

Statelessness in Japan: Management and Challenges

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According to the Universal Declaration of Human Rights, “Every person has the right to a nationality”. Most of us take nationality for granted, but people in varied circumstances find themselves to be stateless, sometimes to their surprise. This paper focuses on statelessness in Japan. First, I examine the cause of stateless people and classify them based on differences in legal status and background. Second, by presenting some actual cases of stateless people, I demonstrate how the stateless issue has been overlooked and sometimes concealed by the system and society in Japan. Last, I introduce the development of the Stateless Network, which is the first and only non-governmental organization in Japan supporting stateless people. Experiences of how the Network manages to support stateless people as well as the challenges to overcome.

Keywords: *stateless, nationality, identification, human rights, Stateless Network*

Introduction

As transnational migration increases, we have become familiar with many people having dual or even multiple nationalities. However, the existence of people living without any nationality, who are called “stateless” people, is not widely known.

According to the United Nations High Commissioner for Refugees (UNHCR), it is estimated that there are more than 12 million stateless persons in the world. Statistics on foreigners registered in Japan show that there are approximately 1,500 people identified as “*Mukokuseki*” or stateless.

Although there have always been stateless people living in Japan, they were not recognized by the public until recently. No organizations existed to provide support

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for stateless people, with the exception of refugee organizations who supported those who also had refugee status. In order to address this issue, the “Stateless Network” was established in Japan in January 2009 through the support of academics, lawyers, and volunteers.

This paper examines the situation of stateless people in Japan, including their social background and the factors that led to their stateless status. It describes the organization of the “Stateless Network”, including its background, network, activities, management, and future agenda. The objective of the paper is to contribute to increased awareness of the situation of stateless people and their human rights. Furthermore, the paper gives an opportunity to rethink the management and challenges of using Public Anthropology to promote human rights for stateless people.

Nationality and Statelessness

Nationality is defined as “an individual status as a member of the particular country.” On the other hand, a stateless person is an individual who is not recognized as a member of any country. Stateless people are often described as “forgotten people” (Chen, 2010) or “excluded people” (UNHCR, 2007).

Most of us take nationality for granted. Often, the only time we think about nationality is when we show our passport at the immigration counter at the airport. Since we live in a world based on nation-states, most people assume that everyone has a nationality. In addition, we tend to categorize individuals based on their nationality, such as “Japanese” or “American.” As a result, most people are not aware of stateless people, as they are often invisible. However, there are stateless people living all around us.

In 2010, there were 1,234 people registered as “stateless” in the Japanese alien registration system according to the *Statistics of Alien Residence* issued by the Association of Immigration Control (NyukanKyokai, 2010). However, the actual number of stateless people is higher than this official figure, as it does not include those who are not registered as aliens, or who are categorized as having nationality but are *de facto* stateless (as discussed further below).

Who Is Stateless?

Fundamentally, there are two types of statelessness. One is *de jure* statelessness, which means that the person is stateless “by law,” and the other is *de facto* statelessness. Being *de jure* stateless means that the given person is not considered a national by any state under the operation of state laws. This means that no state will recognize the person as a citizen. In contrast, an individual in a situation of *de facto* statelessness may have a nationality by law, but the link between state and individual is ineffective or does not exist in tangible terms. These are discussed in more detail below.

One of the issues often raised is whether stateless people are refugees, or whether refugees are stateless. The two statuses can be related, but are distinct. Normally when a person is a refugee, he or she does not necessarily lose his or her nationality, even if he or she may not be able to seek the protection of his or her state. Thus the person is a refugee but is not stateless. In cases such as in the former Soviet Union or other former communist countries where people fled or did not complete their military service, their nationality was taken away. This means that they were clearly deprived of their nationality, so are stateless, and under such circumstances a person can indeed also be considered a refugee. So the status of refugee and of being stateless may be linked in some cases, but there is no automatic connection between the two.

Causes of *de jure* Statelessness

How is nationality granted? Most of the time, it is very obvious. Basically there are two ways: based on the bloodline (that is, through the parents’ nationality) or based on where the child is born. However, nationality that is based on the bloodline raises certain issues. If the parents are of different nationalities, is the child’s nationality based only from the paternal side or is it also considered from the maternal side? In many countries, nationality is still conferred only through the paternal side; this creates potential problems—as would, of course, basing nationality on the maternal side only. Depending on the situation, the place where the child is born can create certain issues as well. However, the biggest reason why people become *de jure* stateless is the breakup of states. This happens when countries disappear by being incorporated into other states, or break up so that new countries are established. *De jure* statelessness is usually the source of the largest number of stateless cases.

