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INTRODUCTION

The developments in contemporary international law practices have led to a fundamental transformation of certain classical approaches. It is observed that one of the areas affected by this change is the institutions of human rights and citizenship. The issue of determining the boundaries drawn by international law in these areas, which correspond to the absolute sovereignty of states, holds significant importance. In addition, new approaches are emerging in judicial interpretations at the national legal system level regarding the binding nature and implementation of international treaties, which occupy an important place in classical international law.

In this book, the authors analyze the aforementioned issues within the framework of contemporary approaches in international law. In the first chapter, esteemed authors Mustafa Çakır and Alisher Bakhronov examine the current approach of the Constitutional Court of the Russian Federation in terms of the ratification and implementation of international treaties. In the second chapter, esteemed author Alisher Bakhronov addresses the legal status of foreigners in the national regulations of the Russian Federation. In the final chapter, esteemed author Nimet Özbek analyzes the concept of free citizenship in the context of statelessness. I hope that this book, which focuses on significant contemporary approaches, will contribute to the literature on international law.

Assoc. Prof. Sezercan Bektaş

Content

CHAPTER I

Legal Analysis of Clause “B” of Part 5.1 of Article 125 For Contradiction With Part 4 of Article 15 of the Constitution of The Russian Federation

Mustafa ÇAKIR[1]
ALISHER BAKHRONOV[2]

Introduction

For a long time before the adoption of amendments to the Constitution of Russia, proposed by President Vladimir Putin in his address to the Federal Assembly on January 15, 2020, supplementing clause b, part 5.1 of Article 125 of the Constitution of the Russian Federation (Amendment Act of 14.03.2020 No. 1-FKZ "On Improving the Regulation of Certain Issues of Organization and Functioning of Public Power"), there were negative attitudes on the part of public authorities of Russia

[1] Assoc. Prof. Public international law https://orcid.org/0000-0001-9595-0815
[2] Employment: State Committee on Investment and State Property Management of the Republic of Tajikistan: Dushanbe, TJ Position: Deputy Head of Analytical Department https://orcid.org/0000-0001-9828-6673

regarding regulatory norms of a binding nature at the international level in the field of human rights and freedoms. There have been many discussions about the potential for non-enforcement of the ECtHR decisions.

The first attempts were made back in 2011, when Alexander Torshin, First Deputy Chairman of the Federation Council (upper house of parliament) (2008-2015), using the rights of legislative initiative, introduced a bill in the State Duma, the content of which would block the enforcement of judgments of the ECtHR. For example, if Russian courts issued rulings based on legal norms that do not contradict the Constitution and have not been recognized unconstitutional in advance, it would be impossible to review such decrees of Russian courts based on ECtHR decisions.[3] The draft law introduced at that time by A. Torshin caused a public outcry and was not adopted by the State Duma.

And in 2013 the Constitutional Court of the Russian Federation concluded that there is a reason to overcome the decision of the ECtHR at the state level. Thus, the Chairman of the Constitutional Court of the Russian Federation explained the position of such an opinion as follows: "When certain decisions of the Strasbourg Court are doubtful from the point of view of the essence of the European Convention on Human Rights itself, and all the more directly affect national sovereignty and fundamental

[3] Совет Федерации Федерального Собрания Российской Федерации. «А.ТОРШИН: ЗАКОНОПРОЕКТ ДОЛЖЕН ПРЕДОТВРАТИТЬ ИСПОЛЬЗОВАНИЕ ЕСПЧ КАК ИНСТРУМЕНТА ДАВЛЕНИЯ НА ВНУТРЕННЮЮ ПОЛИТИКУ РФ». 20 июнь 2011 г. Accessed March 13 2024. http://council.gov.ru/events/news/16967/

constitutional principles, Russia has the right to develop a defense mechanism against such decisions".[4]

The case of Yukos v. Russia (complaint No. 14902/04) was the final prerequisite for the adoption of the Constitutional Court's decree No. 21-P of July 14, 2015. The ECtHR issued a decree that found violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Strasbourg Court ordered the Russian Federation to pay an unprecedented amount of compensation of €1.9 billion to the shareholders of Yukos (which was declared bankrupt on August 1, 2007). The Ministry of Justice, as well as other state authorities of the Russian Federation, disagreed with the ECtHR decision and called the case politicized.[5]

As a result, in 2015, the Constitutional Court of the Russian Federation accepted into its proceedings the statement "In the case of verifying the constitutionality of the provisions of Article 1 of the Federal Law "On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto", clause 1 and 2 of Article 32 of the Federal Law Law "On International Treaties of the Russian Federation", parts one and four of Article 11, clause 4 of part four of Article 392 of the Civil Procedure Code of the Russian Federation, parts 1 and 4 of Article 13, clause 4 of part 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, parts 1 and 4 of Article 15, clause 4 of part 1 of Article 350 of the Code of Administrative Proceedings

[4] М.К Худолей, «КОНСТИТУЦИОННЫЙ СУД РФ И ЕСПЧ: ИСТОРИЯ РАЗВИТИЯ ОТНОШЕНИЙ», *Ex jure* 1 (2022 г.), 51.
[5] Brabandere, Eric De. «OAO Neftyanaya Kompaniya Yukos v. Russia (Eur. Ct. H.R.)». *International Legal Materials* 55/3 (2016), 478. https://doi.org/10.5305/intelegamate.55.3.0474

of the Russian Federation and clause 2 of part four of Article 413 of the Criminal Procedure Code of the Russian Federation in connection with a request from a group of deputies of the State Duma."[6]

The Constitutional Court of the Russian Federation issued a decree on the above appeal on July 14, 2015, No. 21-P, where it established its position on possible cases of non-enforcement of ECtHR decisions.

The Constitutional Court of the Russian Federation, in its Decree No. 21-P, recognized the norms and provisions of the ECHR, but paradoxically questioned only a specific article. Thus, in this decree, the Constitutional Court of the Russian Federation appealed to the federal legislator to develop a particular legal mechanism on the possibility and impossibility of implementing Article 46 of the 1950 Convention.[7]

Based on the adopted Decree No. 21-P, the State Duma amended the Federal Constitutional Law on the Constitutional Court. These amendments authorized the Constitutional Court to issue decrees that do not enforce the decisions of international courts (primarily the ECtHR) if they contradict the Constitution of the Russian Federation. The amendments came into force after being

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[6] «Постановление Конституционного Суда РФ от 14.07.2015 N 21-П "По делу о проверке конституционности положений статьи 1 Федерального закона „О ратификации Конвенции о защите прав человека и основных свобод и Протоколов к ней", пунктов 1 и 2 статьи 32... \ КонсультантПлюс». Accessed March 13 2024. https://www.consultant.ru/document/cons_doc_LAW_182936/

[7] Lauri Mälksoo, «Russia's Constitutional Court Defies the European Court of Human Rights: Constitutional Court of the Russian Federation Judgment of 14 July 2015, No 21-П/2015», *European Constitutional Law Review* 12/2 (2016), 378.

signed by Russian President Vladimir Putin in December 2015 (Federal Constitutional Law of 14.12.2015 N 7-FKZ "On Amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation").[8] Based on this at the same time it was already clear, that in case of permanent violation of the ECHR by Russia, its exclusion from the Council of Europe was inevitable.[9]

The Russian president, because of his foreign policy as well as some economic factors initiated in 2020 amendments to the Russian Constitution. Attempts to make new amendments to the Constitution of the Russian Federation were a clear example that the country was rapidly moving towards a more rigid form of government in the direction of limiting the instruments of human rights protection and freedoms.[10] Although all the legal procedures for introducing and amending the Constitution were passed, Russian President Vladimir Putin decided to schedule April 22, 2020, and hold a formal vote on the amended Constitution. But the COVID-19 pandemic, sweeping the world, prevented the Russian president from

[8] «Федеральный конституционный закон от 14.12.2015 N 7-ФКЗ "О внесении изменений в Федеральный конституционный закон „О Конституционном Суде Российской Федерации“ \ КонсультантПлюс». Просмотрено 14 март 2024 г. https://www.consultant.ru/document/cons_doc_LAW_190427/

[9] Fleig-Goldstein, Rachel M. «The Russian Constitutional Court versus the European Court of Human Rights: How the Strasbourg Court Should Respond to Russia's Refusal to Executive ECtHR Judgments». *Columbia Journal of Transnational Law* 56 (2018 2017.), 172. https://heinonline.org/HOL/Page?handle=hein.journals/cjtl56&id=176&div=&collection=

[10] Государственная Дума. «Полный текст поправок к Конституции: что меняется?» 14 март 2020 г. Accessed March 14, 2024. http://duma.gov.ru/news/48045/

holding this vote. The number of people sickened by the disease forced the president to push back the voting date on the constitutional amendments to July 1, 2020.[11]

Although the crucial purpose of these amendments was to reset the terms of Russian President V.V. Putin, questions regarding international treaties were also of particular importance, where special powers were allocated to the Constitutional Court of the Russian Federation regarding the execution of decisions of International Courts on the territory of Russia. The authorities of the Russian Federation made sure that the issue of non-enforcement or refusal to enforce ECtHR decisions was resolved not only at the level of a decree of the Constitutional Court but also at the level of the fundamental law of the country - the Constitution.[12] Thus, the 2020 amendments supplemented Article 125 of the Constitution of the Russian Federation with Clause b, part 5.1, the contradictory nature of which is discussed in more detail below.

Legal analysis of clause "b" of part 5.1 of article 125 for contradiction

In his presidential address on January 15, 2020, President of the Russian Federation V.V. Putin proposed to introduce several amendments to the Constitution of the Russian Federation, and these proposals were adopted as the Law on Amendment of March 14,

[11] «Общероссийское голосование в условиях пандемии: как будет обеспечена безопасность здоровья участников?» Accessed March 14, 2024. http://www.garant.ru/news/1381208/

[12] Usenkov, Ivan - Morozov, Igor. «Enforceability of ECtHR Judgements in Russia: Alternatives of Interaction Between Jurisdictions». *SHS Web of Conferences* 50 (2018), 01192. https://doi.org/10.1051/shsconf/20185001192

2020 No. 1-FKZ “On Improving the Regulation of Certain Issues of the Organization and Functioning of Public Power" (206 changes).[13]

Amendments to the Constitution increased the powers of the Russian President at the expense of the government and the Prime Minister. The dependence of the courts on the president has also increased. The president's guarantees after resignation were enshrined in the Constitution, including his right to become a senator for life. Most importantly, a provision appeared in Article 125 of the Constitution of the Russian Federation (clause b, part 5.1), which allowed the Russian authorities not to comply with decisions of international bodies (courts), which is the subject of our analysis.

Clause b, part 5.1, article 125 of the Constitution of the Russian Federation reads:

Constitutional Court of the Russian Federation:

in the order established by the federal constitutional law, resolves the issue of ***the possibility of execution of decisions of interstate bodies, adopted on the basis of the provisions of international treaties of the Russian Federation*** *in their interpretation contrary to the Constitution of the Russian Federation, as well as* ***the possibility of execution of a decision of a foreign or international (interstate) court, foreign or international arbitral tribunal (arbitration), imposing obligations on the Russian Federation,*** *if*

[13] Президент России. «Послание Президента Федеральному Собранию». 15 январь 2020 г Accessed March 14, 2024. http://kremlin.ru/events/president/news/62582

this decision contradicts the foundations of the Constitution of the Russian Federation;

In the formulation of this provision, it is necessary to take into account the paradoxical fact that the constitutional court is empowered to resolve the issue of ***the possibility of execution (non-execution) of decisions of interstate bodies (adopted based on the provisions of international treaties of the Russian Federation) and the possibility of execution (non-execution) of a decision of a foreign or international (interstate) court, imposing obligations on the Russian Federation***, while Part 4 of Art. 15 of the Constitution gives priority to the norms of international law. This contradiction lies in the fact that Part 4 of Art. 15 of the Constitution states: ***"If an international treaty of the Russian Federation establishes rules other than those provided for by law, then the rules of the international treaty apply."*** Thus, in the case of signature and ratification, the state assumes obligations, and the international document becomes an integral part of the domestic legal system, which takes precedence over domestic norms.[14]

In the provision of clause b, part 5.1 of Art. 125 of the Constitution of the Russian Federation, ***on the possibility of executing decisions of interstate bodies or on the possibility of executing decisions of interstate courts that impose obligations on the Russian Federation***, we are talking specifically about ***ratified norms of international law.*** Since interstate bodies or international

[14] Галина Геннадьевна Фастович , «К ВОПРОСУ О ЗАЩИТЕ ПРАВ ЧЕЛОВЕКА (НА ПРИМЕРЕ АНАЛИЗА ПОСТАНОВЛЕНИЙ КОНСТИТУЦИОННОГО СУДА РОССИЙСКОЙ ФЕДЕРАЦИИ)», *Аграрное и земельное право* 4 (172) (2019 г.), 34.

