior to the loss or renunciation of nationality. Articles 8 and 9 prohibit deprivation of nationality when the person may be stateless and on grounds of discrimination but provide for exceptions, such as in cases where nationality has been fraudulently obtained. Article 10 provides that in case of state succession, measures must be established in the negotiation to ensure that no person becomes stateless. If these measures are nor established or there is no negotiation or treaty, the states involved must grant nationality to avoid

statelessness due to the transfer of territory (Convention on the Reduction of Statelessness, 1961). Each state has the right to establish and apply its own legislation on nationality, but it is essential that they commit to adapt and implement them in accordance with international law in order to prevent further cases of statelessness; the 1961 Convention currently has 5 signatories and 76 parties (UN Treaty Series 2021, vol.989 p.175). States may also make reservations, but in this case only to articles 11, 14 and 15 (Convention on the Reduction of Statelessness, art 17, 1961).

Annex 1 shows the number of parties to the 1954 Convention, the 1961 Convention, and the states that are party to both Conventions. It is essential to address the issue of statelessness that states become parties to both Conventions because although the 1961 Convention provides in detail measures to grant nationality and prevent new cases of statelessness, the 1954 Convention is of utmost importance, as it seeks to protect and ensure access to basic rights to persons while they are stateless. As can be observed, there are still many states that are not party to either Convention, most countries in Asia, the Middle East, and quite a few countries in Africa (UNHCR, 2019). States can join both Conventions at any time by depositing with the UN Secretary-General an Instrument of Accession, signed by the Head of State, Head of Government or Minister for Foreign Affairs of the country (UN Office of Legal Affairs).

In the case of stateless persons with refugee status, they are protected by the provisions included in the *1951 Convention Relating to the Status of Refugees*. It gives a concrete definition of "refugee" and clarifies who does not qualify for refugee status, establishes basic standards for how states should treat refugees and ensure their access to basic rights. In addition, article 31 provides that no penalty may be imposed on a refugee if he or she enters the territory of a state illegally and there is good cause for this; articles 32 and 33 prohibit the expulsion or return ("refoulement") of the refugee, but determine that in case of the need for expulsion the state must give the refugee time to seek legal admission to another state, and article 34 requires states to facilitate the naturalization of refugees (Convention Relating to the Status of Refugees, 1951). The 1967 *Protocol relating to the Status of Refugees* was created to eliminate the geographical and temporal barriers of the 1951 Convention and to

give its provisions a universal character, since the convention only considered the cases of persons who had become refugees due to events prior to January 1, 1951 in Europe (Protocol relating to the Status of Refugees, 1967).

b) Main Human Rights Instruments:

Another very important instrument regarding the right to nationality is the *Universal Declaration of Human Rights of 1948*. Article 15 declares that everyone has the right to a nationality and manifests against arbitrary deprivation of nationality or denial of change of nationality (UDHR, art.15, 1948). Although this instrument is not legally binding, it is generally considered the basis of International Human Rights Law, on which many legally binding human rights instruments or initiatives and values of human rights organizations are inspired. Its consideration as customary law or not, is relative since it depends on judicial interpretation, as in the case of Anudo Ochieng Anudo v Tanzania previously mentioned (Manby, 2018). Moreover, *the Declaration on the Human Rights of Individuals who are not nationals of the country in which they live* of 1985 establishes provisions to ensure non-discrimination and the protection of the basic rights of "aliens". In its article 1 the term "alien" is defined as "to any individual who is not a national of the State in which he or she is present" (Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, 1985).

In addition, article 24.3 of the *International Covenant on Civil and Political Rights* determines that all children have the right to acquire a nationality, and article 24.2, that all children must be registered immediately after birth (ICCPR, art. 24, 1966).

c) Instruments addressing specific groups:

The following instruments are useful to protect the right to nationality with respect to specific aspects or conditions. For example, article 7 of the *Convention on the Rights of the Child* also states that every child must be registered immediately after birth and have the right to a nationality, and that states must protect this right by respecting international instruments, especially when the child would otherwise end up stateless (CRC, art. 7, 1989). Regarding

child's identity, article 8 determines that states must respect the child's identity and, in the event of unlawful deprivation, provide the necessary means to reestablish it rapidly (CRC, art.8, 1989). Article 5(d)(iii) of the *International Convention on the Elimination of All Forms of Racial Discrimination* requires states to prohibit and eliminate all forms of racial discrimination and to guarantee without discrimination the right to nationality (ICERD, art.5(d)(iii), 1965). Article 18.1 of the *Convention on the Rights of Persons with Disabilities* requires states to recognize the right of persons with disabilities to acquire or change their nationality and to ensure that they are not arbitrarily deprived of their nationality or identification documentation on the basis of disability. Article 18.2 refers to children with disabilities and their right to be registered immediately after birth (CRPD, art.18, 2007).

