

# ON CITIZENSHIP STRIPPING



GLOBAL SEMINAR SERIES

## LECTURE 4

STATELESSNESS  
AND INTERNATIONAL CRIMINAL LAW



**CÓMAN KENNY**

## LECTURE & DEBATE KIT

THE ONLINE LECTURE 'STATELESSNESS AND INTERNATIONAL CRIMINAL  
LAW' BY CÓMAN KENNY AND FURTHER READING

QUESTIONS TO GUIDE VIEWING OF THE LECTURE IN A WORKSHEET  
(ANSWERS ON THE LAST PAGE OF THE KIT)

SUGGESTIONS FOR AN EXERCISE OR RESEARCH  
TO LEARN MORE ABOUT THE TOPIC

QUESTIONS FOR CRITICAL REFLECTION,  
DISCUSSION OR DEBATE

# VIDEO RECORDING OF THE LECTURE

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## ABOUT THE LECTURE

In this lecture Cómán Kenny addresses arbitrary deprivation of nationality as a matter of international criminal law. Based on post-World War II jurisprudence, Kenny argues that mass arbitrary deprivation of the nationality of a group resulting in statelessness could fall within the ambit of international criminal law and give rise to individual responsibility. Building on this argument, Kenny maintains that when mass arbitrary deprivation of nationality is a tool of discrimination against minorities, statelessness can be the precursor to mass atrocities and should be subject to international legal scrutiny.

**CÓMAN KENNY** is an Irish barrister currently working as a Legal Officer at the United Nations. He is a graduate of the National University of Ireland, Galway (LLB), Leiden University (LLM), and the Honorable Society of King's Inns (BL). Prior to his current role, he served as a prosecutor at the Special Court for Sierra Leone, the International Criminal Court, and the Extraordinary Chambers in the Courts of Cambodia. He has also worked as a defence lawyer at the International Criminal Tribunal for the former Yugoslavia. Kenny has published widely on issues of international criminal law and public international law.

### FURTHER READING

- Institute on Statelessness and Inclusion (2020) [The World's Stateless 2020: Deprivation Of Nationality](#)
- Cómán Kenny (2020) Legislated out of existence: [Mass arbitrary deprivation of nationality resulting in statelessness as an international crime](#), in International Criminal Law Review.<sup>1</sup>

This lecture is part of the **GLOBAL SEMINAR SERIES ON CITIZENSHIP STRIPPING**.

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<sup>1</sup> Access to this article requires a subscription to the journal.

# QUESTIONS TO GUIDE VIEWEING - WORKSHEET

**1.** How does C3man Kenny connect nationality deprivation resulting in statelessness and the commission of atrocities against Jewish people in the context of World War II?

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**2.** Why does C3man Kenny hold that mass arbitrary deprivation of nationality resulting in statelessness can be viewed as an 'other inhumane act' under the Rome Statute, and can therefore be criminalised?

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**3.** Why does C3man Kenny argue that mass arbitrary nationality deprivation resulting in statelessness can amount to the crime of apartheid?

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**4.** What are the components of the crime of genocide under international law? Why does C3man Kenny argue that mass denationalisation can amount to the crime of genocide?

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# QUESTIONS FOR CRITICAL REFLECTION, DISCUSSION OR DEBATE

- While some lip service is paid to the 'dark history' of denationalisation in contemporary writing and debate on the use of citizenship stripping, the clear link to crimes against humanity does not feature very strongly. Why do you think that is? Why is the language of the Nuremberg trials about denationalisation as "crimes camouflaged as legislation" not more widely known/understood? And what more could be done to promote acknowledgement of this dimension of the issue?
- Mass arbitrary deprivation of nationality is often committed via government policies and laws. Who could, or should, be considered liable in those cases for the commission of such a crime and why?
- Which would you argue is a more likely or more appropriate response to mass deprivation of nationality, criminal sanctions or economic sanctions, and why?

## LEARN MORE...

According to Corman Kenny, mass arbitrary deprivation of nationality targeting a minority group is a tool of discrimination and depending on the circumstances, it can be characterised as an international crime. Look into examples of minorities being targeted by mass arbitrary deprivation of nationality throughout history and now. What is the impact of such a measure on the human rights of the targeted minorities? Can you identify a link between statelessness and atrocity crimes committed against the targeted minorities you are reviewing?

- *Find out more about 'anti-transportation campaigns': who organised them, what were the techniques used, how successful were they?*
- *Reflect on the geopolitical context of modern denationalisation: which are the states performing banishment and which are the 'dumping grounds'? What is the relationship between them and can you imagine an equivalent strategy being adopted by states that are today functioning as the 'dumping grounds' for banished citizens?*

# QUESTIONS TO GUIDE VIEWEING - ANSWERS

## 1. How does C3man Kenny connect nationality deprivation resulting in statelessness and the commission of atrocities against Jewish people in the context of World War II?

*World War II shows how denationalization is used in a discriminatory and dehumanizing manner. The Nuremberg Laws, which deprived Jews of German citizenship, resulted in Jews being powerless to act against other state decisions. Deprivation of citizenship of Jews was therefore an underlying element of the crimes subsequently committed against them. According to Hannah Arendt, 'Jews had to lose nationality before they could be exterminated', because 'one could do as one pleased' with the stateless.*

## 2. Why does C3man Kenny hold that mass arbitrary deprivation of nationality resulting in statelessness can be viewed as an 'other inhumane act' under the Rome Statute, and can therefore be criminalised?

*The extent to which statelessness can pervasively impact almost all facets of a person's life, as well as the anguish and uncertainty of effectively being excluded from society, can cause severe physical and mental harm. Therefore, depending on the facts of a particular situation of mass arbitrary deprivation of nationality resulting in statelessness, the gravity of the suffering or injury caused to the mental or physical health of those affected could be qualified as an 'other inhumane act' under the Rome Statute and can therefore be criminalised.*

## 3. Why does C3man Kenny argue that mass arbitrary nationality deprivation resulting in statelessness can amount to the crime of apartheid?

*The crime of apartheid encompasses inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups (broad definition of race) and committed with the intention of maintaining that regime. A state policy to arbitrarily deprive a group of nationality resulting in the statelessness of its members could be considered an inhumane act, committed to maintain a regime of institutionalised and systematic domination of one group over another, thereby amounting to the crime of apartheid.*

## 4. What are the components of the crime of genocide under international law? Why does C3man Kenny argue that mass denationalisation can amount to the crime of genocide?

*Genocide is characterised by:*

- *the infliction of serious bodily or mental harm to members of a particular group*
- *the infliction of life conditions upon a group of people that could result in their physical destruction.*

*If denationalisation is carried out on a large scale with the intention to destroy a specific target group, and results in that group becoming stateless, it can be considered an act of genocide.*