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Collective Victimisation of Stateless Peoples

The Added Value of the Victim Label

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Abstract

The lives of stateless peoples tend to be marked by social discrimination and state hostility. Framed as ‘undesirable aliens’, stateless communities that live within the territorial boundaries of hostile state-regimes are often approached with suspicion and internal security concerns rather than with sympathy for the forms of victimisation that define their existence. The present contribution reflects on the implications of a discourse of statelessness that fails to recognise the stateless *as victims*. We argue that negative labels attached to stateless peoples are partially facilitated by legal documents that fail to recognise victimhood that is often inherent to statelessness. Moreover, we submit that providing ‘the victim label’ to stateless communities, through academic debate and advocacy, might enhance their status in international law as well as at the domestic level.

Keywords

statelessness – victimology – abuse of power – human rights

1 Introduction

Studies on stateless peoples remain curiously absent in the present body of victimological literature,¹ 'curiously' because the vulnerabilities that define the existence of those subjected to statelessness are elaborately dealt with in other academic disciplines. Perhaps most famously, Hannah Arendt has shed light on the causes and forms of victimisation that come with a lack of citizenship. Asserting that the stateless have no 'right to have rights', she showed that not having a nationality means that an individual falls beyond the protection and entitlements that are normally safeguarded by the bond between a state and its citizens. The stateless thus reside within the territorial borders of a state as outlaws without formal socio-political existence and entitlements.² The constant threat of detention and deportation, difficulties in obtaining secure employment, accessing health care, attending institutions of higher education, and impairments to freedom of movement are the result of the legal non-existence of a person without citizenship.³ Furthermore, being stateless, 'belonging nowhere' complicates a person's self-perception and in combination with a hostile state climate may cause severe psychological stress. Following the UNHCR, currently an estimated 12 million people worldwide are stateless, making statelessness one of the most urgent challenges for the international community today.⁴

The causes of statelessness, as well as the reality of *being* stateless, differ from context to context. Statelessness may be voluntary when a person gives up his nationality *proprio motu*, but statelessness may also occur 'accidentally' when a loophole in a state's domestic law renders a person stateless.⁵ Of interest in the light of the present contribution, however, are those instances where people and communities have lost their citizenship as a consequence of

1 The UN Convention Relating to the Status of Stateless Persons defines that a '(...) "stateless person means a person who is not considered as a national by any State under the operation of its law'. Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 189 UNTS 117, art 1.

2 See M.J. Gibney 'Statelessness and the Right to Citizenship' (2009) 32 *Forced Migration Review* 50, 50-51 (referring to Hannah Arendt).

3 While human rights are generally to be enjoyed by everyone, selected rights such as the right to vote may be limited to nationals. See further L. van Waas, *Nationality Matters. Statelessness under International Law* (Intersentia 2008).

4 Note: no accurate statistics are available on the precise number of Stateless people. In: UNHCR (2013). *Stateless People Figures*. Last accessed: October 22nd, 2013.

5 In Lebanon for instance, women lose their nationality if they marry foreign man. In case their husband is stateless, the children will inherit no nationality and become stateless too.

arbitrary deprivation of nationality. Although at odds with human rights standards,⁶ most states hold clauses in their domestic legal systems that allow for revocation of a person's citizenship. This grants the state legal space to exclude those who it deems 'unworthy' and 'undesirable' from their protection.⁷ When a state decides to revoke nationality for discriminatory purposes, the person left stateless faces a complicated life in the hostile state environment. Not only is his access to a number of fundamental rights entangled, he also has to cope with the reality of a society that is framing him as an undesirable 'Other' rather than a person prone to become victimised by the implications of statelessness. The social construction of the statelessness label in these circumstances thus renders a person subjected to it more vulnerable than in cases where *de jure* statelessness is a consequence of an 'accidental' loophole in the law, or voluntary revocation. Moreover, state discourse framing the stateless as 'outlaws' might facilitate bottom-up legitimacy for policy that further discriminates against the excluded. In extreme cases this might lead to outright state-violence, as happened during the persecution of Jews in the first half of the 20th century and today in states such as Lebanon and Myanmar.

In the present contribution we explore how returning the 'victim label' to stateless people living in the context of abusive states may nurture recognition of the stateless *as victims*. People who have fallen victims of the discriminatory policies of their states may be constructed within the state as 'undesirable' or 'politically controversial' rather than 'deserving victims' worthy of compassion and a solution for their fate. This negative discourse is partially facilitated by legal documents that fail to recognise the proneness to experience victimisation of those who hold no citizenship. We argue that returning 'the victim label' to stateless communities, through academic debate and advocacy might positively transform the way in which stateless people are framed, and as such strengthen their position at the domestic as well as the international level.

