



*Keynote speech  
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# **“Beyond Borders: Statelessness and the People in between”**

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# INTRODUCTION

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**T**he United Nations Charter begins, “We the **peoples** of the United Nations determined to save succeeding generations from the scourge of war...” Yet, the structure and decision making of the United Nations gives centrality to the nation state. Increasing numbers of individuals around the world are falling between the cracks of “We the peoples” and the contours of the modern nation state. In these cracks is a subterranean world where individuals exist without formal rights, many living just above survival. They are most often at the receiving end of arbitrariness and caprice on the part of state authorities.

Theorists sometimes call this subterranean world a state of freedom, to be undefined by the identity, duties and obligations of the nation state. But in real life, for most people living in these cracks, life is marginalized and vulnerable where one faces existential threat on a daily basis. It is a site of danger and precariousness, though some groups have found agency through powerful mobilization.

Statelessness is one aspect of this subterranean space, a space they share with persecuted minorities seeking asylum, internally displaced persons, victims of trafficking, victims of human smuggling, undocumented and irregular migrants. The categories are sometimes fluid and overlapping. Statelessness is defined by and is a challenge to the nation state of modern times. In its initial definition by Oppenheimer in 1912, it was defined in the negative as a people “destitute of nationality.” Statelessness is no longer the exception in the world. It has become endemic to the existence of nation state system.

Stateless people are treated with suspicion, as people in between, without a clear identity or belonging. It is a status that elicits racism and xenophobia of the worst sort and threatens home communities in a fundamental way. It is often the symptom and the cause of discrimination. As the Roma have shown us through the years, statelessness is a status of profound marginalization, keeping individuals out of the complex and sometimes enabling relationship citizens have with their nation state.

For some statelessness is existential where an imagined state remains in people’s minds and the desire to have that state captures the imagination. They then mobilize the political agency to make it real. The Palestinians, many Sri Lankan Tamils and the Kurds are an example of a people with an imagined community and an imagined state. As a result their statelessness and marginalization is deeply political and creates great anxiety, adding another layer of complexity to the many ways of dealing with statelessness.

Stateless people are always the “stranger,” the “other,” often even when they have moved beyond their status and received citizenship or even great success. This “otherness” will often stay with them for the rest of their lives and into the next generation as stateless people and their children negotiate their place within and outside their home countries.

In some ways statelessness is purely a problem of modernity as the rise of the nation state has been with us only for about two centuries. Citizenship is the primary construct of the nation state. It entitles the recipient to some rights and benefits and certain obligations such as military service. The Greek city-states clearly had the demarcation between citizens and slaves. While privileging one group, they disenfranchised another. In modern times people like Hannah Arendt took this construct forward to hook statelessness to the regime of human rights. Though this has always been a welcome development, the Convention on Statelessness came into existence before all the major developments in modern human rights law.

Statelessness has also been at the crossroads of human rights law and international humanitarian concerns between the concepts of protection and rights. The framework of protection based on the “do no harm” principle aims at providing a safety net of protection for stateless and other vulnerable people. A rights framework is a framework of entitlement, advocacy and accountability. The early era of statelessness was very much about protection, but we are increasingly seeing the problem of statelessness from a rights perspective.

There are still those who resist a rights perspective to these issues of statelessness. The fluidity of categories in the world of non-citizenship, repression and backlash, the need to understand local conditions and particularities have pushed some to argue for case by case resolution of conflicts rather than moving forward on general principles. Others feel we should not reify the concept of nation state and its particular framework of rights but work to undermine the oppressive nature of the modern nation state and work toward alternative forms of governing ourselves.

These arguments are valid but given present times there is a felt need to strengthen the framework of rights enjoyed by stateless people at least in the short term. Their real life, material situation requires nothing less. As I looked out onto Cox’s Bazar, onto an endless boundary of polythene sheets confined to a small space and a sea of faces that was expressionless, the kind of look people have when pain is deep and despair so overwhelming, the impulse was to help them immediately, to enable, entitle and embolden them. A lifetime of theorizing on human rights was just forgotten.

# THE LEGAL FRAMEWORK

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Instead of conceding or being overwhelmed by the fluid nature of the concept of statelessness, many lawyers want instead a tight legal definition and very definite responses on the part of nation states and the international community. They want to bring a plethora of rights even if there is no citizenship, a reform of nationality law and a restructuring of the state, especially at the local level so that it is able to deliver services.

For stateless people and all others who are similarly situated, the law, the bureaucracy and documentation are their never-ending struggles in life. When I interviewed an old lady from the Rohingya community in Cox's Bazar, she brought forward this dirty, plastic bag and from it she pulled out one identification card that certified her grandparents' Burmese citizenship in the 1950s, another that limited her rights, another that took away her citizenship and finally what is called a verification card that gives her some rights – not citizenship – because she agreed to be called a Bengali Muslim and not a Rohingya. She had left all her furniture, clothes, and jewelry behind in Northern Rakhine and only clutched this plastic bag to her bosom as she fled. Such are the power of documents in the modern world.