(interstate) courts make ***certain decisions regarding the Russian Federation or impose obligations on the Russian Federation only based on treaties ratified by Russia.***

In general, world practice shows that if an international treaty violates the basic norms of the constitutional system, then in this case the state abstains and does not enter into the treaty.[15] In the Russian Federation, there is a particular norm concerning this procedure. For example, by clause d of Part 2 of Article 125 of the Constitution of the Russian Federation, the Constitutional Court resolves the issue of compliance of international treaties that have not entered into legal force with the Constitution of the Russian Federation.[16] This is the very norm that prevents and restrains the Russian Federation from signing contradictory provisions of international treaties. And if Russia, with the permission of the Constitutional Court itself, signs and ratifies an international treaty, then, according to the fundamentals of the constitutional system (Chapter 1 of the Constitution of the Russian Federation), the Russian Federation assumes responsibility to comply with the norms of an international treaty in case of contradiction with domestic legislation. The provisions of Chapter 1 (Fundamentals of the Constitutional System) of the Constitution of the Russian Federation, according to Article

[15] Borgen, Christopher J. «Resolving Treaty Conflicts». *George Washington International Law Review* 37 (2005), 573. https://heinonline.org/HOL/Page?handle=hein.journals/gwilr37&id=583&div=&collection=

[16] «Official Website of the Government of the Russian Federation / The Russian Government». Accessed March 14, 2024. http://archive.government.ru/eng/gov/base/54.html

135, cannot be revised by the Federal Assembly.[17] If the proposal to revise the provisions of Chapter 1 of the Constitution of the Russian Federation is supported by three-fifths of the total number of members of the Federation Council and deputies of the State Duma, then, following the federal constitutional law, a Constitutional Assembly is convened, which either confirms the immutability of the Constitution of the Russian Federation or develops a draft of a new one Constitution of the Russian Federation, which is adopted by the Constitutional Assembly by two-thirds of the votes of the total number of its members or submitted to a popular vote. Legal norms of the Fundamentals of the Constitutional System are the fundamental principles based on which all other norms of the Constitution are based. Consequently, all changes and additions to Chapters 3-8 by the Federal Assembly of the Russian Federation (members of the Federation Council and deputies of the State Duma) must be made taking into account Chapter 1 of the Constitution of the Russian Federation. Thus, the amendment made in Clause b of Part 5.1 of Article 125 of Chapter 7 of the Constitution of the Russian Federation does not take into account the specific provisions of Part 4 of Article 15 of Chapter 1 of the Constitution of the Russian Federation.

Based on the above, if we pay attention to Part 4 of Article 15, 79 in combination with clause d of Part 2 of Article 125 of the Constitution of the Russian Federation, we can see that Russia does not have the right to conclude international treaties that do not comply with the Constitution, and the rules of an international treaty

[17] Toma Birmontienė, «2020 Amendments to the Russian Constitution – Change of the Constitution or Its Collapse?», *Gdańskie Studia Prawnicze* 4/48 (2020), 134.

do not apply in the legal system (supremacy belongs to the Constitution) if they contradict constitutional provisions. To avoid signing contradictory norms of international law, the Constitution of the Russian Federation obliges state authorities not to violate the basis of the Fundamentals of the Constitutional System, which determines the extent of recognition, observance, and protection of human and civil rights and freedoms.[18] One way or another, If the Russian Federation ratifies an international treaty, it recognizes the treaty as part of its legal system after it enters into legal force, and considers it fully consistent with the provisions of the fundamental domestic law.

In the Vienna Convention on the Law of Treaties, Article 26 states that "every treaty in force is binding on the parties to it and must be performed by them in good faith, that is, without reservation ("Pacta sunt servanda").[19] For example, if a Country has ratified the ECHR, it is obliged to implement the decisions of the ECtHR based on Article 46 of the ECHR.

Mikhail Lobov, former Head of the Department for Human Rights Policy and Cooperation of the Council of Europe (2014-2021) emphasized the peculiarity of the ECHR in Article 46. He believed that this article distinguishes in general the "treaty" from other classical instruments of international law by the mechanism of

[18] Elena A. Kremyanskaya and etc., *Russian Constitutional Law* (Cambridge Scholars Publishing, 2014), 6.

[19] «Suspension and Expulsion of States from International Organisations: Analysis of the Vienna Convention on the Law of Treaties and of the Practice at the United Nations and the Council of Europe | Think Tank | European Parliament». Accessed March 14, 2024. https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)751410

implementation.[20] Based on the Convention, for the first time in history, the decision of an international judicial body became unconditionally binding, and to de facto enforce these decisions, a mechanism of systematic control by an intergovernmental body was established. Consequently, for the first time in history, in the long years of existence of international justice, a mechanism has been developed not only of recommendation, which explains and defines the "essence of the right", but also a mechanism of realization of this right. The condition fixed in Article 26 of the Vienna Convention on the Law of Treaties has strict wording. That is, the state that signed the treaty assumes the responsibility to fulfill its obligations in good faith. Also, article 27 of the same Convention indicates to the parties that they are not entitled to invoke the provisions of domestic law as justification for refusing to fulfill their obligations under the treaty. On this basis, states that have recognized the jurisdiction of the ECtHR should not allow the principle of voluntary performance of a treaty under the ECHR 1950 to be violated.

Although after the full-scale special military operation by Russia in Ukraine (24.02.2022), Russia was excluded from the Council of Europe and the execution of ECtHR decisions technically

[20] Bakhronov, Alisher - Çelik, Seydi. «LEGAL ANALYSIS ON THE DECREE (JULY 14, 2015 NO. 21-P) OF THE CONSTITUTİONAL COURT OF THE RUSSIAN FEDERATION RELATED TO THE ENFORCEMENT OF DECISIONS OF THE EUROPEAN COURT OF HUMAN RİGHTS». *Journal of Justice (Journalofjustice.Org)* 4/2 (2020). https://avesis.kocaeli.edu.tr/yayin/f5b326c8-ce27-4958-8f19-df6208830a43/legal-analysis-on-the-decree-july-14-2015-no-21-p-of-the-constitutional-court-of-the-russian-federation-related-to-the-enforcement-of-decisions-of-the-european-court-of-human-rights

became impossible, however, the Constitution of the Russian Federation has developed a particular legal mechanism (clause b, part 5.1, article 125) on the possibility and impossibility of execution of article 46 of the 1950 Convention, when Russia was a member of the Council of Europe and the compulsory jurisdiction of the ECtHR extended to the Russian Federation.

Conclusion

Any legal norm, being a generally binding prescription, regulates certain social relations. However, unlike the provisions of domestic laws, the norms of international law are binding if a State party has assumed the responsibility to sign an international treaty. Article 26 of the Vienna Convention on the Law of Treaties of 1969 is, in our view, fundamental to this issue. "Binding" concerning a state's performance of its obligations under a treaty, is the linchpin upon which an international treaty is held. When a State undertakes obligations to fulfill a treaty and suddenly refuses to fulfill them for subjective reasons, the credibility of such a State in the international arena is diminished and even undermined.[21]

M.A. Likhachev gives an illustrative example of "evasion" of the Constitutional Court from acute issues. He criticizes the Constitutional Court for the flaws of argumentation in its Conclusion No. 1-Z of March 16, 2020, where, assessing the amendments to Articles 79 and 125 of the Constitution, the Constitutional Court refrained from comparing the proposed amendments with Part 1 of Article 17 and Part 3 of Article 46 of the Constitution and reduced the argumentation to the following indication: the above provisions

[21] Marc G. Pufong, «State Obligation, Sovereignty, and Theories of International Law», *Politics & Policy* 29/3 (2001), 486.

do not imply the refusal of the Russian Federation from observing international treaties and fulfilling its international obligations, the mechanism itself is designed to develop a constitutionally acceptable way of implementing the decisions of international bodies while steadily ensuring the supreme justice of the Russian Federation. M.A. M.A. Likhachev emphasizes that in this case we are not even talking about the weakness of arguments, but about the absence of the slightest explanation in direct disregard of constitutional provisions.[22] It is significant to understand how the Constitutional Court of the Russian Federation, in the context of presidential amendments to the Constitution, correlates the refusal to comply with the decision of an international human rights body with the right to international protection (Part 3 of Article 46 of the Constitution) and with the state's obligation to recognize and guarantee human rights "by generally recognized principles and norms of international law" (Part 1 of Article 17). The above example shows that the Constitutional Court is unlikely to side with a citizen in his dispute with the state.

[22] Лазутин, Л.А - Лихачев , М.А. *Права человека: единство российского и международного права, конкуренция решений судов*. (3): Том. Московский журнал международного права, 2021. https://doi.org/10.24833/0869-0049-2021-3-31-44

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ПРЕДОТВРАТИТЬ ИСПОЛЬЗОВАНИЕ ЕСПЧ КАК ИНСТРУМЕНТА ДАВЛЕНИЯ НА ВНУТРЕННЮЮ ПОЛИТИКУ РФ». 20 июнь 2011 г. Accessed March 13, 2024. http://council.gov.ru/events/news/16967/

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CHAPTER II

Legal Analysis of The Shortcomings of Article 11 of Federal Law No. 115-Fz On The Legal Status of Foreign Citizens In The Russian Federation

Alisher BAKHRONOV[1]

Introduction

In today's globalized world, the issues of the legal status of a foreign citizen are particularly relevant.[2] The Russian Federation is one of the geopolitical, socio-economic, cultural, and educational centers not only in the post-Soviet space but also globally. The current legislation of the Russian Federation recognizes as foreign citizens persons who are not citizens of the Russian Federation, but who have proof of citizenship of another state.

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[1] Dr. (Employment: State Committee on Investment and State Property Management of the Republic of Tajikistan: Dushanbe, TJ Position: Deputy Head of Analytical Department)
https://orcid.org/0000-0001-9828-6673

[2] Kim Rubenstein - Daniel Adler, «International Citizenship: The Future of Nationality in a Globalized World», *Indiana Journal of Global Legal Studies* 7 (2000 1999.), 519.

From the legal point of view, relations with a "foreign element" are regulated both by the norms of international (private) law and domestic (Russian) norms, international treaties in force, as well as general principles of international law. [3]

This article deals with the issue of the free movement of foreign citizens for personal or business purposes within the Russian Federation based on documents issued or executed by them under Federal Law of July 25, 2002, No. 115-FZ "On the legal status of foreign citizens in the Russian Federation" except visits to territories, organizations, and facilities which, by federal laws, require a special permit for the entry.

The right to freedom of movement, choice of place of stay, and residence of foreign citizens within the Russian Federation is guaranteed by part 3 of article 62 of the Constitution of the Russian Federation of 1993, according to which foreign citizens and stateless persons enjoy rights and bear obligations in the Russian Federation on an equal footing with citizens of the Russian Federation and part 1 of article 27, which enshrines the possibility of realization of this right to everyone who is legally on the territory of the country.

