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# No Legal Bond, No Family Life

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## Abstract

With increased efforts to address the problem of statelessness globally, there is still a fundamental deficiency in information regarding the substantial violations of right caused by statelessness and its consequences. What this article wishes to do is to shed light on one consequence of statelessness that is yet to be part of either national or international discourse or addressed in research or reports on the issue. This overlooked problem is the negative and alarming effects of statelessness on the enjoyment of family unity and ultimately on the preservation of family structure. This article wishes to discuss the impact of statelessness on family unity by analysing three significant violations of rights that occur due to this status, focusing on the right to marriage, family unification and the right to own property - and how they often cause rifts in starting developing or keeping family unity.

## Keywords

statelessness – family unity – family unification

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'I worried my sons would get deported. I worried my sons would get arrested. They can legally live nowhere. Deportation. Arrest. Deportation. Arrest. These worries took over my life, destroying me, and made me a crazed women'<sup>1</sup>

UM ADAM

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'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.'

ARTICLE 16(3), *Universal Declaration of Human Rights*

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## 1 Introduction

Um Adam is an Egyptian woman who had four stateless children, four of the many millions of stateless persons worldwide, who spoke extensively of the worry she had about being separated from her children because of their status. Statelessness is often framed as a complex legal phenomenon where those who have this status are both excluded from the legal protectionary regime, whilst suffering under the legal punitive regime. The discourse in the international field has focused on the definition of a stateless person and the legal limbo that this leaves them in - such as flaws in nationality legislation, and attempts to regularize their status. Due to this, it was only recently that we have begun to discuss, through developing engagement with the affected populations and their own mobilization, the dire consequences this status has on access to fundamental rights. We know that denying access to the right nationality is in violation of many norms and obligations, and additionally nationality has often become the right to access many other rights. Nevertheless,

<sup>1</sup> An interview conducted with Um Adam (March 2013), an Egyptian woman married to a foreigner, whose children were stateless before a change in the law in 2004, which allowed her to transfer her nationality to her children. This was part of research conducted for the Women's Refugee Commission, *Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013; a project which inspired this article.

limited qualitative or quantitative research has been done to highlight the extent of the consequences of such violations - which rights have consequentially been violated and to what extent. This is problematic for several reasons. Firstly, this means that the depth of the problem is not fully understood by both those who work on the issue and those who potentially could. Secondly, this poor understanding has placed obstacles in engaging with the wider international, academic, human rights and NGO scene that currently do not see how this problem relates to their work. Additionally, it does not encourage separate stateless populations to unify in their advocacy for change as there is little understanding of their shared problems in access to rights.

However, positively, this deficiency is beginning to be addressed and data is being gradually culminated. What this article wishes to do is to shed light on one consequence of statelessness that is yet to be part of either national or international discourse or addressed in research or reports on the issue. This overlooked problem is the negative and alarming effects of statelessness on the enjoyment of family unity and on the preservation of the family structure. This article wishes to discuss the impact of statelessness on family unity by analysing three significant violations of rights that occur due to this status, focusing on the right to marriage, family unification and the right to own property.

## 2 Right to Family Life

There are no provisions in either of the statelessness conventions that call for the protection of family unity of stateless persons. However the right to family unity in international legal discourse is a well-established right with much literature relating to the importance of it with regards to vulnerable groups such as refugees and IDPs.<sup>2</sup> This often focuses on separation and family unity but also comes alongside the importance placed on the right to family life which can be found in a whole range of regional and international instruments such as the European Convention on Human Rights and the African Charter on Human and Peoples Rights.<sup>3</sup> Alongside this, the importance of the healthy

<sup>2</sup> Examples to note would be *Family Unity and Refugee Protection*, (Cambridge University Press 2003) available at: <http://www.refworld.org/docid/470a33beo.html>; EF Abram, *The Child's Right to Family Unity in International Immigration Law* (1995) 17 *Law & Policy* 397, 397-439, and Helene Lambert, *Family Unity in Migration Law: The Evolution of a More Unified Approach in Europe* (2013). V Chetail (ed.) *Research Handbook on International Law and Migration* (Edward Elgar Publishing 2013).