2 The Victim Label in Victimology

In the introduction we stressed that the reality of statelessness depends on the social construction of this term within a specific society. In this section we

6 The right to nationality is enshrined in article 15 of the UDHR. A vast number of Conventions has thereby stipulated the right to nationality. For a comprehensive overview, please consult: A/HRC/13/34.

7 H. Arendt 'Chapter 9: The Decline of the Nation-State and the End of the Rights of Men' in *The Origins of Totalitarianism* (Harcourt Brace Jovanovich 1973) 267-302.

briefly explore how the victim-label has developed over the past decades within the discipline of victimology, to illustrate the dynamic character of social constructs and labels, and their interconnectedness with overall society. Within victimology, a discourse of *pathos* for victims has emerged only recently. In the 1940s, pioneer victimologists including von Hentig, Mendelsohn, Wolfgang and Nagel, focused on studying the extent to which victims of crime provoked their own victimisation.⁸ Today, the original precipitation paradigm is considered rather victim-unfriendly, as it engaged in victim-blaming instead of studying the impact and consequences of victimisation *per se*. Following Van Dijk, contemporary victimology did not become a separate scientific field until 1970s, when the rapid emergence of social movements spread recognition and sympathy for the victim's cause.⁹ Especially the Feminist Movement was successful in demanding recognition for victims in the criminal justice system. Besides claiming rights and acknowledgement, the civil society groups also drew attention to the 'discovery' of new victims, including victims of marital rape and domestic violence. The revolutionary development of the victim-label in the second half of the 20th century reflects that who is recognised as a victim depends on the sociopolitical context. The label is therefore a social construct rather than a rigid reality, subject to the dialectics and developments of the society at large with respect to a common understanding of *deservingness*.

Recently, victimologists have started to study aspects relating to large-scale victimisation caused by gross human rights violations or international crimes.¹⁰ This trend towards recognition of collective victimisation should encourage victimologists to engage in mapping the scale and nature of victimisation suffered by stateless communities. An important research question in this regard is what the effect of victimisation is on both individuals and society at large and how to develop adequate legal and psycho-social remedies.¹¹ The outcomes of such research may further influence relevant policy-making and voice the needs and concerns of the stateless in their unique contexts.

8 J. Goodley, *Victims and Victimology: Research Policy and Practice* (Pearsons Education 2005).

9 J.J.M. Van Dijk, 'Introducing Victimology' in J.J.M. Van Dijk, R.G.H. Van Kraam, J. Wemmers, *Caring for Crime Victims: Selected Proceedings of the Ninth International Symposium on Victimology, Amsterdam, August 25-29, 1997* (Criminal Justice Press 1999) 1-12.

10 See for instance: R. Letschert, R. Haveman, A. De Brouwer, A. Pemberton, *Victimological Approaches to International Crimes: Africa* (Intersentia, 2011).

11 See for an overview of existing literature in this field: *Ibid*.

3 The Victim Label in International Law

The 1985 *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, today by some victimologists termed the *Magna Carta* of victim rights, is the first international legal instrument explicitly recognising the position of victims of crime and abuse of power. The Victim's Declaration distinguishes between two definitions of victimhood: one specific for victims of crime, the other focusing on victims of abuse of power. 'Abuse of power' is a term used to refer to the abuse of political or economic power of a legitimate authority, for instance a state, which results in the victimisation of certain (groups of) people. In preparation of the provision on victimisation due to 'abuse of power' in the Victim's Declaration, the Secretary General and the Committee on Crime Prevention and Control, reiterated that:¹²

(...) while victims of traditional crimes should also be dealt with, major attention should be given to the victims of illegal abuses of power, especially of a large-scale nature, and those which may not even yet be proscribed, yet whose impact may be far greater than assumed, with particularly serious consequences for vulnerable disadvantaged segments of the population (see E/CN.5/1983/2, paras. 137-143). Persecution, especially when institutionalized, may victimize masses of people, and economic malpractices perpetrated by powerful trading partners can inflict great harm on unsuspecting consumers, especially in developing countries.¹³

Because the present contribution specifically looks at hostile state-treatment of stateless people on their territory, a situation that might amount to the crime of persecution, it makes sense in formulating the definition of 'victims of abuse of power' as perpetuated in the Victim's Declaration, instead of the definition relating to conventional 'victims of crime'. Following Article 18, the term 'victims of abuse of power' refers to:

(...) persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or

12 For an overview of the procedural history of the Victim Declaration see United Nations Office of Legal Affairs, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: Procedural History' <<http://untreaty.un.org/cod/avl/ha/dbpjvcap/dbpjvcap.html>> accessed 29 March 2013.

