

GUIDE ON THE PROTECTION OF STATELESS PERSONS

(Presented by Dr. Carlos Mata Prates)

I. INTRODUCTION

1. The General Assembly of the Organization of American States (OAS) asked the Inter-American Juridical Committee (IJC), in the resolution “AG/RES. 2826 (XLIV-O/14), to prepare a “Guide on the Protection of Stateless Persons”.

2. The Inter-American Juridical Committee assigned Dr. Carlos Mata Prates as rapporteur of the theme, during its 85th regular session.

3. Accordingly, this rapporteurship meets the requirements of the request made by the General Assembly of the OAS.

II. PURPOSE OF THIS REPORT

4. In accordance with the provisions set forth in the Resolution of the General Assembly of the OAS, what is requested or required is a *Guide on the Protection of Stateless Persons*, in other words, suggestions as to the establishing of some procedures, or even the approving of norms that enhance the efficacy and efficiency – assuming that the paramount principle is to protect such people who are in circumstances that pose a high degree of risk - when concrete measures are taken concerning questions on statelessness presented for the appreciation of the American States.

5. The above remarks do not excuse us from exploring the theoretical study of this problem - statelessness – on which a normative consensus already exists in today’s international law, besides an extensive bibliography in the Americas and elsewhere.

6. Likewise, it is fitting that since the early 50’s, when statelessness was recognized as a world problem, the Office of the United Nations High Commissioner for Refugees (UNHCR), was designated by the General Assembly of the United Nations as an organ entrusted with the avoidance and reduction of statelessness.

7. According to the precisions developed, the following report on the topic is hereby presented.

III. THEORETICAL FRAMEWORK

8. It must be considered that this report assumes the development carried out in respect to norms, with special reference to those contained in the **Universal**

Declaration of Human Rights (1948), the **Convention relating to the Status of the Stateless Persons (1954)** and the **Convention on the Reduction of Statelessness (1961)**.

9. As regards the American juridical instruments, special emphasis was placed on the contents of the **American Declaration of the Rights on Duties of Man (1948)** and the **American Convention on Human Rights (1969)**, where article 20 deals with the question.

10. It is also appropriate to consult the **Model Law for the Protection of Stateless Persons of the United Nations High Commissioner for Refugees (2012)**.

11. Finally, mention must be made of the study presented by the Member of the Inter-American Juridical Committee, Dr. José Luis Moreno Guerra, entitled **Measures Recommended for the States of the Americas to Prevent Statelessness (CJI/doc.482/15)** and the **Support Document on Statelessness (2015)** prepared by the Department of International Law of the OAS.

IV. METHODOLOGY

12. The comments above propose that this study is essentially practical in nature for the purpose of dealing with resolving a problem such as protecting stateless persons in an efficacious and efficient manner.

13. The methodology used was designed to gain familiarity with the panorama of the American States on the issue of the norms and practices they employ on the question related to protecting stateless persons. A *questionnaire* was drawn up and sent to the States in order to survey the situation based on the answers received and consequently carry out an analysis.

V. STATELESS PERSONS

14. A preliminary aspect to be considered refers to the concept of nationality. On this matter, the idea that is usually accepted is that *nationality* is a natural bond between an individual and a State, and that the rights and duties of both subjects are derived from this.

15. This juridical bond is in general regulated by the Constitutional Law of each State, whereas International Law converges with different norms in order to avoid or resolve conflicts such as positive or negative nationality.

16. Contemporary International Law recognizes the legitimacy of nationality being attributed by the States, applying the criteria of *jus soli* – acknowledging this bond for individuals born in the territory of the State; *jus sanguine* – acknowledging this bond for individuals who are the offspring of nationals regardless of the place of birth; and *jus labor* –acknowledging nationality based on the place where the individual works.

17. It should be borne in mind that despite the various criteria considered by contemporary International Law as legitimate, a negative conflict of nationality appears, in other words, when those persons that do not have any nationality and consequently are in a position of extreme vulnerability that calls for international law to intervene in order to prevent such situations or, if such situations become concrete, to find solutions to protect such persons.

18. With regard to the Convention relating to the Status of Stateless Persons (1954), article 1 states that: “**DEFINITION OF THE TERM “STATELESS”** 1. *For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by one State under the operation of its law.*” This is the definition accepted by doctrine and jurisprudence.