The term statelessness first appears in international instruments at the time of the League of Nations and the Convention on Certain Questions Relating to the Conflict of Nationality: Protocol Relating to a Certain Case of Statelessness. Once the United Nations was created, the process for formulating a Convention on Statelessness moved to this new institution. It would be inevitable that an organization that is structured around nation states would be keen to demarcate its boundaries and define the gaps so that its integrity is not threatened. ECOSOC passed a resolution, a study was commissioned, followed up with an ad hoc drafting Committee till in 1954 the Convention Relating to the Status of Stateless Persons emerged. It accompanied the Convention relating to the Status of Refugees or the Refugee Convention.

The Convention continued to define stateless in a negative way. "The term stateless person means a person who is not considered a national by any state under the operation of its law" - an echo of "destitute of nationality." Universal human rights as a concept and a practice only took off after the 1960s. Until then the nation state and nationality were the only factors that mattered for a person's identity and rights. Today the Global Campaign to End Statelessness, led by UNHCR, aims at strengthening human rights within this framework, reforming nationality law and advancing the Convention to protect the stateless. It is a hope that a reformed Convention becomes like the other Treaty Bodies with an implementing Committee that can follow up on state obligations with regard to the stateless. Given the climate prevailing today, such major changes will require a great deal of effort by the global community.

The Convention and the general legal framework with regard to statelessness has been criticized as not being holistic enough to define the stateless community as it stands in the world today, with its diversity and its complexity. There is also a belief that it was born in the pre-justiciable era of human rights and has been frozen in time since the 1950s. It does not reflect the changes of thinking with regard to nationality law and the full access to civil and political rights as well as economic and social rights. Constitutions and laws used to have access to rights based on whether you were a citizen or a “person.” Increasingly in areas such as education and healthcare, access is now being opened to “persons” with or without citizenship. Activists want the full plethora of rights, or the vast majority of rights, to be enjoyed equally by both citizens and persons.

## WOMEN AND CHILDREN

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**S**tatelessness, nationality law and citizenship have a fundamental bearing on women and children’s identity and their place in the world. For a long time the vast majority of countries required the wife and children to take on the nationality and citizenship of the husband and father. Nationality law was also primarily based on blood and descent and one could not acquire nationality on objective criteria that were a precursor to citizenship. So once a woman married she had to take on the husband’s domicile, his nationality and his citizenship if she wished to belong to a state. Her children also received their domicile status, their nationality and their citizenship from their father. These laws were justified by earlier theorists as being necessary for the maintenance of family unity.

The international community is particularly concerned with children. Article 7 (1) of the Child Convention posits the right of a child to acquire a nationality. Article 9 speaks to refraining States from separating children from their parents except in the best interest of the child. Article 10 points to the need for speedy reunification. When turmoil occurs parents send their children out first in an attempt to save their lives. I remember being at the Kenya-Somalia border watching groups of children holding hands and crossing the border without adults. The issue of granting citizenship to the child and not to the parents who cross later has been raised many times. But the Convention on the Rights of the Child points to a speedy reunification that it feels is in the best interest of the child.

The presence of a large number of children in the stateless category raises the issue of the need for provision of basic services like education and health. Modern refugee camps set up by UNHCR have this in mind and learning spaces, health clinics and even play areas have become a part of the camp's design. However, a camp can usually provide only basic facilities and host communities vary on how they will pick up the pieces. Prejudice and discrimination often prevent stateless children from receiving the minimum welfare benefits that would meet their very basic needs. The right to education and health are probably the most important of the international human rights guaranteed by the International Covenant on Economic, Social and Cultural Rights.

## ROHINGYAS

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**W**e can talk about rights and frameworks for the stateless in the abstract but what do they mean in real life? I am a member of the United Nations Fact Finding Mission on Myanmar. I have witnessed these issues play out in real time over the last two years. These are heartbreaking issues and one is never really quite the same after experiencing and seeing the impact forced statelessness has on the lives of the people you meet.

The Rohingyas are very firm in stating to us that they are not stateless; they have a state and a country and it is Myanmar. That state has decided to deny them their basic rights and from this basic disenfranchisement comes the rest of the horrific troubles they have had to face. At the core of their struggle is the problem of citizenship and enforced statelessness.

The first identity issue they face is that the Rohingya are not allowed to choose their name, a name that has defined them through many centuries of Burmese history so much so that the founder of modern Burma, Aung San, had them sit at the peace table and included them in the first Constitution. Over time they lost their nationality and the right to be included as one of the nationality races of Myanmar. They lost their citizenship as well, especially after 1982 and the Citizenship Law. The main purpose was to make them lose their legal status without guarantee of another status or citizenship in another country; to force them to fall into the cracks of statelessness.