However, the analysis of Article 11 of the Federal Law No. 115-FZ has shown that not all categories of foreign citizens (temporarily staying, residing, permanently residing) legally staying on the territory of the Russian Federation can realize all the elements that constitute the normative content of the right under study: 1) freedom of movement on the territory of the Russian Federation; 2)

[3] A. G. Egorova, «Foreign Element and National Law: Forms of Normative Interaction», *Journal of Comparative Law* 10 (2015.), 151.

freedom to choose a place of stay; 3) freedom to choose a place of residence.

Norms regulating the rights of foreign citizens to freedom of movement and choice of place of residence in Clause 1 and 2 of Article 11 of the Federal Law of July 25, 2002, No. 115-FZ "On the legal status of foreign citizens in the Russian Federation" have inconsistency not only with each other but also contradicts Part 1 of Article 27 of the Constitution of the Russian Federation. Thus, the following is a legal analysis of Clause 1 and 2 of Article 11 of Federal Law № 115-FZ, shortcomings are identified and ways of solving the existing legal problem are proposed.

Legal analysis of the shortcomings of article 11 of federal law no. 115-fz

If we pay attention to the content of clauses 1 and 2 of Article 11 of Federal Law No. 115-FZ of the Russian Federation, then one can notice a legal and technical inconsistency in the wording. This approach, when interpreting specific concepts, creates a feeling of ambiguous understanding of legal norms. For example, Clause 1 of Article 11 states that ***"Foreign citizens have the right to freedom of movement for personal or business purposes*** *within the Russian Federation based on documents issued or executed by them by this Federal Law."*[4] That is, based on the content of clause 1 of Article 11, foreign citizens (except visiting territories, organizations, and facilities that require special permission to enter) have the right to move freely both for personal purposes and for business. Business

[4] «Статья 11. Передвижение иностранных граждан в пределах Российской Федерации \ КонсультантПлюс». Accessed March 15, 2024. https://www.consultant.ru/document/cons_doc_LAW_37868/5921d9d3a7b901a3455f0d53224623dd0cbd6021/

goals can be related to work activities, and personal goals can be visiting relatives, friends, etc., or choosing a place of stay and residence.[5] The movement to choose a place of stay and residence is already guaranteed by Part 1 of Article 27 of the Constitution of the Russian Federation. Clause 2 of the same article Federal Law No. 115-FZ of the Russian Federation establishes:

A foreign citizen temporarily living in the Russian Federation has no right to change at will the place of living *within the constituent entity of the Russian Federation in whose territory is permitted temporary stay.*

Based on the above, we see that the legislator in clause 1 of Article 11 of Federal Law No. 115-FZ of the Russian Federation allows free ***movement (the right to freedom of movement for personal or business purposes),*** and already in clause 2 of the same article prohibits ***(has no right at will change place of living)*** when such a right is guaranteed by the Constitution of the Russian Federation (part 1 article 27).

Candidate of Legal Sciences Irina V. Shapiro considers the position of the Decree of the Constitutional Court of the Russian Federation of July 19, 2017 No. 22-P, which allows for the opportunity for a temporarily arriving foreign citizen to register for migration at the place of stay at the address of the organization and live in the residential premises provided by it, as a measure facilitating foreign citizens to exercise the right to choose their place

[5] Александр Александрович Галушкин - Каса Илда, «Актуальные вопросы правового положения иностранных граждан в Российской Федерации», *Вестник Российского университета дружбы народов. Серия: Юридические науки* 4 (2013 г.), 126.

of stay, on par with other human rights and freedoms.[6] Federal Law No. 109-FZ of the Russian Federation does not define the concept of "place of living", which is used by Federal Law No. 115-FZ of the Russian Federation". So, according to clause 2. Art. 11 Temporarily living foreign citizens do not have the right to change at their request their place of living within the constituent entity of the Russian Federation in whose territory they are allowed temporary living, or to choose another constituent entity of the Russian Federation as their place of living. Based on the analysis of regulatory legal acts, the legislator understands the place of living as a residential premises at the address of which temporarily living foreign citizens are registered at the place of residence or stay. According to Candidate of Legal Sciences Irina V. Shapiro, the use of the term "place of living" and not "place of stay" and "place of residence" is dictated by the regulation of the licensing procedure for choosing a place of living for temporarily living foreign citizens, which does not correspond to the natural nature of the constitutional right to freedom of movement, choice of place of stay and residence.[7]

Professor T.Y. Khabrieva also draws attention to the incompleteness, gaps, and inconsistency of Article 11 of Federal Law No. 115-FZ of the Russian Federation. Citing as an example

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[6] «Постановление Конституционного Суда РФ от 19.07.2017 N 22-П "По делу о проверке конституционности положений части 1 и пункта 2 части 2 статьи 20 Федерального закона "О миграционном учете иностранных граждан и лиц без гражданства в Российской... \ КонсультантПлюс». Accessed March 14, 2024. https://www.consultant.ru/document/cons_doc_LAW_220701/

[7] Шапиро , Ирина Валерьевна. «ПРАВО ИНОСТРАННЫХ ГРАЖДАН НА СВОБОДУ ПЕРЕДВИЖЕНИЯ, ВЫБОР МЕСТА ПРЕБЫВАНИЯ И ЖИТЕЛЬСТВА В РФ: ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ». *Гуманитарные, социально-экономические и общественные науки* 12–2 (2020 г.), 160. https://cyberleninka.ru/article/n/pravo-inostrannyh-grazhdan-na-svobodu-peredvizheniya-vybor-mesta-prebyvaniya-i-zhitelstva-v-rf-problemy-pravovogo-regulirovaniya

clause 1 and 2 of Article 11 of Federal Law No. 115-FZ of the Russian Federation, Prof. T.Y. Khabrieva states that clause 2 of Article 11 of Federal Law No. 115-FZ of the Russian Federation contradicts part 1 of Article 27 of the Constitution of the Russian Federation, as well as the contradiction of clauses 1 and 2 of Article 11 of the Law in question with each other.[8]

The right to freedom of movement, choice of place of stay, and residence of foreign citizens within the Russian Federation is also guaranteed by part 3 of article 62 of the Constitution of the Russian Federation, according to which foreign citizens and stateless persons enjoy rights and bear obligations in the Russian Federation on an equal footing with citizens of the Russian Federation and part 1 of article 27, which enshrines the possibility of realization of this right to everyone who is legally present on the territory of the country.

Part 3 of Article 62 of the Constitution of the Russian Federation reads:

Foreign nationals and stateless persons shall enjoy in the Russian Federation the rights and bear the obligations of citizens of the Russian Federation, except for cases envisaged by the federal law or the international agreement of the Russian Federation.

(Иностранные граждане и лица без гражданства пользуются в Российской Федерации правами и несут

[8] «К вопросу об основных проблемах законодательства о правовом положении иностранных граждан и лиц без гражданства в Российской Федерации». Accessed March 14, 2024. https://cyberleninka.ru/article/n/k-voprosu-ob-osnovnyh-problemah-zakonodatelstva-o-pravovom-polozhenii-inostrannyh-grazhdan-i-lits-bez-grazhdanstva-v-rossiyskoy-1/viewer

обязанности наравне с гражданами Российской Федерации, кроме случаев, установленных федеральным законом или международным договором Российской Федерации).[9]

The content of the provisions of Part 3 of Article 62 of the Constitution of the Russian Federation can be divided into two parts: 1) *Foreign nationals and stateless persons shall enjoy in the Russian Federation the rights and bear the obligations of citizens of the Russian Federation,* and 2) restrictions *"envisaged by the federal law or the international agreement of the Russian Federation."* In the implementation of the first, as noted above, the possibilities of realization are enshrined in Part 1 of Article 27 of the Constitution of the Russian Federation, which states:

Every who legally stays in the territory of the Russian Federation shall have the right to free travel, choice of place of stay or residence.[10]

To the second, concerning "international agreements", we can refer to Article 12 of the 1966 ICCPR, which states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

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[9] «Статья 62 \ КонсультантПлюс». Accessed March 15, 2024. https://www.consultant.ru/document/cons_doc_LAW_28399/a62def841e40a234f1b3e1d602e6285f161db249/

[10] «Статья 27 \ КонсультантПлюс Accessed March 15, 2024. https://www.consultant.ru/document/cons_doc_LAW_28399/1a349c9b47bf7c4104137be732fbc8640d1b81de/

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

For *federal law*, the most suitable is Article 11, clause 1 of Federal Law No. 115-FZ of the Russian Federation *(The list of territories, organizations, and objects, for entry to which foreign citizens require special permission, is approved by the Government of the Russian Federation)* concerning Decree of the Government of the Russian Federation No. 754 of October 11, 2002, which approved the list of territories, organizations and objects, for entry to which foreign citizens require special permission.[11] This decree is a clear example that confirms the wording of part 3 of Article 62 of the Constitution ***"except for cases envisaged by the federal law or the international agreement of the Russian Federation"***.

Thus, we see that Part 3 of Article 62 of the Constitution restricts foreign citizens only in specific cases established by law, and in all other cases, foreign citizens lawfully present on the territory of Russia enjoy in the Russian Federation the rights of an equal footing with citizens of the Russian Federation, including the right to free movement, free choice of place of stay and residence.

[11] «ПРАВИТЕЛЬСТВО РОССИЙСКОЙ ФЕДЕРАЦИИ ПОСТАНОВЛЕНИЕ от 11 октября 2002 г. N 754 ОБ УТВЕРЖДЕНИИ ПЕРЕЧНЯ ТЕРРИТОРИЙ, ОРГАНИЗАЦИЙ И ОБЪЕКТОВ, ДЛЯ ВЪЕЗДА НА КОТОРЫЕ ИНОСТРАННЫМ ГРАЖДАНАМ ТРЕБУЕТСЯ СПЕЦИАЛЬНОЕ РАЗРЕШЕНИЕ \ КонсультантПлюс». Accessed March 15, 2024. https://www.consultant.ru/document/cons_doc_LAW_39083/92d969e26a4326c5d02fa79b8f9cf4994ee5633b/

Therefore, summarizing the above analysis, to avoid such contradictions, in clause 2 of Article 11 of Federal Law No. 115-FZ of the Russian Federation, it is proposed to amend the following wording:

A foreign citizen temporarily living in the Russian Federation who wishes to change the place of residence *is obliged, within the period established by law (?), to inform the migration authorities of the relevant constituent entity of the Russian Federation on whose territory is allowed temporary living.*

Such changes and additions will not only solve the problem of inconsistency between clauses 1 and 2 of Article 11 of Federal Law No. 115-FZ of the Russian Federation but also eliminate contradictions with Part 1 of Article 27 of the Constitution of the Russian Federation.

Conclusion

Legal problems related to the freedom of movement and choice of place of residence of foreign citizens in the Russian Federation have a significant impact on their ability to realize their personal and business goals effectively.

Federal Law № 115-FZ in the current version, contrary to its name, does not so much define the legal status of foreigners as regulates, mainly through restrictive and prohibitive measures, the conditions and procedure for their access to the territory of the Russian Federation, registration, control over the residence, labor activity, expulsion, and deportation. It is extremely complicated to analyze a certain sphere of legal regulation of the law because it lacks a clear concept and a clear structure. For example, the norms

concerning the labor activity of foreign nationals are scattered in four different chapters. As a result, it is very unclear what the possibilities and conditions of employment and labor rights of foreign citizens are. In addition, at least 14 different by-laws (including those regulating the issuance of temporary stay permits and residence permits) are envisaged, which should also be summarized.[12] Based on the above analysis, it is also evident that the norms regulating freedom of movement and choice of residence are not harmonized, which negatively affects the quality of regulation and makes it ambiguous.

