



2016/2220(INI)

8.11.2016

DRAFT REPORT

on statelessness in South and South East Asia
(2016/2220(INI))

Committee on Foreign Affairs

Rapporteur: Amjad Bashir

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on statelessness in South and South East Asia (2016/2220(INI))

The European Parliament,

- having regard to the provisions of the UN legal instruments in the sphere of human rights, in particular those concerning the right to nationality, such as the UN Charter, the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of Racial Discrimination and the Convention on the Rights of the Child,
- having regard to other UN instruments on statelessness and the right to nationality, such as the UN High Commissioner for Refugees (UNHCR) executive committee's Conclusion No. 106 on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons,
- having regard to the UNHCR's Campaign to End Statelessness by 2024 and the International Campaign to End Gender Discrimination in Nationality Laws supported by the UNHCR, UN Women and others,
- having regard to UN Human Rights Council resolution on human rights and arbitrary deprivation of nationality of 15 July 2016,
- having regard to Article 3 of the Treaty on European Union (TEU) which states that in 'its relations with the wider world', the EU must contribute to the 'eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter',
- having regard to Council Conclusions on the Action Plan on Human Rights and Democracy 2015 - 2019¹,
- having regard to the Council Conclusions on Statelessness of 4 December 2015,
- having regard to the Council conclusions of 20 June 2016 on an EU strategy vis-à-vis Myanmar/Burma,
- having regard to its resolution of 7 July 2016 on Myanmar, in particular the situation of the Rohingya²,
- having regard to Rule 52 of its Rules of Procedure,

¹ Council Conclusions on the Action Plan on Human Rights and Democracy 2015 - 2019 of 20 July 2015

² Texts adopted, P8_TA(2016)0316.

- having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on Development (A8-0000/2016),
- A. whereas the region of South Asia and Southeast Asia consists of the following countries – Afghanistan, Bangladesh, Bhutan, Brunei, Cambodia, India, Indonesia, Laos, Malaysia, the Maldives, Myanmar, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand and Vietnam – who are all Members of either the Association of Southeast Asian Nations (ASEAN) or the South Asian Association for Regional Cooperation (SAARC);
- B. whereas the ASEAN Human Rights Declaration affirms that every person that has the right to a nationality as prescribed by law and no person ‘shall be arbitrarily deprived of his nationality, nor denied the right to change that nationality’;
- C. whereas a stateless person is defined in the 1954 Convention Relating to the Status of Stateless Person as someone ‘who is not considered as a national of any State under operation of its law’; whereas the causes of statelessness can vary, including but not limited to being forced to flee, migration, changes and gaps in nationality laws, expiration of nationality through having lived outside of one’s country for an extended period of time, gender discrimination, administrative and bureaucratic hurdles;
- D. whereas statelessness is a multifaceted problem, including but not limited to problems relating to birth certificates and other civil status documents, as well as other documents relating to property, educational achievement and business ownership, political representation and voting participation, access to social security and public services; whereas statelessness may contribute to human trafficking and child abuse;
- E. whereas the right to a nationality is enshrined in the Universal Declaration of Human Rights and other global human rights instruments and conventions;
- F. whereas The Global Action Plan to End Statelessness: 2014 – 2024 of the UNHCR aims to resolve existing major situations of statelessness, prevent new cases of emerging and better identify and protect stateless populations;
- G. whereas the Council Conclusions on the Action Plan on Human Rights and Democracy 2015 - 2019¹ affirm the importance of addressing the issue of statelessness in relations with priority countries and on focusing efforts on preventing the emergence of stateless populations as a result of conflict, displacement and the break-up of states;
- H. whereas the EU Annual Report on Human Rights and Democracy in the World – Country and Regional Issues of 20 September 2016 affirms the EU’s aim to increase the consistency, effectiveness and visibility of human rights in EU foreign policy and the aim to increase the profile of the EU’s engagement with the UN and with regional human rights mechanisms to foster regional ownership and to promote the universality of human rights, and mentions specifically that this includes the launch of a first policy dialogue on human rights with the Association of Southeast Asian Nations’ (ASEAN) human rights mechanisms;