<sup>3</sup> Some other instruments in which we can find the right to family unity are Articles 17 and 23 of the International Covenant on Civil and Political Rights, Article 10 of the International

development of the family is often found in national legal instruments and often legally encoded in the constitutions. Examples range from Ireland where the Constitution states that: '[t]he State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State'<sup>4</sup>; to the Constitution of the United Arab Emirates which states in Article 15 that: '[t]he family is the basis of society. It is founded on morality, religion, ethics and patriotism. The law shall guarantee its existence, safeguard and protect it from corruption.'<sup>5</sup>

Outside of the legal protection mechanisms, the preservation of family life is often seen by other institutions, such as religious or social ones, as one of the most important structures to preserve.

### 3 Stateless Persons and the Safeguard of their Family

The violation of the right to family unity comes as a consequence of a whole host of other violations of rights that stateless persons are subjected to. There are many ways in which the family structure is threatened by statelessness, such as psychological strains on families and pressure on couples to divorce to solve their status, but this article will focus on three which include the inability of stateless persons to start a family, family unification problems, and the strains of non-existent property rights of families.

#### 3.1 *Marriage*

The ability for a stateless person to get married is often limited, or at times impossible for stateless persons due to a variety of reasons. Severe restrictions on the right to get married can be found in various countries. In Burma, for example, the Rohingya have to follow regulations that mean obtaining permission from certain authorities in order to marry, often by paying them large bribes. The time it takes to receive this permission often takes several years.<sup>6</sup> Furthermore, sometimes, these applications for marriage are even

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Covenant on Economic, Social and Cultural Rights 1966; 9, 10, and 22 of the Convention on the Rights of the Child; Article 17 of the American Convention on Human Rights 1969 and Article 74 of Additional Protocol 1 of 1977 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War 1949.

4 Constitution of Ireland, 1937.

5 Constitution of the United Arab Emirates 1971.

6 Human Rights Watch, 'Burma: Revoke 'Two-Child Policy' For Rohingya' May 2013, <http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>.

rejected.<sup>7</sup> In other countries these limitations are tailored not towards prohibiting marriage, but towards the simple fact of not possessing any form of documentation – when someone is not legally in a country this renders the registration of any form of official process limited or impossible.

The legal obstacles to marry for stateless people are only part of the problem. Being stateless, and shouldering the associated economical, psychological and social implications that come with it often means that people are unwilling to marry someone who is stateless. This is specifically true when the status of being stateless will be inherited by their children. Often this comes from individuals themselves who refuse to marry someone who is stateless, but sometimes it is the family who opposes such a marriage out of fear of the future, as highlighted in this example from Lebanon:

Bilal and his wife Amal were born in Lebanon. (...) When they married eight years ago, their marriage was opposed by Amal's parents. How could their daughter marry a stateless man? Someone with no documents? Someone, who even though he was born in Lebanon and had lived his entire life in Lebanon, could not prove he was Lebanese? Someone who, in their eyes, had very little future ahead of him.<sup>8</sup>

These limitations on marriage for stateless persons means that many are left without the option of marriage, and additionally, as in many countries, not being married means you are unable to start a family.<sup>9</sup> This means that even beginning a family life by getting married and starting a family has become impossible.

### 3.2 Family Unity

The physical unity of the family is additionally often undermined when an individual is stateless. Stateless persons, who find no state in the world in which they can live legally, are constantly at threat of being detained or deported. When this fear materializes the unity of their family becomes violated and the enjoyment of family life is interrupted.

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7 The Irrawaddy, *Rohingya Plight Highlighted in London*, 2012, <http://www.irrawaddy.org/archives/9430>.