The identified shortcomings in the legal analysis course of clauses 1 and 2 of Articles 1 and 2 of Federal Law No. 115-FZ require careful consideration and solution. The solution to these legal problems will create more favorable conditions for the stay and movement of foreign citizens in the Russian Federation, which will contribute to their integration and increase their legal protection.

[12] Александрович, Галушкин Александр - Илда, Каса. «Актуальные вопросы правового положения иностранных граждан в Российской Федерации». *Вестник Российского университета дружбы народов. Серия: Юридические науки* 4 (2013 г.), 125–133. https://cyberleninka.ru/article/n/aktualnye-voprosy-pravovogo-polozheniya-inostrannyh-grazhdan-v-rossiyskoy-federatsii

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problemah-zakonodatelstva-o-pravovom-polozhenii-inostrannyh-grazhdan-i-lits-bez-grazhdanstva-v-rossiyskoy-1/viewer

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«ПРАВИТЕЛЬСТВО РОССИЙСКОЙ ФЕДЕРАЦИИ ПОСТАНОВЛЕНИЕ от 11 октября 2002 г. N 754 ОБ УТВЕРЖДЕНИИ ПЕРЕЧНЯ ТЕРРИТОРИЙ, ОРГАНИЗАЦИЙ И ОБЪЕКТОВ, ДЛЯ ВЪЕЗДА НА КОТОРЫЕ ИНОСТРАННЫМ ГРАЖДАНАМ ТРЕБУЕТСЯ СПЕЦИАЛЬНОЕ РАЗРЕШЕНИЕ \ КонсультантПлюс». Просмотрено 15 март 2024 г. https://www.consultant.ru/document/cons_doc_LAW_39083/92d969e26a4326c5d02fa79b8f9cf4994ee5633b/

Галушкин , Александр Александрович - Илда, Каса. «Актуальные вопросы правового положения иностранных граждан в Российской Федерации». *Вестник Российского университета дружбы народов. Серия: Юридические науки* 4 (2013 г.), 125–133. https://cyberleninka.ru/article/n/aktualnye-voprosy-pravovogo-polozheniya-inostrannyh-grazhdan-v-rossiyskoy-federatsii

Шапиро , Ирина Валерьевна. «ПРАВО ИНОСТРАННЫХ ГРАЖДАН НА СВОБОДУ ПЕРЕДВИЖЕНИЯ, ВЫБОР МЕСТА ПРЕБЫВАНИЯ И

ЖИТЕЛЬСТВА В РФ: ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ». *Гуманитарные, социально-экономические и общественные науки* 12–2 (2020 г.), 160–163. https://cyberleninka.ru/article/n/pravo-inostrannyh-grazhdan-na-svobodu-peredvizheniya-vybor-mesta-prebyvaniya-i-zhitelstva-v-rf-problemy-pravovogo-regulirovaniya

CHAPTER III

The Legal Remedies and Policies of Free Citizenship and Statelessness

Nimet Ozbek[1]

1.0 Introduction

Statelessness, is generally defines as the condition of not being recognized as a citizen by any state under the operation of its law, it poses huge human rights challenges. Stateless persons often lack access to basic services, education, employment, and legal protection. [2] This issue affects millions of people worldwide, although the exact number is difficult to determine due to lack of accurate date and reporting.[3] The absence of nationality exposes individuals to a vulnerable position, which render them unable to

[1] Assoc. Prof. Ankara University Faculty of Political Science

[2] United Nations High Commissioner for Refugees, 'Ending Statelessness' (UNHCR, 2014) https://www.unhcr.org/statelessness.html accessed 5 July 2024.

[3] Institute on Statelessness and Inclusion, 'The World's Stateless 2020' (Institute on Statelessness and Inclusion, 2020).

exercise their fundamental rights and often subjected to discrimination and exploitation.

This paper examines the concept of free citizenship, a model for eliminating statelessness in which obtaining citizenship does not entail strict legal and administrative obstacles. Free citizenship is a move away from the traditional notions of nationality, which are related to either birth (jus soli), descent or long-term residence…to something better. To that end, this paper seeks provide a comprehensive examination of legal frameworks and policies regarding these practices as well practical challenges to addressing statelessness,inclusive citizenship, and the ways in which they are being employed around the world.

Statelessness can arise from a variety of causes, such as discriminatory laws or practices which deprive certain groups access to nationality, conflicts of laws between different states' citizenship regimes and arbitrary denial of nationality[4] One of the main causes is oppressive nationality laws that discriminate on grounds as ethnicity, gender and religion. This can happen when women are not allowed to pass their nationality on—which is the case in a number of countries—either because the father's identity, including his relation to the child that he does acknowledge as his own or refuses it, has been forcefully denied.[5] Barriers at the administrative levels such as inadequate birth registration systems are also a driver of the problem.[6]

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[4] *Ibid*.

[5] Open Society Foundations, 'Gender Discrimination in Nationality Laws' (OSF, 2019) https://www.opensocietyfoundations.org/publications/gender-discrimination-nationality-laws accessed 5 July 2024.

[6] United Nations Children's Fund (UNICEF), 'Every Child's Birth Right: Inequities and Trends in Birth Registration' (UNICEF, 2013).

International treaties such as the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness has lay down the legal framework to solve the problem of statelessness.[7] These treaties outline numerous rights which stateless persons are entitled to and also establish steps to prevent and reduce statelessness. The 1954 Convention defines who a stateless person and set out ways in which they are to be treated, including access to identity documents and travel papers.[8] The main focus of the 1961 Convention is on prevention of statelessness at the time of the persons birth and later in life, stipulating that states should give nationality to persons who are born in their territory, are a vulnerable to statelessness.[9] Although these international frameworks, the implementation and enforcement of these standards vary widely across countries, leading to inconsistencies in the protection and recognition of stateless individuals.

Free citizenship intends to address the issue of statelessness by advocating for a more sweeping approach to acquiring nationality. It goes against the normal ways of acquiring citizenship and calls for the removal of discriminatory laws and procedural barriers in acquiring citizenship. This concept promotes the a idea that individuals who are at risk of statelessness should be given nationality which is centered on the principle of inclusiveness and non-discriminatory.

[7] Convention Relating to the Status of Stateless Persons 1954, 360 UNTS 117; Convention on the Reduction of Statelessness 1961, 989 UNTS 175.
[8] Convention Relating to the Status of Stateless Persons 1954, 360 UNTS 117.
[9] Convention on the Reduction of Statelessness 1961, 989 UNTS 175

By analyzing international treaties, national laws, and case studies, this paper provides an in depth understanding of how free citizenship can be use as a paramount solution to statelessness. It stresses the need for vigorous legal and policy frameworks that guarantees every individual's right to a nationality, finally contributing to the global efforts to eradicate statelessness and promote inclusive citizenship.

2.0 Definition and Causes of Statelessness

Statelessness is one the most horrible regions human rights and social strength face-off. it alludes to a circumstance wherein an individual isn't considered as national by any state under its national or residential law. Those living in marginalised spaces are often not only excluded from households but also deprived of basic services, work opportunities, education and legal protection. Statelessness is a complex problem that results from various causes like discriminatory laws, procedures and practice relating to nationality, conflict of laws etc., arbitrary or illegal renewal mechanisms. While these problems are not new, addressing them in ways that conform to international instruments — for example the 1954 Convention[10] relating to the Status of Stateless Persons and its sibling the 1961 Convention on Reduction of Statelessness – would be significant.

Most statelessness can be attributed to discriminatory laws. Such laws are typically directed against certain ethnic, gender or religious groups and deny them the rights of citizenship.[11] The Rohingya are a persecuted ethnic minority in Myanmar who have

[10] Moeckli, Daniel, Shah, Sangeeta, Sivakumara, Saandesh. “International Human Rights Law”, International Human Rights Law, 2022

[11] The Palgrave Handbook of Gender and Citizenship, Springer Science and Business Media LLC, 2024

been systematically stripped of their citizenship by the Burmese authorities on grounds that they no longer can provide convincing proof, under 1982 Citizenship Law which is based on so-called 'ethnic criteria. The Rohingya are considered to be stateless people and, hence excluded from these 3 categories as per the law.[12]

Gender discrimination in nationality laws is another major area of concern. The principle that prevents women from passing on her nationality to their children in so many countries These policies violate the norms of international human rights law, including provisions within the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that require equal treatment between men and women in nationality matters.[13]

Statelessness may also be linked to bureaucratic and administrative practices. One of the main reasons is inadequate birth registration systems. Additionally, children who are unregistered at birth[14] all too often become unable to evidence their nationality and as a result will be stateless. According to the United Nations Children's Fund[15] (UNICEF), it is estimated that one in four children younger than five has not been registered for a birth certificate worldwide.[16] The problem is more serious in countries like Kenya

[12] Citizenship, Nationalism and Refugeehood of Rohingas in Southern Asia, Springer Science and Business Media LLC, 2020
[13] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, Article 9.
[14] Mai Kaneko-Iwase. "Nationality of Foundings", Springer Science and Business Media LLC, 2O21
[15] United Nations Children's Fund (UNICEF), 'Birth Registration for Every Child by 2030: Are We on Track?' (UNICEF, 2019).
[16] Amiya Bhatia, Leonardo Zanini Ferreira, Aluisio J.D Barros, Cesar Gomes Victora. "Who and where are the uncounted children? Inequalities in birth certificate coverage among children under five years in 94 countries using nationally representative household surveys", International Journal for Equity in Health, 2017

where among the marginalized, notably Nubians have major difficulties getting documents due to administrative hurdles and corruption.[17]

Administrative practices Denial or deprivation of nationality, arbitrarily applied (statelessness) Sovereign states may also denatutalize their own citizens (generally by a form of forced emigration) — while this could be explicitly targeted at the individual that makes it for political reasons. Bahrain, for example, has stripped opponents of the monarchy's nationality so they become de facto stateless.[18]

He has nationality of two countries, a similar situation which leads to conflicts of law where different legal systems either between or within a given country have rules regarding his/ her state intellectual property rights and other foreign states do not want him/her to benefit from having the nationality because they are citizens under their political banners. A potential outcome from this approach is therefore that several generations will not be able to build citizenship in any jurisdiction. In some cases, a child born of parents with diverse nationalities may not have the ability to automatically acquire nationality at all from either parent because their two nations' laws could be in conflict.[19] The Hague Conference on Private International Law aims to harmonise applicable laws

[17] Open Society Foundations, 'Citizenship and Statelessness in Kenya' (OSF, 2019) https://www.opensocietyfoundations.org/publications/citizenship-and-statelessness-kenya accessed 5 July 2024.

[18] Bahrain Institute for Rights and Democracy, 'Bahrain: Arbitrary Revocation of Nationality' (BIRD, 2020) https://www.birdbh.org/bahrain-arbitrary-revocation-of-nationality accessed 5 July 2024.

[19] Mark Manly and Laura van Waas, 'The State of Statelessness Research' (2016) 28 International Journal of Refugee Law 587.

regarding personal status, including nationality law; thus today conflict of laws concerning nationality are a rare event.[20]

Denaturalization: the deprivation of nationality in an arbitrary manner, e.g. without due process or discrimination-basedgrounds This could be achieved through legal changes, or regulatory and executive orders pertaining to particular subjects. The Dominican Republic's top court, the Constitutional Court, retroactively took away citizenship from people born to Haitian families all the way back in 1929. This ruling rendered thousands of them stateless despite having been born and in some cases lived their entire lives within the country.[21]

2.1 Case Studies On The Causes And Consequences Of Statelessness

Case studies from different contexts demonstrate the complex aspects of cause and consequence in statelessness. Maasai people in Kenya and Tanzania would automatically have become stateless, as historically they were nomadic. In Southeast Asia, the Hmong and Karen hill tribes in Thailand often lack citizenship due to strict nationality regulations and bureaucratic hurdles.[22]

Roma population in Europe is the largest stateless group because of their characteristics, migration, peculiarities concerning nationality and historical discrimination. Once they lost their

[20] Hague Conference on Private International Law, 'Nationality and Statelessness' https://www.hcch.net/en/instruments/conventions/specialised-sections/nationality-statelessness accessed 7 July 2024.