De jure statelessness can also occur when citizens are deprived of their nationality. Fortunately, this is an issue which is less prominent than during the time of the former communist regimes; as mentioned above, in former Soviet countries the state could deprive citizens of their nationality if they fled to other countries or refused to do military service.

Renunciation of nationality, and the right to change one's nationality through naturalization, is also an issue. The problem occurs when a person renounces their nationality but does not attain a new one. Sometimes this happens because there are different systems and different legal provisions in the former and the new nationality. When one has to renounce their original nationality before they can attain a new one, there may be some problems that arise in the later stages of the transference. And once an individual renounces their former nationality, it becomes much more difficult to get it back. This is often an issue in countries that do not allow dual citizenship, or require a foreign woman who marries to take the nationality of her husband. In the case of divorce, women who go back to their home country often face problems because they cannot get their original nationality back.

Causes of *de facto* Statelessness

De facto statelessness occurs for numerous reasons. One example is that of a national who has no access to diplomatic or consular services. This is often the case for nationals of countries that have a very limited diplomatic or consular presence outside of their own country. In other cases, it is impossible to establish the nationality of a given person. Such a situation can arise if one country claims that the person is a national of another country, and that country claims that he or she belongs to the first country. In short, it becomes disputed which state the person in question belongs to. If the person has no official documents, the situation then becomes increasingly difficult to resolve; and immigration officers are often confronted by this problem. Key issues are the refusal of re-admission to the home country and the difficulty of proving nationality. For example, if a foreigner comes into a nation without documentation, it is necessary to prove that the person is of a certain nationality. Thus he or she must be able to approach the embassy of that nation to obtain the necessary documents so that he or she can prove their nationality as well as to get back to homeland. However, without any documentation the embassy often says; "No, no, no, he is not our national" and send them to other official. I think you can see why this situation is called "ping pong" because these people go from one country to the other and yet they are not allowed in anywhere.

The difficulty of proving nationality can also occur for other reasons. Later we can discuss the case of Vietnamese born in Thailand who came to Japan. Among some ethnic groups in Africa, there is no culture or custom to register the birth of a child. The rate of unregistered children is still high in Somaliland, Uganda and Ethiopia (The African Child Policy Forum, 2005). Therefore, how do you prove that you are a national of a certain country? Nationality is one of those issues that perhaps we take for granted, but if there is no system or custom in place, it creates a lot of issues and difficulties.

International Conventions Relating to Statelessness

The international legal framework on statelessness consists of two international instruments. Both were established after the Second World War. The first one was the 1954 Convention Relating to the Status of Stateless Persons (UNHCR, 2011). Initially, this Convention was linked to the 1951 Refugee Convention, and the main purpose was to deal with the consequences of the Second World War. To address the issue of statelessness, it ensured that provisions for stateless people were in place among member states. However, in practice most stateless people were handled through the refugee system and were not covered under the 1951 Convention.

The second instrument was the 1961 Convention on the Reduction of Statelessness which established a set of rules in order to prevent people from becoming stateless (United Nations, 2005). The Convention particularly focused on granting nationality to children or to orphans. In addition, it encouraged states to avoid situations that may result in stateless people. Yet, by 2012 only 43 states were signatories to this Convention. Japan has not yet acceded to either Convention relating to statelessness (Abe, 2011).

Statelessness in Japan

As mentioned above, the actual number of stateless people in Japan is higher than the official figure, for several reasons. First, there are stateless children born in Japan to parents who have illegal status or have overstayed. It is estimated that over 10 thousand children are in this situation. Because their births cannot be registered, I categorize them as unregistered. An example is the status of Japanese Filipino Children (JFC) born to a Japanese father and Filipino mother. Their parents often

are not legally married and the mother has overstayed in Japan. After the baby is born, the parents hesitate to register the child because the mother has overstayed in Japan, and/or the father may have another family with his legal wife. In this way many children have unregistered status.

Second, there are people who have an alien registration card issued by the Japanese government that identifies them with a certain nationality, but have not yet been issued any documentation of this nationality from the actual government. I have encountered people in this situation who hold an alien registration card noting their nationality as Vietnamese, Korean, or Burmese. Yet they were not issued a passport or other form of documentation from those governments, and do not enjoy citizenship or other rights from that country. I categorize them as “nationality-less”.