8 G Constantine, *Lebanon: Born Here But Not a Citizen* (Pulitzer Centre 2012). <<http://pulitzercenter.org/reporting/lebanon-stateless-gender-discriminating-citizenship-laws-women-rights-politics>>.

9 Many countries have social and sometimes even legal norms that are against having children out of wedlock. An example of this would be Iran – see UNICEF, 2005, *Birth Registration in Iran: An Analysis of the State of Relevant Laws in Iran*, 9.

Detention generally takes place with the objective of deporting the individual, despite the reality that in most cases this is impossible because there is nowhere to deport them to. This result of the inability of ‘governments to recognise statelessness as a significant issue has resulted in many individuals being detained indefinitely.’<sup>10</sup> This happens both in a migratory context, such as in Australia, which has no tailored policy of dealing with stateless persons in detention or the indefinite detention of the Rohingya in neighbouring countries to which they have fled,<sup>11</sup> but also with in situ stateless populations such as the case in Jordan. Um Khaled from Jordan talks about how:

My son has been arrested twice for not having any documents. The first time they only kept him for two days, but the second time for 16 days as it was his second offence. What is his offence? He is begging for these documents.<sup>12</sup>

Deportation is an additionally troubling notion that disrupts family unity. Although in most cases the deportation of a stateless individual is impossible, precisely because of their status, there remain many examples of precarious situations in which this has taken place. One high profile example of such a case is the one of Ahmed Abd AlKhaled – a bidoon from the United Arab Emirates. In 2009, the UAE had negotiated a deal with the Comoros Islands where some of its stateless community were able to acquire Comorian passports, despite having no links there. They were told this would legitimize their stay in the UAE and therefore make it easier for them to naturalize in the future. Abd Alkhaled had been targeted due to his active role as someone who criticizes regime policies in the UAE, and in 2012 the government deported him, by using his Comorian ID, to Thailand, where he remains.<sup>13</sup>

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10 Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, July 2010, 174: <http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>.

11 Ibid, 174.

12 An interview conducted with a Jordanian woman (February 2013) as part of the Women's Refugee Commission *Our Motherland; Our Country* project.

13 For more information on this see Human Rights Watch, *UAE: Free Blogger Activist*, 28 May 2012, available at: <http://www.hrw.org/news/2012/05/28/uae-free-blogger-activist>. and Financial Times, *UAE's Stateless Acquire Foreign Passports*, 4 June 2012 available at <http://www.ft.com/cms/s/0/8abfc14a-a8aa-11e1-be59-00144feabdco.html#axzz2h7KwLLW>.

Even when deportation does not happen, stateless individuals often have problems with re-entering ‘their’ country<sup>14</sup> - if they had left the country temporarily they are unable to re-enter to return to their families. This occurs either due to discrimination at the border, or because they possess no documentation and no form of residency permit. Despite growing jurisprudence on countries’ responsibilities to allow stateless individuals to re-enter their country<sup>15</sup> with the argument founded on Article 12 of the 1966 International Covenant on Civil and Political Rights, which provides that ‘No one shall be arbitrarily deprived of the right to enter his own country,’ (not limiting this right to nationals), often states do not consider themselves obliged to allow access of stateless persons into their country.

Jordan highlights an example in which this happens. A stateless Palestinian man who was unable to access higher education because he was stateless, left the country to enter the university elsewhere. Yet, when the residency permit he had for living abroad ran out, its renewal was refused by the authorities. His auntie talks about how ‘He has been stuck there for eight years not being able to return. (...) he hasn’t seen his family or mother for the past eight years as he cannot get back into the country. He can only see them through the internet.’<sup>16</sup>

The daily risks these families face of their members being detained in, deported from, or refused from re-entry into the state because of their status creates severe obstacles in preserving the simple right of a family to live together.

### 3.3 *Property*<sup>17</sup>

The inability of stateless persons to own property highlights how a violation of one right has unintentional direct effect on causing strains on the family. Property rights are often restricted to citizens or severely limited for

14 In some cases, like that of cases with the Bidoon, they are allowed to exit the country for reasons such as education, but often find themselves unable to re-enter. In other cases they may have been forced across the border such as through displacement brought on by conflict.