[21] Open Society Foundations, 'The Situation of Haitian Descendants in the Dominican Republic' (OSF, 2020) https://www.opensocietyfoundations.org/publications/situation-haitian-descendants-dominican-republic accessed 7 July 2024.

[22] United Nations High Commissioner for Refugees, 'Ending Statelessness' (UNHCR, 2014) https://www.unhcr.org/statelessness.html accessed 7 July 2024.

citizenship, many Roma from the former Yugoslavia also became stateless because none of the new republics would recognise them as citizens.[23]

3.0 The Concept of Free Citizenship

By this criterion, citizenship is free in that it can be claimed based on non-exclusive, or equitable and inclusive grounds; ideas which have been taken up elsewhere under the rubric of affording 'free citizenship' (Sager 2013) since they reduce barriers to entry by way of procedural universality. It is a concept that defies conventional conceptions of citizenship based on place of birth, kinship or extended residence. It is one that argues for a less rigid and cruel conception of nationality, so tahat people are not left stranded in legal no-man's-land. It is calling for citizenship to be free of all other costs and charges, but more importantly that people are not hampered by discriminatory barriers or procedural hurdles preventing stateless individuals from acquiring nationality.

The foundation of free citizenship can only be found in the principle of inclusion and therefore, that national membership laws must never involve discrimination on grounds such as race or ethnicity nor include exclusions based on gender/sexuality millions; by birthright —its a State / Government directive via implemented Legislation.[24] Such an approach is in harmony with the Universal Declaration of Human Rights, which establishes that "Everyone has the right to a nationality".[25] free citizenship strives for legal

[23] Institute on Statelessness and Inclusion, 'The World's Stateless 2020' (Institute on Statelessness and Inclusion, 2020).
[24] Kabata,Faith Njoki. "Impact of International Human Rights Mechanisms in Kenya", University of Pretoria (South Africa), 2023
[25] Universal Declaration of Human Rights 1948, Article 15.

frameworks that are sensitive to the demands of diversity and do not marginalize those who truly need special protection.

A great example of inclusivity in action are the pushes for nationality reform laws (and also how they have been achieved to some extent) in Senegal. Until then, Senegalese law did not give women the right to transfer their nationality or citizenship on their children if the father is a foreigner. However, since then the law has been reformed and a nationality can be acquired depending on either parent · it is an illustration of the inclusive principles of free citizenship.[26]

Traditional citizenship laws often link nationality to specific criteria such as jus sanguinis (right of blood) and jus soli (right of the soil). While these principles are essential, they can be overly rigid when addressing the complexities surrounding modern issues of statelessness. Flexible citizenship allows individuals to obtain nationality through various means, including extended residence, naturalization, or marriage, without excessive bureaucratic hurdles.[27]

For example, Portugal's nationality law is praised for its adaptability. It permits the naturalization of individuals who have legally resided in the country for at least six years, without requiring them to give up their original nationality. This method diminishes the risk of statelessness and encourages social integration.[28]

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[26] Open Society Foundations, 'Gender Discrimination in Nationality Laws' (OSF, 2019) https://www.opensocietyfoundations.org/publications/gender-discrimination-nationality-laws accessed 7 July 2024.

[27] Mark Manly and Laura van Waas, 'The State of Statelessness Research' (2016) 28 International Journal of Refugee Law 587.

[28] United Nations Children's Fund (UNICEF), 'Birth Registration for Every Child by 2030: Are We on Track?' (UNICEF, 2019).

Laws regarding citizenship have discriminatory barriers which constitute a key factor in the prevalence of statelessness. Discrimination based on sex is one of the most experienced of such forms whereby some countries bar the women from passing their nationality to their children or foreign husbands.[29] Such barriers regarding citizenship must however be eradicated if the demand for free citizenship is to be met, such citizenship must also be based on non-discriminatory legal provisions as far as nationality is concerned.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) notes if nationality laws … discriminates against the women and obligates nations to make provisions that allow for females to have the same opportunity as men regarding children's nationality.[30] It noted that most of these countries signed the CEDAW and amended their laws, but some countries still uphold the prejudice. Campaigns for free citizenship include campaigning for adherence to provisions of CEDAW worldwide.

Procedural hurdles such as excessive documentation requirements, high fees, and lengthy processes can prevent individuals from acquiring nationality. Free citizenship argues for the simplification of these procedures to make nationality accessible to all. This includes reducing documentation requirements, lowering fees, and streamlining application processes.

[29] Human Rights Watch, 'The Rohingya Crisis' (HRW, 2019) https://www.hrw.org/rohingya-crisis accessed 7 July 2024.
[30] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, Article 9

Bureaucratic factors including cumbersome documentation, stiff tariffs, and delayed processes may hinder people from obtaining citizenship. [31] Free citizenship advocates support administrative measures like the reduction or removal of these barriers to nationality. This, therefore, includes the elimination of most of the documents provided with the applicants for the application of such citizenship and reducing the application fees as well as simplification of the application procedures.

Canada, as an example, has been quite an exemplary country in regard to naturalization policies. Canada has undertaken efforts to ease the way people get their citizenship like alternative online means of applying for citizenship with assistance to the applicants. These measures have borne fruits in terms of making the advancement of citizenship easier and the occurrences of statelessness have drastically reduced.[32]

3.1 Case Studies on the challenges surrounding the issue of application of free citizenship principles

Some of these studies have provide novel and valuable insights into the many practical limitations associated with the implementation of the free citizenship ideas. Bangladesh and the Dominican Republic are two such countries that have particularly experienced a high level of statelessness.

The Rohingya are a people rendered stateless by the citizenship laws of Myanmar such as Burma’s Infamous Citizenship

[31] United Nations High Commissioner for Refugees, 'Ending Statelessness' (UNHCR, 2014) https://www.unhcr.org/statelessness.html accessed 7 July 2024.
[32] Government of Canada, 'Apply for Citizenship: How to Apply' (Government of Canada, 2023) https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/how-to-apply.html accessed 7 July 2024.

Laws. Citizenship was in fact provided to them in Bangladesh however there is no reduction, several regional pressures are known to exist and the country has made some efforts to resolve the issue. Sio case underlines subscriptions of the regional solidarity and effectiveness of universal jurisdiction assistance when it comes up to free citizenship which should be feasible in a situation as this one.[33]

The Discriminatory Constitution of the Dominican Republic changes the legal nationality of people in 2013, in their case, the nationality of Haitian descendants in the country of the DR Minow. This kind of reform has encountered some recent attempts including the effects of colonization that have sought to rectify this situation, but there are obstacles. From this case, it is clear that legal reforms are not sufficient unless there are ways to implement and supervise the reforms in a manner that will prevent statelessness.[34]

3.2 Policy Recommendations on Implementation of Free Citizenship

To implement free citizenship effectively, several policy recommendations are necessary. Governments should adopt comprehensive birth registration systems to guarantee that every child's nationality is recorded from birth.[35] Nationality laws should be reformed to eliminate discriminatory provisions and provide multiple pathways to citizenship.[36] International cooperation and

[33] Human Rights Watch (n 6).
[34] Open Society Foundations, 'The Situation of Haitian Descendants in the Dominican Republic' (OSF, 2020) https://www.opensocietyfoundations.org/publications/situation-haitian-descendants-dominican-republic accessed 7 July 2024.
[35] United Nations Children's Fund (UNICEF), 'Birth Registration for Every Child by 2030: Are We on Track?' (UNICEF, 2019).
[36] Manly and van Waas (n 4).

support are essential to assist countries with significant stateless populations in implementing these reforms.[37]

4.0 International Legal Instruments addressing the problem of statelessness

The fight against statelessness has been emboldened by the action of the United Nations through its conventions and resolutions, providing stateless persons with protection from statelessness by creating an effective legal environment to consider shortening the time amid. In addition there are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness which are part of the most normative legal instruments which have a bearing to the problem of statelessness and burs there, steady etc. These, along with the above conventions are placed under the his UDHR, which has Article 15 that says “everyone has the right to a nationality.” That's why, despite the existence of these international frameworks[38], standing and respect to such codes is different according to geographies, creating dilemmas in attempting to protect and identify stateless people.[39]

The 1954 Convention on Statelessness was the first international treaty to specifically address the problem of statelessness. It provides a detailed definition of what constitutes a stateless person: "a person who is not recognized as a citizen by any state by operation of law" The Convention sets out the civil,

[37] Institute on Statelessness and Inclusion, 'The World's Stateless 2020' (Institute on Statelessness and Inclusion, 2020).
[38] Celentano, Paul, “Burden-Sharing, Security, and the International Protection of Displaced Persons: The United States and Italy as Case Studies”, City University of New York, 2021
[39] Barbara von Rutte. “The Human Right to Citizenship”, Brill, 2022

economic, social and cultural protections to be afforded to persons who stateless, aimed at least other non-citizens in the country will receive the same favorable treatment as guaranteed persons.[40]

Rights granted under the 1954 Convention[41] includes access to stateless persons and travel documents, the right to employment, education and housing, and protection from deportation, . mandate that states facilitate the naturalization process for stateless persons and ensure their citizenship and legal protection.[42] However, not all countries are signatories, and even among those that have, the impact of the Convention is limited and its implementation can be inconsistent.

The 1961 Convention on the Reduction of Statelessness seeks to reduce and eliminate statelessness by establishing clear criteria for the acquisition and loss of citizenship Obliges states to grant citizenship to persons born in on their territory who would be stateless and not withdraw citizenship as statelessness would, Except in cases of fraud, misrepresentation, or acts contrary to national security.[43]

A key guiding principle of the 1961 Convention is the abolition of statelessness at birth. It includes provisions for children born in or out of wedlock, ensuring that nationality laws do not discriminate on the basis of birth status The Convention also requires states to provide citizenship to abandoned infants and individuals

[40] Convention Relating to the Status of Stateless Persons 1954, 360 UNTS 117, Article 1.
[41] Katia Bianchini. "Protecting Stateless Persons", Brill, 2018
[42] Ibid, Articles 27-32.
[43] Convention on the Reduction of Statelessness 1961, 989 UNTS 175, Articles 1-8.

whose nationality has been terminated due to changes resulting from marriage.[44]

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a foundational document that outlines the fundamental rights and freedoms to which all human beings are entitled Article 15 of the UDHR states: , that nor will he be given the opportunity to change his country." [45] Although the UDHR has no legal force of application, it serves as a moral and ethical guide for States Debt nations several treaties, regional human rights mechanisms and constitutions on the state.

In addition to global instruments, several regional legal frameworks address statelessness. The European Convention (ECN), established by the European Commission in 1997, seeks to avoid statelessness by establishing principles of nationality, including the right to citizenship and including the prevention of statelessness.[46] The American Convention on Human Rights (and the Pact of San José between them in 1969 regarding human rights), includes provisions whereby state parties are required to safeguard and grant access to nationality.[47]. Also, the African Charter at the Rights and Welfare of this Child states that all children should certainly have a nationality.[48]

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[44] Caia Vlieks, Ernst Hirsch Ballin, Maria Jose Recalde Vela. "Solving Statelessness", Netherlands Quarterly of Human Rights, 2017

[45] Universal Declaration of Human Rights 1948, GA Res 217A (III), Article 15.
[46] European Convention on Nationality 1997, ETS No. 166.
[47] American Convention on Human Rights 1969, OAS Treaty Series No. 36, Articles 20-21.
[48] African Charter on the Rights and Welfare of the Child 1990, OAU Doc CAB/LEG/24.9/49, Article 6.