13 Count 3, 'Introduction in: ESC, "Report of the Secretary-General, Guidelines for Measures on Behalf of Victims of Crime and Abuses of Power"' (12 March 1984) UN Doc E/AC. 57/1984/14.

substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.¹⁴

In this light, victims are people who suffer injustices due to violations relating to their physical integrity, emotional integrity, or their economic welfare, which are not necessarily prohibited in, for instance, national criminal laws in their state of residence. Article 19 of the Victim's Declaration prescribes that states should provide remedies to victims of abuses of power, such as restitution and/or compensation, and necessary material, medical, psychological and social assistance and support. How does this formulation link to statelessness?

From the outset, it is important to note again that statelessness is at odds with human rights. The UDHR, and numerous international conventions, define the right to nationality as fundamental.¹⁵ As such, states that have incorporated clauses into their national laws that allow for revoking a person's nationality are operating in violation of international law. Furthermore, the reality of statelessness victimises people in a number of ways. Lacking 'the right to have rights' a stateless person leads no socio-political existence. Where the stateless are actively persecuted, they might face outright state-violence and segregation. Statelessness separates families, limits freedom of movement, and denounces the recognition of the core norm of human rights law: people are ends in themselves, worthy of dignity. Whether condoned or actively created, statelessness appears as abuse of power *par excellence*, parodying the core of human rights, and causing economic, social, political, and in some case physical harm to the peoples subjected to it. As such, victimhood and vulnerability are the very markers for defining the reality of statelessness, constituting an integral part of the lives of all stateless people living in hostile state environments.

In this light it is striking that neither the statelessness Conventions, nor the *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*,¹⁶ at any point refer to 'victims' when listing the conditions under which statelessness status applies.¹⁷ Why is it that the

14 UNGA, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (29 November 1985) UN Doc A/Res/40/34. Here we looked at the provision relevant for the group of victims described in this contribution. For victims of crime see A(1,2).

15 For a comprehensive overview, see: A/HRC/13/34.

16 UN High Commissioner for Refugees (UNHCR), *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons* (6 October 2006) No 106 (LVII) <http://www.refworld.org/docid/453497302.html> accessed 22 October 2013.

17 UNHCR, 'Introductory Note by the Office of the United Nations High Commissioner for Refugees' in 'Convention and Protocol Relating to the Status of Refugees',

UN systematically refrains from speaking of 'victims' in relation to stateless peoples? To provide a discursive explanation, this might be attributed to the associations attached to the victim label. As Lacau notes: '(...) naming is not just the pure nominalistic game of attributing an empty name to a preconstituted subject. It is the discursive construction of the subject itself.'¹⁸ Consequently, when one refers to a 'victim' one sends certain unspoken socio-political messages that have become inherited in the term. *Ideal victims* are often labelled as persons who suffered passively, are weaker than the offender, have no voice, are vulnerable, distressed, innocent, helpless and needy.¹⁹ The reference to a 'victim' invokes an appeal to empathy and compassion. Meredith comprehensively demonstrates that one should be cautious to grant such compassion and first embed the usage of the term 'victim' in the respective socio-political context. Discourses on 'victimhood' might for instance be 'instrumentalised' in the public space.²⁰ Meredith refers to state leaders who emphasise collective victimhood of their nation in public speeches, to legitimise certain policies related to the national interest that might in fact be hostile to other national groups.²¹ A straight-forward example of a state that frequently applies this technique is the State of Israel, which justifies militarisation on the basis of self-defence relating to its own victimhood as a Jewish state under continuous threat of hostile Arab neighbor states. In these cases, determining which party is truly the victimised one, deserving of compassion, is complex and highly dependent on the dominant national narrative and people's individual ideas of right and wrong, good and bad.

That being said, how could one explain the absence of referring to stateless persons as victims at any point in the Conventions concerning statelessness? Did the states that drafted the Conventions not consider stateless people 'deserving' of victim status? Were the drafters of the Conventions afraid for unintended political statements they might make by including the word 'victim' in the Conventions? We opt for the latter. By refraining from terming stateless persons 'victims', the United Nations remained neutral as to whether stateless persons were deserving of international compassion or not. Apart

<<http://www.unhcr.org/3b66c2aao.html>> accessed 28 March 2013. Scanning the Convention, the Protocol and the Introductory Note on the term 'victim' or 'victims' yields zero results.