19. The causes of people finding themselves in a situation of statelessness are multiple, for instance *de jure* stateless – those who do not obtain nationality automatically or by individual decision according to the legislation of a State – and *de facto* stateless – individuals who cannot establish their nationality. In turn, among these individuals are those who had a nationality and lost it by a judicial sentence or administrative act in systems that allow this, or else renounce their nationality, and those cases where an individual has been unable to gain any nationality. For the effects of this report, as well as for doctrine and jurisprudence, both situations are considered capable of being assimilated to allow due protection.

20. In this respect and as a guiding criterion on the matter, as regards American international law, it must be remembered what article 20 of the American Convention on Human Rights (1969) prescribes, “**Right to Nationality.** 1. *Every person has the right to a nationality.* 2. *Every person has the right to the nationality of the State in whose territory he was born, if he does not have the right to any other nationality.* 3. *No one shall be arbitrarily deprived of his nationality or of the right to change it”.*

21. It bears repeating that the American Convention on Human Rights (1969) is a juridical instrument of a conventional nature and – given its high degree of acceptance as well as the passing of time – it must be considered that by now it has acquired the characteristics of common law.

VI. ANALYSIS OF THE ANSWERS TO THE QUESTIONNAIRE SENT OUT

22. A questionnaire was sent out to the American States with four questions on the topic under discussion: 1) *Is your country a signatory or has it ratified the Convention on the Reduction of Statelessness dated August 30, 1961?*; 2) *Indicate the practice in your State in statelessness cases;* 3) *Identify the national authority in charge of cases of statelessness;* 4) *Send the domestic legislation in your country on the topic, as well as any other documentation considered relevant.*

23. The following States provided responses to the above questionnaire: Argentina; Colombia; Costa Rica; Ecuador; El Salvador; Honduras; Paraguay; Peru, United States of America and Uruguay.

24. We must also report that the countries that have already ratified the Convention on the reduction of Statelessness (1961): Colombia; Uruguay (2); Argentina; Peru; Costa Rica; Paraguay (2); Ecuador; and Honduras (2). The United States of America and El Salvador are not parties to this Convention (however, El Salvador has ratified the Statute for Stateless Persons).

25. From the analysis of the responses forwarded it is clear that different situations appear regarding the organic aspect when dealing with statelessness cases (the Ministry of Foreign Affairs of Colombia, Costa Rica and Peru; in Argentine and Uruguay, the Commission of Refugees; in the United States of America and Honduras the organ in charge is the Migrations Secretariat, whilst in Ecuador and Paraguay there no specific authority to deal with those situations).

26. All the States that answered the questionnaire report that there is supplementary domestic legislation to the 1961 Convention and that all of them follow different procedures for resolving cases of stateless persons.

27. The responses received allow us to say that at the normative level the trend is to adhere to instruments aimed at avoiding or resolving the problems caused by statelessness. However, if we consider the responses received and the number of States Party to the OAS, this fact refrains us from drawing comprehensive conclusions about the reality of the Continent in this specific issue.

VII. PROPOSED GUIDE ON THE PROTECTION OF STATELESS PERSONS

28. In response to the request of the General Assembly, we suggest that OAS Member States adopt the following *Guide on the Protection of Stateless Persons*:

At the normative level:

Ratifying or adhering to:

- the Convention relating to the Statute of Stateless Persons (1954); and
- the Convention on the Reduction of Statelessness (1961).

Approving the following:

- Model Law on the Protection of Stateless Persons of the United Nations High Commissioner for Refugees (2012);
- Regulation for enforcing the provisions of the Conventions when required by the respective juridical system.

At the level of strategic framework:

- a world plan to put an end to the stateless (2014-2024)
- Declaration of Brasilia (2010)
- Manual on the Protection of Stateless Persons (UNHCR Manual)
- Decisions of the Inter-American Court of Human Rights
- Consulting Opinions of the Inter-American Court of Human Rights

At the organic and procedural levels:

- Establishing an accessible procedure for the protection of stateless persons, applying the principle of informality in favor of the stateless person and providing a reasonable time-frame.
- Taking into consideration the vulnerable situation of stateless persons, which calls for addressing the situation by applying the principle of protecting human beings.
- Acknowledging the status of the stateless person must include granting documentation to allow access to basic services (healthcare, and so on).
- Such acknowledgement will enable the stateless person to enjoy access to employment in the State where he/she resides.
- A specialized agency should be set up for the attention of situations of the stateless for the purposes of offering a service concerning the protection of the human rights involved.

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