4.1 Implementation and Challenges of Statelessness

Despite those comprehensive criminal frameworks, the execution and upholding of global standards on statelessness range extensively across nations. Some states have adopted complete legal guidelines and policies to cope with statelessness, whilst others have lagged behind, often due to political, social, or financial motives. For example, countries just like the Philippines and Brazil have made massive strides in ensuring beginning registration and granting nationality to stateless people.[49] However, in evaluation, nations with complicated political situations, along with Myanmar and the Dominican Republic, have continued to perpetuate statelessness via discriminatory legal guidelines and practices.[50]

4.2 Case Studies on Effectiveness and Obstacles Encountered in Enforcing International Legal Measures to Combat Statelessness

Case research display critical classes on the effectiveness and boundaries encountered in implementing global criminal measures to fight statelessness. In the Philippines, the authorities has hooked up a strong beginning registration system and applied rules to grant nationality to stateless people, in particular the ones of Filipino descent who have been born abroad.[51] Brazil has also adopted inclusive nationality laws that furnish citizenship to kids born within its borders, no matter their dad and mom' nationality.[52]

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[49] United Nations High Commissioner for Refugees, 'Ending Statelessness' (UNHCR, 2014) https://www.unhcr.org/statelessness.html accessed 7 July 2024.
[50] Human Rights Watch, 'The Rohingya Crisis' (HRW, 2019) https://www.hrw.org/rohingya-crisis accessed 7 July 2024.
[51] United Nations Children's Fund (UNICEF), 'Birth Registration for Every Child by 2030: Are We on Track?' (UNICEF, 2019).
[52] *Ibid*.

In contrast, the Rohingya crisis in Myanmar illustrates the excessive impact of discriminatory laws and practices on stateless populations. The 1982 Citizenship Law successfully denies the Rohingya people nationality, rendering them stateless and prone to human rights abuses.[53] Similarly, the 2013 Constitutional Court ruling in the Dominican Republic retroactively stripped citizenship from individuals of Haitian descent, main to widespread statelessness and social marginalization.[54]

4.3 Comparative Analysis Of National Legal Frameworks In Their Approach To Citizenship And Statelessness

Different countries have adopted various methods to citizenship and statelessness, reflecting diverse criminal traditions, political contexts, and social attitudes. A comparative analysis well-knownshows the blessings and shortcomings of these techniques and underscores the significance of inclusive and proactive steps in eliminating statelessness.

The Philippines has introduced a clear birth registration strategy that is pivotal in stopping statelessness. According to UNICEF, birth registration is a essential human right and serves as the legitimate recognition of a child's lifestyles by way of the kingdom.[55] In the Philippines, the Civil Registry Law mandates the registration of all births within 30 days, and past due registration is authorized with minimum consequences.[56] The implementation of

[53] Human Rights Watch, 'The Rohingya Crisis' (HRW, 2019) https://www.hrw.org/rohingya-crisis accessed 7 July 2024.
[54] Open Society Foundations, 'The Situation of Haitian Descendants in the Dominican Republic' (OSF, 2020) https://www.opensocietyfoundations.org/publications/situation-haitian-descendants-dominican-republic accessed 8 July 2024.
[55] United Nations Children's Fund (UNICEF), 'Birth Registration for Every Child by 2030: Are We on Track?' (UNICEF, 2019).
[56] Civil Registry Law (Philippines), Act No. 3753 (1930).

the Philippine Statistics Authority's PhilSys Birth Registration Assistance Project targets to attain faraway areas and marginalized groups to make certain frequent birth registration.[57] This systematic technique guarantees that each one children born in the Philippines are documented and might collect citizenship from start, thereby greatly minimizing the possibilities of statelessness.

Filipinos who gave up their citizenship by becoming legal immigrants of another country are able to apply for dual citizenship with the passage of Republic Act 9225, known as the Philippine Citizenship Retention and Reacquisition Act of 2003. [58] This legislation paves the way for dishonorably discharged RoP Born back into the country and guarantees they will never be citizens. The legal system in the Philippines is characterised by its inclusiveness and access to promote the right of an individual to a nationality. The Philippine Citizenship Preservation and Revocation Act of 2003 also includes children who are deemed by law to have lost their citizenship pursuant under any extradition decree. Philippines-This law Philippines -Helps in Regaining nationality and prevents stateless persons.

Brazil's approach to citizenship is enshrined in its constitution, which grants citizenship to anyone born on Brazilian soil, with provisions granting citizenship to Brazilian parents of children born abroad through registration on, irrespective of the citizenship or legal status of parents,[59] and every child born in the sovereign state is guaranteed nationality

[57] Philippine Statistics Authority, 'PhilSys Birth Registration Assistance Project' (PSA, 2021).
[58] Citizenship Retention and Re-acquisition Act of 2003 (Philippines), Republic Act No. 9225.
[59] Constituição Federal [Constitution] (Brazil) 1988, Article 12.

In addition, the Brazilian National Immigration Law of 2017 provides a legal framework for the naturalization of stateless persons.[60]The law emphasizes human rights and social integration, including the right of stateless persons to… reside in the country for a specified period of time.[61] This legal framework to does this development show that Brazil is committed to tackling statelessness through an inclusive humanitarian approach.

Bangladesh presents the opposite case, where legal and governance challenges have perpetuated statelessness. The Rohingya Muslims, a ethnic group in Myanmar also known as Burma have been a most persecuted minority group and denied citizenship in their own country for more than three decades.[62] Some fled to Bangladesh but they do not enjoy the protection given by the state because they are denied citizenship. Although Bangladesh is not the 1954 and 1961 conventions half though, the country has made efforts to document Rohingya and provide temporary protection. [63] The absence, however, has compounded the ineffectiveness of these mechanisms regarding a clear legal framework for integrating the stateless into Bangladeshi society.

Different nationality laws that has been put in place within the Dominican Republic has resulted into a large number of stateless people particularly the Haitians. In 2013, the Constitutional Court at the Dominican Republic sought to denationalize anyone born in the DR to parents who were illegal immigrants from Haiti resulting to

[60] National Immigration Law (Brazil), Law No. 13.445 (2017).
[61] *Ibid*.
[62] Human Rights Watch, 'The Rohingya Crisis' (HRW, 2019) https://www.hrw.org/rohingya-crisis accessed 8 July 2024.
[63] United Nations High Commissioner for Refugees, 'Ending Statelessness' (UNHCR, 2014) https://www.unhcr.org/statelessness.html accessed 8 July 2024.

statelessness.[64] The judgment received much criticism from across the world. .. of the country's Nationality laws on the published document.[65] Even though attempts have been made in the past to tackle the problem, where naturalization to be granted to people, many are still left without nationality due to bureaucratic policies and discriminative laws.

There has been an improvement in the legal frameworks in Kenya that recognises and deals with statelessness from both legislative and governance perspectives. The country's constitution enacted in 2010 offers a policy on nationality which requires equality in the rights of the citizens in regards to nationality and identity.[66] The Kenyan government has also embarked on registering and assimilating stateless people as was the case for Makonde people who where recently granted Kenyan citizenship in 2017 after decades of statelessness.[67] Such efforts illustrate that Kenya has been trying to find ways of decreasing statelessness, for example through roads affecting every and rights.

4.4 Case Studies: Bangladesh and the Dominican Republic

Statelessness on the one hand, is a concern whose history, politics, and law cannot be understood in isolation of a general global process. Two of these are Rohingya of Bangladash and people of

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[64] Tribunal Constitucional [Constitutional Court] (Dominican Republic) Judgment TC/0168/13.

[65] Open Society Foundations, 'The Situation of Haitian Descendants in the Dominican Republic' (OSF, 2020) https://www.opensocietyfoundations.org/publications/situation-haitian-descendants-dominican-republic accessed 8 July 2024.

[66] Constitution of Kenya 2010, Articles 14-16.

[67] United Nations High Commissioner for Refugees, 'Kenya's Makonde Community Becomes Country's 43rd Tribe' (UNHCR, 2017) https://www.unhcr.org/news/stories/2017/2/589cfd3a4/kenyas-makonde-community-becomes-countrys-43rd-tribe.html accessed 8 July 2024.

Haitian origin in Dominican Republic These case studies are quite useful to stress upon the need of implementation of law and order interventions that need to focus well on the problem of statelessness.

The Rohingya ethnic, living in Myanmar have been discriminated for years and denied fundamental rights of citizens including citizenship. Stateless under Myanmar's 1982 Citizenship Law, the Rohingya have been confined to the camp and denied freedom of movement, education and healthcare.[68] The United Nations has characterized the treatment of the Rohingya as a "textbook example of ethnic cleansing."[69]

The Myanmar's military launched a brutal campaign against Rohingya in Rakhine State in August 2017, which forced the Rohingya population to cross over the border into Bangladesh en mass. Thus, by 2021, more than 900 thousand Rohingya refugees were concentrated at highly overcrowded camps in Cox's Bazar, Bangladesh that has become the world's largest refugee settlement.[70] In Managing this humanitarian crisis Bangladesh has been under significant pressure due to lack of adequate resource and capacity.

There is still uncertainty on the legal recognition of the Rohingya in Bangladesh to this day.[71] Still, there is no change in Bangladesh's position of not awarding citizenship or even the permanent residency to the Rohingya refugees fearing social

[68] Myanmar Citizenship Law 1982.
[69] United Nations Office of the High Commissioner for Human Rights, 'Report of OHCHR Mission to Bangladesh: Interviews with Rohingyas Fleeing from Myanmar Since 9 October 2016' (OHCHR, 2017).
[70] United Nations High Commissioner for Refugees (UNHCR), 'Rohingya Refugee Crisis' (UNHCR, 2021) https://www.unhcr.org/rohingya-crisis.html accessed 10 July 2024.
[71] Citizenship, Nationalism and Refugeehood of Rohingyas in Southern Asia, Springer Science and Business Media LLC, 2020

integration and threat to national security.[72] They do not receive official recognition as refugees, they are referred to as Forcibly Displaced Myanmar Nationals and they enjoy little legal protection and few political or social rights. While Bangladesh remains for a temporary refugee hosting country, lack of a legal framework to assimilate the Rohingya into the society presents new challenges for the future well-being of the refugees as well as stability of the country.

The current reactions by the global community have been in form of provision of humanitarian assistance but there is no permanent solution yet. International organizations such as the United Nations High Commissioner for Refugees (UNHCR) has advocated for a strategy that involves tripartite of repatriation, integration and resettlement.[73]. But, most repatriation has been ceased because there is no sign that security situation can be stabilized and that they can get citizenship in Myanmar.[74]

It is observing the situation of the people of Haitian origin in the Dominican Republic that one realizes how convoluted nationality laws are as well as the effects that judicial erasures can cause. In the past, Dominican Republic has had high altitude of Haitian migrants; many of them would be brought in to work in the sugarcane plantation.[75] Regardless of the long time they resides, a

[72] Human Rights Watch, 'Bangladesh is Not My Country: The Plight of Rohingya Refugees' (HRW, 2018).
[73] United Nations High Commissioner for Refugees (UNHCR), 'Comprehensive Solutions for the Rohingya Refugees' (UNHCR, 2020).
[74] United Nations General Assembly, 'Resolution on the Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar' (UNGA, 2019).
[75] Inter-American Commission on Human Rights, 'Report on the Situation of Human Rights in the Dominican Republic' (IACHR, 2015).

great number of them have encountered large scale of discrimination and hardship in acquiring the citizenship of Dominican Republic.