18 E. Laclau, 'Preface' in S. Žižek, *The Sublime Object of Ideology* (Verso 1989) xiv.

19 J.J.M. Van Dijk, 'Free the Victim: A Critique of the Western Conception of Victimhood' (2009) 16 *International Review of Victimology* 1.

20 V.M. Meredith, 'Victim Identity and Respect for Human Dignity: A Terminological Analysis' (2009) 91 *International Review of the Red Cross* 259.

21 Ibid.

from the top-down ‘instrumentalised’ usage of the victim-discourse as described above, van Dijk²² further demonstrated that not living up to the associations of an *ideal victim*, might have negative implications for the victim’s social status – even when the suffering of the person is widely known and recognised. Despite initial sympathy, support may relinquish when the victimised person starts to show behavior that deviates from the ideal victim-image, for instance by denouncing his or her passivity, or presenting him or herself as ‘in charge’ and ‘verbal’. In some cases this results in outright victim-blaming, when the public no longer deems the victim worthy of victim status because the person has behaved in a manner that is socially recognised to resemble an offender-discourse more than that of a victim.²³ In case of stateless people such a reversion in victim-offender roles might be especially likely when they organise themselves in the host-state, for instance in the quest of demanding equal rights. To illustrate, the hostility between the local Lebanese population and the stateless Palestinian refugees might to some extent reflect such a reversion, for the Palestinian military groups have at numerous occasions taken up arms against their Lebanese host-State as well as against Israel.²⁴

4 Conclusion

It appears that which victims are deemed ‘deserving’ and which victims are deemed ‘non-deserving’ of victim status and the compassion following therefrom, highly depends on the social context in which the usage of the term ‘vic-

22 Van Dijk (n 19).

23 Ibid.

24 Following the UNRWA, stateless Palestinian refugees in Lebanon currently number 455000 making up for nearly 25% of the overall Lebanese population. Most have lived in exile in Lebanon since the first Arab Israeli War of 1948, in by poverty stricken camps on the margins of society. Today’s camps are heavily guarded by the Lebanese Forces, and by some referred to as ‘states within the State’. Although especially Lebanese Sunnis in the South initially sympathised with the Palestinians, violence from Palestinian liberation groups within Lebanon, and consequent Israeli retaliation, has caused hostility between the Lebanese and the refugees. Most Palestinian refugees currently live in guarded ‘temporary camps’ and are denied all essential civil rights, including the rights to own real estate, the right to higher education, and the right to work in certain professions. Riots between the Lebanese Forces and the refugees persist, and need urgent attention, especially in light of the current refugee influx from Syria. See inter alia: A. Ramadan ‘The Guests’ Guest: Palestinian Refugees, Lebanese Civilians and the War of 2006’ (2008) 40 *Antipode* 658.

tim' is embedded. In addition, a victim should match the criteria attached to the *ideal victim*-label, in order to not be excluded from social recognition as a victim. Although it makes good sense that the United Nations refrains from inheriting a politically sensitive and essentially vague term as 'victim' in the context of statelessness, we contend that this appears to have had grave implications for the recognition of stateless persons as people who were victimised and therefore could invoke existing victim rights such as compensation, access to justice, psycho-social assistance etc.²⁵ As long as the victim-identity of the stateless peoples does not yield dominance, *statelessness* invokes negative associations, instead of the compassion often attached to the victim-label, which has dire implications for the person who is subjected to the reality of statelessness. The absence of the word 'victim' in the statelessness Conventions reflects this systematic misrecognition of persons as being victimised and constitutes as such an unintended political statement about the 'deservingness' of stateless persons.

We have argued that victimisation is inherent to the reality of being stateless in a hostile state. Furthermore, we contend that the label 'stateless' in such a context evokes exclusive social sentiments that might legitimize further maltreatment of the stateless within a society. After all, the way in which certain situations or contexts are framed can have great impact on the proposed approaches and policies that aim to provide for a solution. The recognition of victims as advocates, persons who have a voice and the importance of granting compensation, assuring justice and providing adequate victim services, should be stretched to the stateless populations and become a guiding approach when dealing with matters relating to collective victimisation. Victimologists should engage in further developing knowledge and policy concerning such communities and spread awareness about their essential status as *deserving victims*.

25 With regard to the needs of refugees, the World Health Organization (WHO) and the UNHCR have recognized that psychosocial needs should not be ignored and, indeed, are as important as physical needs. The World Health Organisation, with the support of the Office, has produced a manual for the mental health of refugees and of others in emergency situations. This is aimed at non-professionals, as was its manual 'The Community Health Worker', published in 1990. The idea is to help those working with refugees to understand how they can provide mental and psychological support to those in emergency situations.