- I. whereas the EU has determined that it will place human rights at the centre of its relations with third countries and a key consideration is that while firmly based on universal norms, the EU's policy on human rights will be carefully designed to accommodate the circumstances of each country;
- J. whereas many of the world's 10 million stateless persons reside in South and Southeast Asia, with the Rohingya of Myanmar being the single largest stateless group in the world, with over 800 000 persons under the UNHCR's statelessness mandate, but large communities of stateless people are also found in Thailand, Malaysia, Brunei and elsewhere; whereas South and Southeast Asia have both protracted and unresolved cases, as well as cases where effective progress has been made, at least on paper;
- K. whereas significant progress has been made in South and Southeast Asia in recent years with amendments to nationality laws introducing adequate provisions to prevent statelessness and to allow stateless persons to acquire nationality;
- L. whereas the Rohingya are one of the world's most persecuted minorities, and have been officially stateless since the 1982 Burmese Citizenship Law; whereas the Rohingya are unwanted by the Myanmar authorities and by neighbouring countries, although some of the latter host large refugee populations; whereas ongoing clashes in Rakhine State are causing continued human trafficking;
- M. whereas the hundreds of thousands of so-called 'Biharis' found themselves stateless after the Bangladesh War of Independence, when Pakistan refused their repatriation; whereas, however, a number of court rulings since 2003 have restored the Biharis' right to Bengali citizenship; whereas a large number of Biharis still live in extremely precarious conditions in camps and have not been able to fully exercise their new rights;
- N. whereas there are many other stateless groups in South and Southeast Asia; whereas, however, a number of positive developments have taken place in recent years, such as in Indonesia, which reformed its nationality law in 2006 so that citizenship can no longer be lost by Indonesian migrants that spend more than five years abroad, in Cambodia, where birth registration has been made free of charge in the first 30 days after the birth, in Vietnam, which in 2008 granted nationality to anyone who had been a stateless resident living in Vietnam for over 20 years, and in Thailand where following reform to nationality and civil registration laws 2 .000 stateless persons have acquired nationality since 2011;
1. Is concerned about the millions of cases of statelessness all around the world and expresses its solidarity with stateless people;
 2. Whilst acknowledging national sovereignty over matters such as citizenship, urges countries with stateless populations to take concrete steps towards resolving this issue, in line with the principles enshrined in international conventions;
 3. Welcomes the commitment of the Council in its Action Plan on Human Rights and Democracy 2015-2019 to address the issue of statelessness in relations with priority countries and in addition welcomes the commitment of the Council to strengthening its relationship with (ASEAN);

4. Recommends that the Member States make it a priority to support the positive developments in addressing statelessness in South and Southeast Asia, and proposes a new comprehensive policy approach including:
 - encouraging relevant ministries and parliaments to highlight the benefits of acceding to the Statelessness Conventions;
 - highlighting the value of the Statelessness Convention in multilateral fora;
 - advocating with states on the benefits of gathering national data on stateless persons and those with undetermined nationality for purposes of registration, documentation, delivery of public services, maintenance of law and order and development planning;
 - consistently emphasising that birth registration needs to be free, accessible and undertaken on a non-discriminatory basis;
 - addressing the issue of nationality laws and gender discrimination, as some countries make it difficult, or even impossible, for mothers to pass on their citizenship to their children;
 - ensuring that all development projects and humanitarian aid for which the EU provides funding are set up so that addressing statelessness is included whenever relevant;
 - building the capacity of relevant EU institutions and actors to understand, assess and programme and report on issues of statelessness;
 - ensuring that statelessness, nationality and citizenship are appropriately covered in human rights and democracy country strategies;
 - ensuring that participants in election observation missions are aware of statelessness issues where relevant;
 - reserving funding in the Development Cooperation Instrument, European Development Fund and the European Instrument for Democracy and Human Rights budgets for NGOs and other organisations working to reach stateless communities;
 - ensuring follow-up, such as awareness raising and technical support for public administrations, including at local level for when there have been positive developments that need to be implemented in practice, such as in Bangladesh, where the Biharis have been granted the right to citizenship and voting rights;
5. Highlights the key role of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness which require the establishment of legal frameworks for the identification and protection of stateless persons and for the prevention of statelessness and may serve as an important starting step for states wanting to make progress in addressing the problem of statelessness;
6. Calls on the EU and its Member States to play a greater role in the fight against statelessness around the world by adopting a comprehensive policy regarding statelessness as a part of its external action on human rights issues;

7. Instructs its President to forward this resolution to the Council and the Commission, and to the governments of the Member States.

EXPLANATORY STATEMENT

The right to nationality has been enshrined in the Universal Declaration of Human Rights for close to seventy years, yet for millions of people this is still a seemingly unattainable fantasy.

The international definition of a stateless person is “a person who is not considered as a national by any state under the operation of its law”.

It is important to bear in mind that most stateless people are not refugees. In other words, they have not left their place of birth voluntarily. In spite of this, some stateless people have become refugees after being forced to flee their country of birth.