Being stateless within Myanmar, they are denied the very basic of rights. They are denied the freedom of movement between villages and townships under a very repressive travel authorization scheme. As a result their access to food is also restricted.

If I am not mistaken Northern Rakhine has the worst malnutrition rates in the world. Today, Rohingyas in Myanmar have some access to primary education but very little access to secondary education and virtually no access to tertiary education. They have little access to health care and with the restriction on travel they cannot seek quality health care to meet their needs.

In recent times with extraordinary rumors afloat, the sexuality and reproductive rights of the Rohingyas are also being regulated. The agitation of the Ma Ba Tha movement has borne fruit in the Rakhine. There are now discriminatory restrictions on procedures for marriage authorization if one were to marry a Rohingya man, restrictions on the number and spacing of children, and denial of access even to birth registration. A more vicious system cannot be found anywhere in the modern world.

The Rohingyas who crossed over to Cox's Bazar in Bangladesh are also treated as stateless. There are nearly a million of them in the smallest possible space. Cramped living accentuates the sense of deprivation but does not dampen hope and expectation. When we first went there just after the massive violence of August 2017, the desperation, the sadness and the tragedy of what we saw was overwhelming. We knew we would never be able to meet their expectations and we did not. But they were grateful that the Mission came to report back and give them the findings. They were much more organized and their questions of, *What next? Whither accountability? Has the international community failed us?* are questions that still have to remain unanswered.

The international community is obsessed with wanting the Rohingya to return to Northern Rakhine from Cox's Bazar. The issue of safety and security is the only factor that is considered. However, what are they to return to? Most of their villages have been bulldozed without a tree standing. In terms of status they will be stateless and may have to be subject to the regime still operating for the Rohingya in Myanmar i.e. no freedom of travel, paltry health facilities, bare minimum education and the regulation of their reproductive rights. The government is offering what they call a verification card which they say could be a pathway to citizenship. To get that card, they have to call themselves Bengali Muslims: a blatant attempt to forcibly eradicate the Rohingya identity from Myanmar's territory.

An old man I interviewed on my last trip to Cox's Bazar symbolized the tragedy of statelessness to me. He was about eighty years old. He came in a long salwar, pants and a cap, sporting a beard that the Taliban has made fashionable. The fact that I was a woman did not bother him. He was immediately at ease, born to a generation of Muslim men where women's bodies, identities and dress were not a major hallmark of their religion. He was a child of newly independent Burma and he remembered the good old times. While the young people in Cox's Bazar were restless for a new life without an ease of belonging, he had no doubt that he belonged to Burma.



He remembered the smell of the earth, his relationships with his Ethnic Rakhine friends, their lives, the tensions and shared warmth. When he recounted the events that led to his displacement, trauma had merged truth with fiction and he could not face the fact that he had been driven away. He was determined to show that his people stood strong and did not just leave. He described scenes of battle that could have only come from the heroic stories he would have been told as a child, of Rohingya nobles who were advisors to the Rakhine kings. Statelessness was a meaningless concept in describing him. He was the living memory of the Rohingya people, his life was so intertwined with post independent Burma that to take that identity away from him was to destroy his very being. His presence in the refugee camp is an absolute crime.

Statelessness is then a political, social, economic, cultural and psychological experience. It is a subset in the world of migration that has become the most important human rights issue of our times. It is experienced in that subterranean world shared by stateless people, illegal migrants, undocumented migrants, irregular migrants, refugees, internally displaced and people who have been smuggled or trafficked. Some have come voluntarily, others have been forced by the reality of their experience.

Their life experience can never fully be described in a legal document or a UN report. The intensity is best captured in movies and plays where tragedy is palpable and the narrative complex. **Capernaum**, or 'Chaos,' that won the Cannes Jury prize last year and received a standing ovation is one such movie and stars a Syrian refugee child actor. Directed by Nadine Labaki, it captures the precarious nature of life, the defining elements of bureaucratic documents and the danger and the pathos of living in that subterranean world where human life does not matter and dignity is never taken for granted.

But we must not always fill our work only with pathos. Capernaum ends on an upbeat note and there are many people from that subterranean world who by way of sheer grit and endurance have made a good life as workers, professionals, businessmen, artists and politicians. From Karl Marx to Albert Einstein to Supermodel Imam there are thousands of inspiring stories of people who lost everything only to become outstanding people in their own right. Our purpose must therefore be to provide a framework to allow that to happen, to empower them with rights, enable them, to dignify them and to provide them with space to make their way in this world. In some contexts like the Rohingyas it looks like impossibility. But no situation is static. It is never a question that a people will be free; it is only a question of how and when. It is our job to try and speed up that how and when.

*Thank you.*