Third, there are people who have alien registration issued by the government where they are specifically designated as stateless (*Mukokuseki*); these are counted in the official statistics as mentioned above. The backgrounds of these people are varied. Some are white Russians who came to Japan before WWII; some are overseas Chinese who held a Republic of China (Taiwanese) passport but who chose to be stateless when Japan shifted their diplomatic relationship from Taiwan to the People’s Republic of China in 1972 (Chen, 2011); some are of Tibetan descent who were born in India and came to Japan with travel documents issued by India; some are people from Palestine, North Korea or other countries with shifting borders and statuses such those in Eastern Europe. We can see that the Immigration Bureau categorizes people who do not have identification of nationality issued from a national authority that Japan recognizes into this group.

We can categorize stateless persons as outlined above based on their alien registration status and whether or not they have an identification issue in Japan. There is a wide range of stateless people living in Japan, ranging from permanent to illegal residents. They are treated differently depending on whether or not they have legal residence status. Stateless people with legal residence can enjoy the same rights as other foreign residents; however, because the stateless are not well known in society, they often face discrimination and their status is misunderstood. They may receive a negative reaction when they show their ID card showing that they are stateless. On the other hand, the type of people who are effectively nationality-less tend to have administrative problems, because they are holding an alien registration card (their primary form of identification) which is not valid. Many will face an identity crisis when their passport application is rejected by the government that they have been

believed to be their “home country,” realizing that they are actually stateless and the nationality shown on ID card is not effective. The most tragic cases are stateless people without status of residence. These people are unable to access health insurance, jobs, housing and other national benefits; they are regarded as illegal residents so they are targeted to be detained and deported from Japan. However, being stateless and having a lack of support from the government, they could be detained longer than other nationals, causing mental problems and violations of their basic human rights.

Through my research on stateless people, I have realized that the Japanese government does not have a system to recognize the nationality-less/stateless. Needless to say, nationality, statelessness, and the status of residence, as well as the type and nature of identification are all deeply interrelated and can affect individual human rights.

Development of the Stateless Network

Stateless people have long been overlooked or abandoned because they are invisible. Also, because the issue of statelessness is complex and difficult to understand, even stateless people themselves are not aware of their situation until they face a problem in reality. In comparison with the human rights of refugees which are easy to be conscious of, the human rights of stateless people are seldom discussed.

In November of 2008, an international forum “The World Seen from the Viewpoint of the Stateless: A Reevaluation of Nationality in Contemporary Society” was co-organized by National Museum of Ethnology (MINPAKU) and UNHCR with the support of Japan Association for Migration Policy Studies (JAMPS). The main purpose of the forum was to make stateless people visible to the public (Chen, 2008).

We invited stateless persons with various backgrounds to share their actual experiences of being stateless, their thoughts on nationality, and their personal identities. We also had panelists including a midwife who had attended births of stateless children; a lawyer who had consulted stateless people; staff from an international organization that connected stateless people and governments; and researchers studying stateless people from legal, historical, and anthropological aspects. We therefore had discussions emerging from very diverse perspectives.

After the forum, we received many comments from the audience including “I could hear the voices of the stateless people,” “I did not know that there were stateless people around us. I want to know more about them,” “I look forward to the building of networks to raise general awareness on these issues,” and “What we can do as citizens?”

To answer these questions following the forum, the Stateless Network was founded on January 2009 with the aim of creating more opportunities to talk about the issue of statelessness and to create a volunteer network among stateless people.

Management and Challenges

The Stateless Network is a nonprofit, multi-ethnic organization that offers support to stateless people who are facing problems and seeking assistance and advocacy to improve their lives. It also organizes outreach opportunities, including workshops and forums, to promote social awareness about statelessness.

Every few months the organization holds workshops called “Stateless Network Café,” inviting stateless people and others to share their experiences and develop mutual understanding and friendship. We also hold seminars, inviting lawyers and other specialists to give lectures related to statelessness. Additionally, we consult on cases of stateless people facing legal and administrative problems, and hold meetings and gatherings to provide them support. Here, I would like to share some cases of stateless people that we have been supporting.

(1) The case of a *de facto* stateless person

Many of the *de facto* stateless people in Japan are second generation Indochinese refugees who have been living in Japan since the 1980s. Ms. Hong was born in Hong Kong to Vietnamese parents who escaped from the Indochina War. The family came to Japan when she was about 4 years old with official support. Thus she is a resident and is registered as a foreigner in Japan; she has been issued an Alien Registration Card which is her primary form of identification. The nationality column of her identification card lists her as Vietnamese.