The decision of the Dominican Constitutional Court in 2013 referred to all DOM citizens of Haitian descent who were registered with their obsolete legal certificates only deepened the problem of statelessness. The then court decision 'removed' the citizenship of people born to Haitian nationals who were in the Dominican Republic without papers since 1929, making thousands of people enemies to the state.[76] It was followed by international protest reaction and exposed the discriminative feature of the nationality legislation of that country.[77]

In response to criticism, the Dominican authorities developed a plan for naturalization in 2014 called Law 169-14, the purpose of which is to restore citizenship to those who lost it in 2013 and legalize the status of other Dominicans.[78] However, due to the following challenges there has been a great dificulties in the implementation of this law. It has become common to find people fall short in providing the mandatory documentations and that there are several bottlenecks that have delayed naturalization.[79] Thus, there is a rather large group of people who either have no legal citizenship or can be classified as being in serious danger of becoming Stateless.

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[76] Tribunal Constitucional [Constitutional Court] (Dominican Republic) Judgment TC/0168/13.

[77] Open Society Foundations, 'The Situation of Haitian Descendants in the Dominican Republic' (OSF, 2020) https://www.opensocietyfoundations.org/publications/situation-haitian-descendants-dominican-republic accessed 10 July 2024.

[78] Law 169-14 (Dominican Republic).

[79] Amnesty International, 'Without Papers, I Am No One: Stateless People in the Dominican Republic' (AI, 2015).

Dominican Republic response to it show constraints between sovereignty, human rights, and international responsibility. The Inter-American Court of Human Rights (IACtHR) has criticised such ruling and has called on the Dominican Republic to reinstate the affected individuals their citizenship status.[80] Nevertheless, the given situation still remains unsolved, which prove the necessity of enhancing the legal systems and interstate relations.

4.4.1 Lessons Learned and Recommendations for addressing statelessness in Bangladesh and the Dominican Republic

The case studies of Bangladesh and the Dominican Republic offer several critical lessons for addressing statelessness:Based on Bangladesh and Dominican Republic experiences, it is possible to derive a few significant lessons with regard to statelessness:

1. **Legal Frameworks**: It can be stated that the absence of the definition and the latter's implementation in practice of the principles of non-statelessness requires the introduction and creation of solid and comprehensive legal norms. Currently, stateless individuals in both Bangladesh and the Dominican Republic had no legal remedy for acquiring effective legal framework for such status so as to become citizens of respective countries.
2. **International Cooperation**: Statelessness can be said to be something that requires the concerted effort of fixing than what an international system is capable of offering. It is therefore important for the

[80] Inter-American Court of Human Rights, 'Case of Expelled Dominicans and Haitians v Dominican Republic' (IACtHR, 2014).

international community to support the States with large population of Stateless persons and the need for recognition of their rights.

3. **Humanitarian Aid and Development**: It has to be noted thus, that humanitarian assistance is still required in the short run, while the long term solutions mentioned should be founded on development and integration. This also involves matters of internal investment for example infrastructure, education and health, to the stateless and the hosts.

4. **Policy Implementation**: It also means that it is just as crucial to applies the policies as well as design them. These are some of the Challenges were witnessed by the naturalization plan in Dominican Republic which highlight the importance of doing away with bureaucratic impediments and making policies accessible to everyone.

5. **Advocacy and Awareness**: I believe that education on statelessness and advocating for stateless persons rights is necessary. This is where Civil society organizations (CSOs) are important in bringing consciousness of the existence of such a problem, and the process of changing the situation through laws and policies.

5.0 Legal Remedies For Statelessness

Legal remedies are important in addressing and preventing statelessness which is a situation whereby an individual is not considered as having a nationality of any country. These remedies include National legislative changes, Judicial actions as well as International relations on how to offer stateless persons options to citizenship.

National governments can change legislation to eliminate cases of statelessness from birth, make procedures of naturalization less complicated and accept the long-term residence status. These efforts are supported by judicial decisions which either interpret or enforce nationality laws. Besides, there is a need to engage in international partnership and lobbying, in order to ensure the implementation of these remedies for the elimination of statelessness across the world.

5.1 National Legislative Reforms

National legislative reforms are fundamental in eradicating and preventing statelessness since it is a human rights violation. There are several legislative measures that the countries can adopt in order to ensure that no one is stranded without nationality as well ensuring that every person who deserves a citizenship gets it easily. These amendments can involve changes to social norms in the context of regulating cases when a person has no state from birth, changes in the requirements to naturalization, and the acknowledgement of the long-term residents' rights.

The major contributing factor to statelessness is the inability of national laws to ensure that every child born in a particular country overcomes the basis of statelessness. There is also

recognition of the principle of conventional nationality of children likely to be stateless in any given state_Roger Blumental enimates in the international legal instruments like the 1961 convention on reduction of statelessness.[81] For example, Article 1 of the 1961 Convention which call for countries to provide nationality to persons that are born in the country and have no citizenship.

Some of the nations such as Brazil have established liberal policies that are meant to solve this problem. According to Brazilian law, any child born within the country irrespective of the parent of the child gets the Brazilian nationality.[82] This strategy ensure that a child born in the country or any child, who would have been otherwise stateless because they were born to parents with no documentation or no nationality, would bring them citizenship by birth in the country.

5.1.1 Simplifying Naturalization Processes

Another legislative change that may contribute to the prevention of statelessness is making the naturalization process easier. The formalization and the officers' discretion in naturalizing can put a strong tend, and maintain a pretty high level of barriers for stateless persons to gain citizenship. When these procedures have been made more efficient and fewer bureaucratic, then countries would be able to facilitate statelessness individuals to attain nationality.

[81] United Nations, 'Convention on the Reduction of Statelessness' (1961) https://www.unhcr.org/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html accessed 10 July 2024.
[82] Constitution of the Federative Republic of Brazil 1988, art 12.

For example, the Portugal has recently made relatively liberal change to the procedures for acquiring naturalization for those who have the genes of Sephardic Jews, who were expelled from the territory of the Iberian Peninsula in the 15th century. There is an opportunity for descendants to get the Portuguese citizenship; this process is not complicated, the descendant must provide a certificate of his/her Sephardic Jewish origin and testimony about connection to the Sephardic community of Portuguese origin.[83] This qualitative and non-demanding method has allowed many people to become Portuguese citizens.

5.1.2 Recognizing the Status of Long-term Residents

Another legislative measure includes adjustment policies which targets identification of circumstances of those who have been living in a particular country for a long time as well as creating a channel to acquire citizenship. Stateless people, nationwide have been in a country for years, in most cases many decades without any legal right to be in that country. This will help to reduce the level of statelessness since the legal residents have been residing in the given country for several years.

Italy is an especially vivid example of the state that implemented this method. It's law of the country as all the people who have been living in the country for long period of time, can apply for the citizenship. This provision is especially useful for the people with no status but have been able to assimilate themselves in the Italy through residency.[84] In that way Italy consider the status of

[83] Law No. 30/2015 (Portugal) https://dre.pt/web/guest/pesquisa/-/search/67137167/details/normal accessed 10 July 2024.
[84]Law No. 91 of 5 February 1992 (Italy) https://www.refworld.org/docid/3ae6b4ee10.html accessed 10 July 2024.

the long-term residents and further assists them with naturalization,[85] thus limiting stateless population and improving integration.

5.1.3 Implementation Challenges

However, effecting these changes can only be done at the national legislative level, it is equally important to note that the implementation of these changes is very vital. On the paper there are many legal provisions in which reality there is no compliance. Weak enforcement of bureaucracy, limited political support and inadequate realization are some of the factors that affect the implementation of nationality laws.

For instance and as discussed below Kenya has liberal nationality laws that afford children born in Kenya without any nationality to their parents nationality. However, implementation has been partial and many of the Stateless persons still struggle to gain citizenship because of the Georgia bureaucratic procedures and lack of awareness to their rights.[86] The issue which arises is that of sufficient training of officials from the government, sensitization of the general public, and efficiency in the exercising of these laws.

Statelessness is addressed in many ways and national legislative reforms are very central to the solution. Thus, by revising the legal provisions on nationality intended for preventing statelessness, by developing the procedures for acquisition of citizenship, and, by recognizing the long-term residence status, countries are in a position to design and adopt more fair and

[85]EU Immigration and Asylum Law, Brill, 2006.
[86] 'Kenya: Stateless Shona Tribe' (UNHCR, 2019) https://www.unhcr.org/ke/12498-kenya-stateless-shona-tribe.html accessed 10 July 2024.

reasonable legal regimes. That being said, the key to all of these reforms lies in their successful implementation, to ensure that legal provisions give a real benefit to the stateless. It becomes the imperative responsibility of governments that they should ensure implementation of such laws and untangle any hurdles that hamper the process of acquisition of citizenship.

5.1.4 Policy Recommendations

Innovations in the process of birth registration is one way of eliminating statelessness. Through strengthening the civil registration and civil documentation, increasing the awareness, the enactment of laws, and linking the civil registration with another service delivery, government will be in a position to ensure that every child born will have a legal recognition. Prescription Implementation Hurdles The above implementation challenges can be addressed or minimized through the support of other international organizations and especially partnership with the private sector for assisting in attaining the goal of universal birth registration.

Promoting and protecting the birth registration for all citizens with no hindrances is the basis of avoiding statelessness. Governments should want to ensure that proper civil registration is in place and that the importance of proper birth registration cannot be overemphasized. Birth registration helps a person to have legal identify and legal recognition in the country, thereby reducing the possibility of statelessness.

There is a need for the governments to enhance civil registration systems and force documentation of birth. Some of the capital investments are infrastructure development, personnel development as well as resource enhancement. For instance, Uganda

has attained an efficient manner of implementing a mobile system for keeping vital records to enhance birth registration mostly in the hard to reach regions. This system enables registration of births through the mobile technology to ensure that each child in the entire country is documented right from birth even in remote areas that can hardly be accessed.[87]

Creating awareness to the public on the importance of birth registration is one way of ensuring all children are registered. Awareness can make parents and communities aware on why birth registration is important and should be done. In Bangladesh, UNICEF had worked together with the government to launch country-wide advocacy reaching success as birth registration rates enlarged drastically. Such campaigns mostly involve the use various media stations, influential leaders and local events.

5.2 Judicial Remedies

Judicial remedies are also useful in the fight against statelessness being that they make up for where legislative interventions have failed in their bid for the interpretation and application of nationality laws. Judicial activism plays an important role in protection of the stateless persons' rights and grant of refugee status through Judicial decision. This part is devoted to the analysis of the role of judicial decisions in combating statelessness, key cases and principles determined by them.

During the process of considering statelessness one of the most significant and authoritative decisions in this matter is the case of Yean and Bosico v. Dominican Republic in which the IACtHR.

[87] Uganda Registration Services Bureau, 'Mobile Vital Records System' (2018) https://www.ursb.go.ug/mobile-vital-records-system/ accessed 11 July 2024.

According to this case, it was unlawful for the Dominican Republic not to provide nationality to two Dominican-born girls of Haitian origin for failure of law to allow them acquirer nationality with an aim of preventing statelessness.[88] The court urged that states have to fully protect that their nationality policies do not violate the principle of non discrimination on grounds of ethnic or descent oriented criteria, and do undertake affirmative measures to prevent the occurrence of statelessness. This judgment has in a great way shaped up the nationality laws in the region and more so those in the global arena.

Likewise the European Court of Human Rights (ECtHR) has defined a strategic role in the eradication of statelessness through its decision making process. Therefore in the case of *Kurić and Others v. Slovenia* the court saw this as a violation of convention rights to former *Yugoslav* citizens who became stateless following the breakdown of former Yugoslavia which Slovenia failed to regularize.[89] The court ordered Slovenia to pay a reasonable amount of money as compensation to stateless people and respond to stateless persons to provide them with legal status in the Slovenia. For this reason, this ruling stressed the state responsibility in eradicating and dealing with statelessness and has set a tone for other cases concerning statelessness in Europe.

[88] Inter-American Court of Human Rights, *Yean and Bosico v. Dominican Republic* (2005) Series C No. 130.
[89] David Weissbrodt, Michael Divine. Unequal access to human rights: the categories of noncitizenship, Citizenship Studies, 2016.