Article 9.1 of the *Convention on the Elimination of All Forms of Discrimination against Women* declares that states must guarantee women the same rights as men with respect to the acquisition, change or retention of nationality, and determines that marriage to a foreigner must not entail the automatic loss or change of the woman's nationality. Article 9.2 stipulates that women must have the same rights as men regarding their children's nationality (CEDAW, art.9, 1979). Furthermore, the *Convention on the Nationality of Married Women* establishes safeguards to protect the woman's right to nationality and to prevent her from becoming stateless in the different situations that may arise in the event of marriage to an "alien" or the husband's change of nationality (Convention on the Nationality of Married Women, 1957).

4. REGIONAL LEGAL FRAMEWORK

EUROPE:

There are also instruments related to the right to nationality and stateless persons at the regional level. Firstly, at the European level, the *European Convention on Nationality* defines nationality in article 2 as *" the legal bond between a person and a State and does not indicate the person's ethnic origin"* and establishes guidelines regarding the acquisition, loss, renunciation or recovery of nationality and others in case of state succession. Moreover, in article 4 it provides several principles on which nationality rules should be based:

"a. everyone has the right to a nationality;

a. *statelessness shall be avoided;*
b. *no one shall be arbitrarily deprived of his or her nationality;*
c. *neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse."*

(European Convention on Nationality, 1997).

In addition, the Convention on the avoidance of statelessness in relation to State Succession adds more detailed safeguards and other rules on how to avoid statelessness due to state succession (Convention on the avoidance of statelessness in relation to State Succession, 2006).

AMERICA:

The American Declaration of the Rights and Duties of Man declares in its article 19 that everyone has the right to the nationality that corresponds to him or her according to the law, and also to change it (American Declaration of the Rights and Duties of Man, art.19, 1948). In addition, article 20 of the *American Convention on Human Rights* affirms that every person has the right to nationality, and in the event of not being able to acquire any other nationality, the person must acquire the nationality of the territory where he/she was born. In turn, no person shall be arbitrarily deprived of his nationality or of the possibility of changing it (American Convention on Human Rights, art. 20, 1969).

AFRICA:

With respect to the right of children to acquire a nationality, Article 6 of the *African Charter on the Rights and Welfare of the Child* also determines that all children must be registered immediately after birth and that in the event that the nationality is not granted by the laws of the country concerned, the child must acquire the nationality of the territory where he/she was born (African Charter on the Rights and Welfare of the Child, art.6, 1990). Regarding women's nationality rights, Article 6(g) of the *Protocol to the African Charter on*

Human and People's Rights on the Rights of Women in Africa provides that women have the right either to retain their own nationality or to acquire their husband's nationality, and Article 6(h) provides that women have the same rights as men with respect to the nationality of their children as long as it is not contrary to domestic law (Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, art. 6, 2003).

ARAB WORLD:

Finally, Article 24 of the *Arab Charter on Human Rights* states that no person shall be arbitrarily deprived of his nationality or of his right to acquire a new one (Arab Charter on Human Rights, art.24, 1994). However, this instrument has been criticized for having certain limitations, since there is not an effective enforcement mechanism to ensure that states parties comply with its provisions (Al-Midani, 2008).

5. ANALYSIS

5.1 Role of International Organizations in dealing with statelessness

Apart from legal instruments, the role of international organizations is also important in the fight against statelessness. In particular, the United Nations, the Council of Europe and the OSCE have good initiatives that contribute to putting pressure on states to reduce statelessness and to protect the rights of people affected by this problem. Moreover, according to the study on nationality and statelessness by Eduardo Trillo, these three organizations have traditionally worked together on the problem of statelessness, drawing on information from different experts while publishing reports and organizing joint conferences (Trillo, 2005).

5.1.1 United Nations

The 1948 *Universal Declaration of Human Rights* and the conventions of 1954 and 1961 were a fundamental contribution to progress against statelessness. In addition, this organization currently has a very relevant project and several mechanisms that contribute to the work of reducing statelessness:

a) Project #IBELONG:

UNHCR, the UN body in charge of promoting and protecting the rights of refugees and stateless persons, created the #IBELONG campaign in 2014. The aim is to eradicate the problem of statelessness in ten years. Invites states to commit to a series of actions that are in line with the provisions set forth in the 1954 and 1961 conventions on statelessness (Bloom, 2014). The campaign consists of 10 actions that aim to mitigate the problem of statelessness and also to obtain data from a larger number of countries in order to measure the true magnitude of the problem. Action 10 for example, focuses on having access to much more quantitative and qualitative information about the number of stateless persons, achieving access to data from 150 countries by 2024 (UNHCR, 2014).

b) General Comments regarding statelessness and nationality:

The General Comments of the treaty bodies are a useful tool mainly to understand the different provisions of the treaties. They serve to clarify certain articles of the conventions, or to develop them further. The General Comments on articles related to statelessness and the right to nationality allow for their proper interpretation. For example, General Comment no. 17: Article 24 (Rights of the Child) clarifies that the state must ensure that the child acquires nationality at birth by all means, in order to avoid statelessness (HCR, 1989).

c) Special Rapporteur on minority issues:

Although there is no Special Rapporteur for the right to nationality specifically, one of the topics covered by the Special Rapporteur on minority issues is statelessness. Considering that the majority of stateless people in the world belong to minority groups, this figure is quite relevant. In his 2019 report on the various minority issues, he explains its functions, which consist in observing and investigating the concrete cases of the vulnerable situation of minorities. To this end, it conducts country visits to learn about the situation, help defend the rights of minorities and gather information. Through communications, he can denounce or appeal to states that have been accused of not respecting the rights of these minorities. In addition, by holding meetings and conferences in collaboration with governments or non-

governmental organizations, it seeks to promote the visibility of these minorities (UN General Assembly, 2019)

d) Universal periodic Review:

The UPR is another mechanism of the UN that encourages countries to make recommendations to other countries on how they should act to improve the human rights situation of their people. This mechanism is relevant because of the large number of recommendations made regarding the right to nationality and the problem of statelessness. In 2017, of the 57,686 recommendations made in the first round, 773 specifically addressed the right to nationality and stateless people (Institute on Statelessness and Inclusion, 2017).

5.1.2 Council of Europe

The work of the Council of Europe on the right to nationality and combating statelessness is also of great relevance at the European level. The 1997 *European Convention on Nationality* is a very important reference for the protection of this right. Moreover, it also has other more recent interesting initiatives. A good example is *The Action Plan on Protecting Refugee and Migrant Children in Europe* which was carried out between 2017 and 2019. This plan is focused primarily on ensuring that children can enjoy basic rights, on the effective protection of children and on facilitating their integration in the place where they arrive. The organization tries to address the issue by working on measures that had not been thought of before by other organizations (Council of Europe, 2017).

5.1.3 OSCE

The Organization for Security and Co-operation in Europe is a large regional security organization. The issue of statelessness has a strong influence on the stability and security in the different regions, so the organization also works to end this problem. It has two bodies through which it collects information on stateless people, and also communicates with governments to address cases that may occur in their territories. These two bodies are the Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM) (OSCE-UNHCR, 2017). It also stands out for its close

collaboration with UNHCR in the publication of reports on statelessness cases and recommendations, in addition to collaborating in the field and in the organization of international conferences. A relevant report regarding statelessness and elaborated by these two organizations in 2017, is the "*Handbook on Statelessness in the OSCE Area*" (OSCE, 2017).

5.2 Rohingya people and statelessness

The Rohingya are a minority located in South-East and South Asia. This group has faced discrimination and persecution for many years. Their history of fleeing as refugees has also contributed to them becoming one of the groups with the largest stateless population. In 2017, 1 million Rohingya refugees were registered, with the majority of them located in Bangladesh (UNHCR, 2017). A large percentage of people from this group fled to Bangladesh in 1978 and again in 1991, escaping discrimination (Centro de estudios sobre refugiados, 2009). Many others are in Myanmar where they are not considered an ethnic group in the country. One of the reasons for this discrimination, apart from social and legal, is the *1982 Citizenship Law*, by which nationality is supposedly acquired by birth. However, it was drafted in such a way as to exclude this minority (UNHCR Division of International Protection, 2017).

It is important to mention that neither Bangladesh, nor Myanmar have ratified the 1954 *Convention Relating to the Status of Stateless Persons* and the 1961 *Convention on the Reduction of Statelessness* (United Nations Treaty Collection, 2021). This makes it difficult for international organizations to exert more pressure on their states to change their nationality laws.

As a result of their stateless status, many of their fundamental human rights are affected, such as access to public health care; access to education; the right to property. They are even sometimes unable to afford basic food products as they are unable to find employment. As a marginalized minority they are also more susceptible to violence and abuse. The institutions themselves are also discriminatory towards them so it constitutes a never-ending cycle (UNHR, 2007)

6. CONCLUSIONS

Nationality is a concept that dates back to classical Greece, the beginning of civilization as we understand it today. It is a fundamental human right that has been enshrined in numerous legal instruments, both international and regional. Statelessness, defined as the inability to have a nationality, is a threat to the exercise of this human right. The central problem of statelessness is that nationality is the link that unites the individual with society and therefore also with its services and legal security. Therefore, not having a nationality,

The lack of nationality is not a new phenomenon, but there is an enormous difference in the projects and initiatives that try to eradicate it. There are numerous causes that generate statelessness, and the main problem that prevents the elimination of statelessness lies in the discriminatory nationality laws that many countries have. Nationality is regulated by the internal laws of the countries that often conflict with each other, which is why it is so costly to make progress**.**

In addition, the low level of data provided by many states also makes it difficult to measure the real magnitude of the problem, and as a consequence, initiatives are not carried out with such precision. The role of international organizations and their instruments are the most realistic way forward to address this issue. However, there is still much to be done, as the mechanisms to exert pressure on states are not as effective as we would like them to be, giving rise to problems such as that of the Rohingya community in Bangladesh and Myanmar.

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ANNEX I: Parties to the 1954 and the 1961 Statelessness Conventions (UNHCR, 2019).