In early 2012, she gave a birth to a son prematurely before she had registered her marriage. Her Japanese partner, who is the father of her newborn baby, tried to submit the marriage registration and the birth registration. But he was requested to add more documents: a certificate of nationality for Ms. Hong and an official certificate from Vietnam stating that she is unmarried. When Ms. Hong went to the Vietnamese embassy, she was told that the Vietnamese government does not have any information about her and therefore cannot issue those documents. The baby remained unregistered for several months until we advised them to attach a detailed statement to solve the issue.

Ms. Hong was shocked to learn that her status is in question, because she had never doubted the legitimacy of her Alien Identification Card. For the first time she realized that she is actually stateless. Many people in a similar situation as Ms. Hong are living in Japan without realizing their status.

(2) The case of a Vietnamese descendent born in Thailand

Many people of Vietnamese descent were born in Thailand after their parents escaped from the political disorder in Vietnam. Their refugee status meant that their births could not be registered in Thailand, and due to the social and political environment they were given only limited rights. Many came to Japan in the 1990s seeking a better future, but due to their stateless status they came to Japan with fake passports. While they are able to find jobs in factories as unskilled laborers, they are illegal residents without access to health insurance or other rights.

In 2007 and 2008, two people in this situation were prosecuted by the Ministry of Justice Immigration Bureau for suspected immigration law violation. Although they were ordered to be deported to Vietnam, they had no place to be deported to since they had never been to Vietnam nor had Vietnam nationality. Lawyers who are members of the Stateless Network fought this case and claimed the deportation order of the government to be invalid, since the government has the responsibility to show enough evidence to confirm people's identity.

From this case, we realized that the nationality column of the ID and certificate issued by Japan to Vietnamese descendents born in Thailand is diverse. Some are recognized as Thai, some as Vietnamese, and some as stateless, even though they share the same experience and background (Chen, 2011).

(3) The case of administrative limbo

Mr. Lam was born in Shanghai and migrated to Bolivia, where he obtained Bolivian nationality. However, he decided to recover his former Chinese nationality while he was in Japan on a business visa. He got information on how to do so from an officer in the Chinese Embassy in Tokyo and proceeded accordingly—giving up his Bolivian nationality and applying for recovery of his Chinese nationality. After a few weeks he got a letter saying that his application was rejected because he should apply either in China or Bolivia since he is not a resident of Japan. Because of administrative failure on the part of the officer in the Chinese Embassy, Mr. Lam became stateless as well as an illegal resident.

Mr. Lam has been stateless in Japan for more than 15 years, causing him severe psychological pain. Separated from his family, he was unable to return for his mother's funeral although he was the eldest son. He said it was the saddest thing that happened in his life. He cannot leave Japan since he has no identification or passport; he cannot work legally, does not receive social welfare, and is even unable to open a bank account.

Stateless people without status of residence often hide their identities in Japan. If they are arrested, they will be put in a detention center, whether or not they have a place to be deported to. People in detention centers for a long period may suffer mental disorders. Some receive provisional release status and can live outside the center, but without a working permit. Thus, they live under very difficult circumstances.

Human Rights of Statelessness

According to article 15 of the Universal Declaration of Human Rights, "Every person has the right to a nationality." We all realize that nationality is the right to have rights. Although nationality is necessary to access various rights, however, once you are in Japan, it seems that resident status is more important for an individual to access basic human rights. Also, we have realized that nationality on the identification issued by official may not necessarily correspond to reality.

From July 2012, a new residency management system began, and the Alien Registration System was abolished (Immigration Bureau of Japan, 2012). A resident Card will be issued to all persons residing in Japan who have been granted a status of residence with a period of stay more than 3 months. Unlike the Alien Registration Card, which was also issued to people without legal residence, this new system will exclude illegal residents. Therefore, this change will result in more unregistered people, and stateless people without legal residence status will lose their tools of identification. This will cause additional difficulties for some to prove their nationality, and in how to identify every individual.

I think the presence of stateless people serves as a mirror to reflect the meaning of nationality and human rights. Unlike legal studies of statelessness, Public Anthropology has as its tasks to discover and record the realities of stateless individuals based on fieldwork studies; to find the gap between stateless people and legal systems in contemporary society; to reevaluate and question the meaning of nationality in relation to human rights; and, not only from a theoretical point of view but also in practice, to throw doubt on the idea that today's human rights are embedded in nationality and the legal systems of nation-states.

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