5.2.1The Role of International Courts and Tribunals

The International Courts and tribunals such as the International Court of justice (ICJ)and the International criminal court (ICC) can as well contribute, by making sure that the state is accountable for the violation of the international law in regimes of stateless. Although these courts does not determine case on the subject of statelessness, their decisions affect the member states' policies and compliance with the international standards.

For instance, the adverse effect of the Advisory Opinion given by the ICJ in the case of *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* accentuated on the right of Chagossians to regain their right to nationality and return to their homeland. [90] Nonetheless, the opinion given has strengthened the legal principles of self-determination and the right to nationality for the states and urged them to solve issue of statelessness.

Judicial remedies are essential in addressing statelessness by interpreting and enforcing nationality laws and protecting the rights of stateless individuals. Landmark judicial decisions have set important precedents, ensuring that nationality laws are applied in a fair and impartial way and that states take proactive measures to prevent and address statelessness. However, challenges such as inconsistent interpretations and enforcement, as well as the need for effective implementation mechanisms, remain. By continuing to leverage judicial interventions and strengthening international legal

[90] International Court of Justice, *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (2019) https://www.icj-cij.org/en/case/169 accessed 11 July 2024.

frameworks, the global community can make significant strides toward eradicating statelessness and ensuring that every person is entitled to have a nationality.

Judicial remedies are crucial in redressing situations of statelessness since they have the mandate of implementing the country's laws and ensuring that stateless persons' rights are not violated. There are landmark judicial decisions that have sufficiently laid the rule of law in nationality cases and that states can and must act to prevent and minimize statelessness. Nevertheless, some issues like interpretation and implementation variability, on the one hand, as well as searching for the economic implementation instruments, on the other, persist. On that regard if the international community persist on using judicial rulings and further consolidating the international law in this area, the work to overcome the statelessness and make every person have the right to be given a nationality can be considered to be greatly achieved.

5.3 Legislative and Policy Measures

It is imperative that political leadership when unions of government come up with laws and policies on birth registration regimes. It is also held that laws should guarantee birth registration of any child born within the territory of a particular country regardless of certain characteristics. Measures, should be implemented and eradicated that hinder child's registration, for example, charges, formalities and constraints. Also in Thailand, there is Civil Registration Act that requires a child to be registered

for birth without charge so that no child is left without an identification document.[91]

Integration of birth registration with other social services such as health and education services can improve on coverage and efficiency. For instance, integration of birth registration with immunizations makes it possible to register the child and offer other health services. In Ethiopia for example, government linking BRI with health care also boosted registration results and child health care.[92]

5.3.1 Challenges and Solutions

Some of the challenges associated with birth registration include; Poor infrastructure, no skilled staff, social or cultural constraints. Solving these issues requires efforts from the governments, international organizations, NGOs, and the private sector. Private sectors can also possess technological solutions like the registration systems that improve efficiency and accessibility when embraced by public organizations.

Nationality laws should be liberal with no discrimination of individuals against their citizenship and conforming to international standards. Laws and regulations should concentrate on eradicating statelessness among populations at birth and special administrative measures have to be taken to naturalize stateless population.

Nationality legislation to avoid Statelessness at birth should ensure that any child born on the territory of that country or one of

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[91] Civil Registration Act, B.E. 2534 (1991) (Thailand) http://www.thailawforum.com/laws/Civil-Registration-Act.html accessed 11 July 2024.

[92] UNICEF, 'Strengthening Birth Registration in Ethiopia' (2017) https://www.unicef.org/ethiopia/strengthening-birth-registration accessed 12 July 2024.

them is a national acquires nationality. This is the principle legally recognized in international instruments like the 1961 Convention on the Reduction of Statelessness.[93] Brazil and the Philippines are one of those countries which enacted broad nationality laws that allows every child born within their specific jurisdictions to acquire their citizenship, irrespective of their parents' immigration status.

Nationality legislation should not be discriminatory on any grounds, such as in terms of race, ethnicity, gender, religion, and others. Discriminatory laws regarding nationality could lead to statelessness among members of marginalized groups. Laws of this nature, where the transmission of nationality is allowed only by one gender which is the male gender, have been responsible for statelessness in many countries.[94] It is consequently crucial in such laws that law reform makes provision for gender equality, by also allowing women to transmit nationality to their children and husbands. In 2004, Algeria reformed its law on nationality, enabling women to pass on their nationality to their children with equal rights as men, hence reducing the risks of statelessness.[95]

Simplification of naturalization processes is also vital in efforts to reduce statelessness among long-term residents and migrants. Unduly complex and onerous processes may discourage or even prevent the stateless from seeking to acquire a nationality. States should move toward simple, transparent, and accessible

[93] United Nations, 'Convention on the Reduction of Statelessness' (1961) https://www.un.org/en/documents/treaty/statelessness.shtml accessed 12 July 2024.
[94] United Nations, 'Women's Rights and Nationality Laws' (2021) https://www.un.org/en/women-rights-and-nationality-laws accessed 12 July 2024.
[95] Algeria Nationality Law, Ordinance No. 70-86 (2004) http://www.refworld.org/docid/3ae6b51b8.html accessed 12 July 2024.

naturalization procedures. For instance, Canada has simplified the procedure for naturalization by reducing residence requirements and simplifying document processing.[96] This allows for easy integration of the stateless into the national community.

5.3.2 Protecting Against Arbitrary Deprivation

Another dimension of inclusive nationality laws is the security of individuals against arbitrary deprivation of nationality. The process for withdrawing nationality should be bound by the most stringent legal standards, including a fair hearing and the possibility for judicial review. Arbitrary deprivation of nationality may render persons stateless and violate their rights. The case of the Dominican Republic's Constitutional Court ruling in 2013, which retroactively took away the citizenship of individuals of Haitian descent, is a strong example of the tragic consequences of arbitrary deprivation.[97] Legal safeguards can prevent such an outcome and ensure the protection of the right to nationality.

5.3.4 Implementation and Enforcement of Inclusive Nationality Laws

What is required now is their proper implementation and enforcement of inclusive national laws. Governments need to set up the resources, train personnel, and establish oversight mechanisms so that compliance with the legal standards occurs. Also, monitoring and evaluation frameworks will be useful in gauging the effectiveness of nationality laws and identifying areas for

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[96] Immigration, Refugees and Citizenship Canada, 'Naturalization Process' (2023) https://www.canada.ca/en/immigration-refugees-citizenship/services/citizenship/become-canadian-citizen.html accessed 12 July 2024.

[97] Amnesty International, 'Dominican Republic: Court Ruling Leading to Statelessness' (2013) https://www.amnesty.org/en/latest/news/2013/09/dominican-republic-court-ruling-leads-statelessness/ accessed 12 July 2024.

improvement. International organizations, like the UNHCR, can thus easily provide states with the relevant technical assistance and advisory services toward inclusive implementation of nationality law.[98]

5.4 International Cooperation and Advocacy

Addressing statelessness involves a process of cooperation between states. Therefore, it requires governments, international bodies, and civil society to work together in creating multi-faceted strategies, sharing best practices, and advocating for the rights of stateless people.

Solving statelessness requires concerted efforts through the collaboration of different stakeholders. These include governments, international organizations, and civil society, which are expected to develop and put into place strategies that address the very roots of statelessness, along with providing solutions for those individuals affected. The UNHCR proposed the Global Action Plan to End Statelessness for 2014-2024, enumerating ten actions by which states can resolve and prevent statelessness.[99] This plan operates under international cooperation and has been embraced by a wide number of countries and organizations.

5.4.1 Sharing Best Practices

The sharing of best practices and successful strategies is naturally part of the attempts to address statelessness effectively. Countries that have put innovative solutions into place have quite a

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[98] UNHCR, 'Global Action Plan to End Statelessness 2014-2024' (2014) https://www.unhcr.org/global-action-plan-to-end-statelessness-2014-2024.html accessed 14 July 2024.

[99] UNHCR Thailand, 'Nationality and Statelessness' (2023) https://www.unhcr.or.th/en/stateless-highland-minorities.html accessed 14 July 2024.

bit to offer other states in terms of valuable insights and lessons learned that may be facing similar challenges. For instance, Thailand's granting of nationality to the stateless highland minorities through a simplified registration process may be taken as an example by those countries in the region where similar populations are hosted. International forums - for instance, annual High-Level Segment on Statelessness at the UNHCR - allow states and stakeholders to exchange best practices and collaborate in joint initiatives.[100]

5.4.2 Advocacy for Stateless Individuals

Advocacy in respect of statelessness persons plays a very important role in voicing their needs and bringing awareness about the issue. Various civil society organizations, such as the Institute on Statelessness and Inclusion (ISI), have been advocating for the cause of stateless people and appealing for reforms in the law and policy. Effective advocacy can shape and influence national and international policies, mobilize resources, and garner public support on issues related to statelessness. For example, ISI's advocacy has ensured that Economic Community of West African States (ECOWAS) adopts the Abidjan Declaration on the Eradication of Statelessness, in which its members commit to taking concrete actions to end statelessness in the region.[101]

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[100] Institute on Statelessness and Inclusion, 'About ISI' (2024) https://www.institutesi.org/about accessed 14 July 2024.

[101] Economic Community of West African States (ECOWAS), 'Abidjan Declaration on the Eradication of Statelessness' (2015) https://www.ecowas.int/abidjan-declaration-on-the-eradication-of-statelessness/ accessed 14 July 2024.

5.4.3 Capacity Building and Technical Assistance

Technical assistance and capacity-building for states trying to address statelessness are provided by international organizations like UNHCR and International Organization for Migration (IOM). Assistance includes training for the personnel of government officials and the development of legal frameworks along with effective systems for registration. For example, the IOM supported Myanmar in developing a National Strategy to Address Statelessness and to Strengthen Legal Protection of Vulnerable Groups.[102] Such efforts build capacity for States to better implement international norms and more effectively provide for stateless persons.

6.0 Conclusion

Free citizenship can be considered as a rather effective approach to solve the statelessness problem on the international level. It remains everyone's responsibility to support, encourage and pass progressive legal provisions and policies regarding the rights to a nationality as the international community seeks to find ways and means to eliminate statelessness. This paper is an indication that there is need to develop more legal reforms, policies and cooperation in order to achieve this goal. To adequately solve the issue of statelessness, currently, strong legal frameworks must be developed that provide for an right of the candidate to receive nationality from birth in a state, which should also prohibit arbitrary stripping of citizenship, and also simplify the procedure for the granting of citizenship to persons who have long been residing in a state.

[102] International Organization for Migration (IOM), 'Myanmar: Addressing Statelessness' (2023) https://www.iom.int/myanmar-addressing-statelessness accessed 14 July 2024.

Happily, there are various successful examples to integrated, practical and innovative solutions from different countries, for instance, Brazilian nationality laws where everyone from all over the world irrespective of their color, race, or origin can obtain nationality with relative ease or Ugandan mobile birth registration. These legal changes should be supported by policies that will address the problem of statelessness; discrimination, bureaucratic procedures and conflicts of laws. In addition, there is the significance of the global instruments including the 1954 Convention for Stateless Persons and the 1961 Convention to reduce the Stateless Persons. These instruments are crucial on the making of national laws and these also act as a framework by which states can fashion out ways through which they can eliminate statelessness. Nevertheless, the international legal instruments are not enough, they need to be properly implemented and applied nationwide.

Multilateralism and diplomacy are also the part of the solution of the problem. International cooperation between government, cross-border organizations and non governmental organizations in the implementation of efficient practices, assessment and support and fundraising. Awareness raising and calling for policy changes for stateless people are some of the reasons that require advocacy globally. The issue of statelessness can only be solved through the use of different legal measures, policies and joined up efforts. The fighting for the idea of free citizenship together with cooperation with other communities can make people all over the world getting the right on having a nationality and make the world more fair and tolerant.

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