15 See for example *MT (Palestinian Territories) v Secretary of State for the Home Department* [2008] EWCA Civ 1149 (22 October 2008) and *SH (Palestinian Territories) v Secretary of State for the Home Department* [2008] EWCA Civ 1150 (22 October 2008), *MA (Ethiopia) v Secretary of State for the Home Department* [2009] EWCA Civ 289; [2010] INLR 1 (02 April 2009).

16 *Women’s Refugee Commission, Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa* (2013), 17.

17 Property rights are one of the few rights that are accorded to stateless persons in the 1954 Statelessness Convention, UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Article 13.

non-citizens.<sup>18</sup> Therefore, due to this and/or lack of documentation, stateless persons are unable to possess property (often including buildings, land and vehicles) anywhere. Several examples as to where this is the case is the Nubians of Kenya. In this country, the property ownership is strongly tied to citizenship rights - this leaves stateless Nubians unable to purchase property.<sup>19</sup> As a direct consequence of the restrictions on the property rights, a stateless person often becomes also unable to inherit what is bequeathed to them.<sup>20</sup> Alongside the obvious economic consequences of the inability to possess or inherit, and the furthering of the ostracization of this community, it also means that stateless persons will often resort to registering their possessions under the name of a national, most often a family member who has citizenship. This puts the stateless person in a highly vulnerable position, and makes them fear that their possession will be appropriated. Ultimately, this often results in causing tension between family members. Ali, a stateless bidoon of Kuwait, tells of the situation he is in:

I have registered my car in my brother-in-laws name, although it is mine. I like him, I think he is a good guy. However I keep telling my sister to make sure he is fine with me, to say good things about me to him. I don't want him to be angry with me. I could be left with nothing.<sup>21</sup>

Also at times of inheritance, this could create further problems between family members where the legal inheritor ignore the real owners.

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19 See the following reports for example: Kenyan National Commission on Human Rights, *Out of the Shadows, Towards Ensuring the Rights of Stateless Persons and Persons at Risk of Statelessness*, 2010 <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Statelessness%20Report.pdf> and Refugees.

International, *Nationality Rights for All: A Progress Report and Global Survey on Statelessness*, March 2009 [http://refugeesinternational.org/sites/default/files/RI%20Stateless%20Report\\_FINAL\\_031109.pdf](http://refugeesinternational.org/sites/default/files/RI%20Stateless%20Report_FINAL_031109.pdf).

20 For more examples of when this occurs see the regional report on statelessness in Central Asia - UN High Commissioner for Refugees (UNHCR), *Statelessness in Central Asia*, May 2011, available at: <http://www.refworld.org/docid/4ed32c9a2.html> and the South East Asia report; UN High Commissioner for Refugees (UNHCR), *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia*, 2 March 2011, available at: <http://www.refworld.org/docid/4d6e09932.html>.

21 An interview conducted in Kuwait (March 2013) as part of the Women's Refugee Commission *Our Motherland; Our Country* project.

#### 4 Conclusion

This research aimed at highlighting statelessness as most substantively a human rights issue, with vast consequences on the family. Namely, this article shed light on three issues, which shake the structure of families affected by statelessness. The importance of the right to family unity is well-established, however, despite the above presented violations of this right, and a whole host of others violations, we are yet to see jurisprudence of cases brought against states. Cases should highlight state practices that cease to protect the family through national, regional or international mechanisms as precedents or the introduction of this phenomena in academic or NGO fields.

With 2014 heralding the 20th Anniversary of the International *Year of the Family*, this could provide opportunity for the impacts of statelessness on family life to be highlighted as one of the most severe consequences of statelessness resulting from many other violations. It could add a significant layer to future arguments of addressing statelessness and to current movements of allowing them to safeguard and preserve their families.