The causes of statelessness include less nefarious but problematic ones like the expiration of nationality through having lived out of one’s country for an extended period of time.

Nevertheless, there are more causes that are source of serious concern.

They include nationality laws that are exploited to discriminate against stateless people (as is the case of the Rohingya in Myanmar where they have been left out of the list of 135 ethnic groups officially recognised by the government). Gender discrimination where women are not given the right to transmit their nationality to their offspring on equal terms with men, or who lose nationality through marriage are also major obstacles. There are also administrative and bureaucratic hurdles which stem from people living in remote areas, lacking the resources to register births leading to issues later on.

There are broader concerns surrounding statelessness as it creates unfair barriers in the workplace, can stop people from getting married, impede access to healthcare, education and prevent the right to property. It contributes to human trafficking, making children especially vulnerable.

Unfortunately, statelessness is a predicament that affects an estimated ten million people around the world, but for the sake of clarity, the rapporteur would like to focus on two groups in particular, the Rohingya and Bihari, who in many ways have come to symbolise the plight of stateless people globally.

The rapporteur would like to focus on how international organisations and cooperation can help promote access to nationality for individuals who are stateless and to avoid new cases of statelessness on a massive scale in the future.

The EU’s role in tackling statelessness should be examined, including what programmes have been financed and whether or not they’ve been successful, including examples of multilateral engagement.

Finally, the rapporteur would like to highlight examples of good practice to show that third countries (Indonesia, Cambodia, Vietnam) can implement measures that take steps in the right direction.

Examples of good practice

Indonesia reformed its nationality law in 2006 so that citizenship can no longer be lost by Indonesian migrants that spend more than 5 years abroad.

Cambodia has made birth registration free of charge in the first 30 days after birth. UNICEF has long worked on improving birth registration and civil registries

Vietnam passed the Vietnamese Nationality Law in 2008 to deal with stateless long-term residents. It granted nationality to anyone who had been a stateless resident living in Vietnam for over 20 years.

Specific examples

Myanmar

Seeds of tension are deep and long running in the country and can be traced back to 1826 and the end of the first Anglo-Burmese war. The British won the war and had control of Arakan and encouraged people from Bengal, including Rohingyas, to move from British India to Arakan. This sudden influx of Muslim-Rohingyas caused tension in Buddhist Arakan. Myanmar, formerly Burma, became an independent nation in 1948. Until overthrown by a military coup to become a dictatorship in 1962, the new state of Myanmar was democratic. The Rohingyas are a group of people originally from the state of Arakan in Burma, on the Burmese/Bangladesh border. They are a minority in Myanmar in terms of religion, as they worship Islam, culture and language. The majority of Myanmar practices Buddhism. Between the Second World War and the coup of 1962 the Rohingyas wanted their own nation of Arakan. The coup meant the new dictator cracked down on the Rohingyas and they were made officially stateless in the 1982 Burmese Citizenship Law.

It is estimated that between 800,000 and 1.2 million stateless Rohingyas reside in Myanmar, and they make up around 80-98% of the population in the Rakhine state of Myanmar. However, they are still without nationality and are instead referred to by the Government as “stateless Bengalis”. The Rohingyas are seen as one of the most persecuted minorities in the world, forced into what is essentially slave labour and denied basic human rights.

Many have migrated, fleeing the persecution and hardships that face them in Myanmar. Neighbouring Bangladesh is one area where between 200,000 and 400,000 Rohingyas have settled as refugees- still without humanitarian aid or recognition from the government in Bangladesh and therefore still without a nationality. They live in camps, with only 33,000 supported by Bangladesh in registered camps where there is some, but little, humanitarian aid, such as soap for children to wash with. The camps are heavily policed, one cannot leave without fear of being killed by guards. Over 200,000 stateless Rohingyas live in atrocious conditions throughout the rest of Bangladesh, in camps that aren't registered.

The elections in Myanmar in 2015 briefly brought hope as military dictatorship was ended and Aung San Suu Kyi was elected. However, the new government has remained very quiet on the matter despite being advocated for minority rights.

In 2015, the Prime Minister of Bangladesh Sheikh Hasina announced plans to relocate the Rohingya camps to an Island in the Bay of Bengal amid fears that tourism was suffering due to

presence of the Rohingya, saying “we cannot host them any longer”. Neither Myanmar, nor Bangladesh want to claim the Rohingya as part of their country and grant them citizenship, not to mention the other countries which the Rohingya have fled to, such as Thailand and Malaysia.

The treatment of the Rohingya has been given increased media attention after the 2012 Rakhine Riots and the 2015 Rohingya Refugee crisis. 2012 saw huge disruption in the state of Rakhine as fighting broke out between the Rohingya Muslims and the Rakhine Buddhists with 88 casualties and thousands of houses burnt to the ground. NGO’s have been critical of Myanmar arguing that the riots can be blamed on decades of discrimination towards the Rohingya people. In the Summer of 2015, the Rohingya were again given media attention as “boat people” as many were trafficked from Myanmar and Bangladesh to countries such as Indonesia and Thailand and sold to work on what are essentially fishing slave ships. Mass graves have been discovered in Thailand for the Rohingya. Myanmar are still trying to get the Rohingya to identify as Bengali to essentially erase the race. Researchers at universities and crime initiatives have suggested that the Myanmar government are planning a systematic genocide-like action to eradicate the Rohingya. According to the UNHCR in the first quarter of 2015, 25000 Rohingya fled from their homes (mainly Myanmar) on trafficked boats.

Why focus on the Rohingya in Myanmar?

They are the world’s largest population of stateless peoples. They make up nearly 20% of global statelessness, as figures stand at up to 2 million Rohingya and 10 million stateless people worldwide. They are also one of the world’s most persecuted minorities.

Has there been any communication or cooperation between the Myanmar government and international organisations aiming to help the Rohingya?

A meeting was held in June 2015 which was attended by 17 nations to address the South East Asia crisis. It was not attended at a ministerial level and only lasted one day. On “this issue of illegal migration of boat people, you cannot single out my country”, Myanmar delegate Foreign Ministry Director-General Htin Lynn said in a stern response to a UNHCR plea to address the root causes of the ongoing migration crisis, including the statelessness issue.

From ‘The National’ June 18th 2015 - A European model?

However, a lasting solution that stops the Rohingya from fleeing Myanmar is not impossible. In Europe, where countries are facing a migration crisis of much larger proportions, the European Commission has devised a plan for resettling refugees that would divide up migrants based on an EU member’s prosperity, number of refugees already taken in, unemployment rate and other factors. South-East Asian countries could establish a similar formula, based on GDP, unemployment rate and others, to determine how many refugees should be resettled.

This plan still has many details to be worked out, and European leaders face many domestic political groups opposed to resettling migrants; still, it is a plan that might work, which is much more than South-East Asia has. International powers could also make promises to resettle a certain number of the Rohingya each year for the next decade – public promises to which they could be held. Although the Rohingya might take time to acclimatise to the United States, Washington has taken in large numbers of migrants from vastly different cultures before – the Hmong in the 1970s and 1980s, or the Bhutanese in the past 10 years.

Bangladesh

History of the situation in Bangladesh

Bangladesh gained its independence in 1971 after East Pakistan broke from West Pakistan, creating the new state of Bangladesh. Pakistan was partitioned in 1947 from India. Many Urdu-speaking, Muslim people from the Bihar region of India moved to East Pakistan- namely the Bihari's. However, during the Independence movement they supported West Pakistan as they more closely identified with their values. After Bangladesh won independence in 1971, the Bihari's were neither a citizen of Bangladesh nor Pakistan. Furthermore, they were unsupported in Bangladesh as they were seen to be a minority supporting the enemy. The name "Bihari" means "stranded Pakistani". At the time of the independence movement, in 1971 the Bihari's were subject to many atrocities; murder, rape, ransacking. They receive horrendous treatment even now in Bangladesh, forced to live in cramped conditions in camps with thousands of others with terrible sanitation. Many are unable to work, get a bank account, a passport, Bihari children are prevented from being educated at government schools if they live in the camps so many are forced to change their identity. Diseases are common, no health care, high birth rate, high death rate.

Remedying statelessness: Many Bihari's wanted to return to Pakistan. After 1971, 170,000 Bihari's were repatriated to Pakistan. However, this was only a third. The Pakistan authorities put conditions on repatriation which is unconstitutional, and immoral. They claimed they didn't want the mass movement of a group of people to come back to Pakistan and upset the balance. However, many, around 100,000 returned to Pakistan without government backing, and now reside as stateless. Leaving around 250,000 stateless Bihari's in Bangladesh by 2006.

2008 was a turning point. A Supreme Court ruling meant that the government would grant citizenship to all the Urdu-speaking Bihari's. Now all camp residents have ID cards and voting rights. This has ended statelessness for nearly 300,000 stateless people in Bangladesh.

However, the Bihari still face daily struggles. Living at the camp means thousands cannot get a passport. They are subject to administration fees and therefore cannot get access to many services in the country. Thousands are still living in poverty.