A rights-based approach to statelessness

Swider, K.J.

Creative Commons License (see https://creativecommons.org/use-remix/cc-licenses):
Other

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
List of references

Academic studies


M. J. Gibney, ‘Statelessness and citizenship in ethical and political perspective’ in *Nationality and Statelessness under International Law* by A. Edwards and L. van Waas (eds.), (CUP 2014).


G. Gyulai, ‘Should nationality have a “minimum content”? – Italian Supreme Court passes landmark decision’, *European Network on Statelessness Blog*, (19 September 2014).


M. Huchzermeyer, *Cities with “Slums”*. *From informal settlement eradication to a right to the city in Africa*, (UCT Press 2011).


Policy Reports

Adviescommissie Vreemdelingenzaken (Dutch Advisory Committee on Migration Affairs), *Geen land te bekennen. Een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland*, (December 2013).

Adviescommissie Vreemdelingenzaken (Dutch Advisory Committee on Migration Affairs), *Profileren en Selecteren. Advies over het gebruik van profilering in de uitvoering van het vreemdelingenbeleid*, (November 2016).


Swedish International Development Cooperation Agency (Sida), *Perspectives on Poverty*, (October 2002).

Institute on Statelessness and Inclusion, *The World’s Stateless*, (December 2014).


**International law and policy**

**Conventions**


UN Convention Relating to the Status of Refugees of 1951.

Montevideo Convention on the Rights and Duties of States of 1933.


Treaty between the Principal Allied and Associated Powers and Romania (Romanian Minorities Treaty) of 9 December 1919.

**EU law**

EU Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted of 13 December 2011.

EU Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data of 24 October 1995.
**International case law**

ICJ Nottebohm (Lichtenstein vs. Guatemala) of 5 April 1955.

ECHR K2 vs. UK of 7 February 2017, Nr. 42387/13.

ECHR Ramadan vs. Malta of 21 June 2016, Nr. 76136/12;

ECHR Genovese vs. Malta of 11 October 2011, Nr. 53124/09;

ECHR Pretty vs. UK of 29 April 2002, No. 2346/02.

**Policy documents**

Universal Declaration of Human Rights of 1948.

UN General Assembly Resolution No. 68/141 of 18 December 2013.

UN General Assembly Resolution No. 67/149 of 20 December 2012.

UN General Assembly Resolution No. 61/137 of 19 December 2006.


UN General Assembly Resolution No. 50/152 of 9 February 1996.

UN General Assembly Resolution No. 50/152 of 21 December 1995.

UN General Assembly Resolution No. 31/36 of 30 November 1976.

UN General Assembly Resolution No. 3274 of 10 December 1974.

UN Economic and Social Council Resolutions adopted during the sixth session, from 2 February to 11 March 1948.


UNHCR Armenia, *Question on Nationality and Statelessness in Armenia*, (March 2013).


UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, No. 106 (LVII), (6 October 2006).


**National laws**

**Laws and policy documents**

**Armenia:**


**Belarus:**


**Costa Rica:**


**Finland:**

Finnish Nationality Act, No. 359/2003, of 2003 [including amendments up to 2007].

**Germany:**


11th Decree to the Reich Citizenship Law (in German - *11. Verordnung zum Reichsbürgergesetz*) of 25 November 1941.
1st Decree to the Reich Citizenship Law (in German – 1. Verordnung zum Reichsbürgergesetz) of 14 November 1935.

The Reich Citizenship Law (in German – Reichsbürgergesetz), of 15 September 1935.

**Hungary:**


Act on Hungarian Citizenship, No. LV, of 1 October 1993 [including amendments up to 2009].

**Iraq:**

Nationality Law, No. 26, of 7 March 2006.


**Lithuania:**


**The Netherlands:**


Administrative instructions on maintaining municipal records (in Dutch - Handleiding Uitvoeringsprocedures), Version 2.2, of 31 August 2015.


Dutch government’s response to the report by the Dutch Advisory Committee on Migration Affairs regarding statelessness (in Dutch - Eerste reactie van het kabinet op het advies van de ACVZ inzake staatloosheid), letter by State Secretary of Security and Justice F. Teeven to the Parliament, No. 548084, of 10 September 2014.


**Macedonia:**

Law on the Citizenship of the Republic of Macedonia, of 11 November 1992, [including amendments up to 2011].

**Malta:**

Citizenship Act, No. XXX of 21 September 1964.

**Moldova:**

Law on the Citizenship of the Republic of Moldova, No. 1024-XIV of 2 June 2000, [including amendments up to 2014].

**Montenegro:**

Law on the Montenegrin Citizenship, No. 01-288/2, of 21 February 2008, [including amendments up to 2014].


**Russia:**


**Spain:**

**UK:**


**Ukraine:**

Law on the Citizenship of Ukraine, N 13, of 2001 [including amendments up to February 2016].

**Turkey:**

Law on the Citizenship of Turkey, No. 5901, of 29 May 2009.

**Nationality law database**


**National case law**

Italian Supreme Court (in Italian - *Corte Suprema di Cassazione*), Nr. 25212/13, of 19 June 2013.


UK Supreme Court, Pham vs. Secretary of State for the Home Department, of 25 March 2015.


Summary in English

In this thesis I argue that current policies on statelessness fail to prioritize the empowerment of affected persons. I suggest adopting a rights-based approach to statelessness policies to remedy that problem. In Part I, I focus on the meanings of the concepts of nationality and statelessness. Deeply rooted yet unfounded assumptions that nationality is by definition good for everyone, and that statelessness is by definition problematic are at the core of the failure of current policies. I analyse where such assumptions come from, and why they remain influential. Part II discusses the current legal and policy discourse on statelessness, identifies the way in which it fails to empower affected persons, and suggests an alternative. A rights-based approach to statelessness requires rethinking the language used in policy and law making generally, as well as amending specific rules that do not prioritize the empowerment of affected persons, such as for example the prohibition on voluntary statelessness. I discuss four case studies of policy responses to statelessness to illustrate the practical implications of the current approach and of the proposed alternative. These cases involve (1) a stateless individual who can acquire the nationality of Armenia at the cost of fulfilling a high-risk military service, (2) a national registration system in the Netherlands which avoids recording instances of statelessness as a matter of explicit policy, (3) the stateless Russian-speaking minority in Latvia, who enjoy a high level of protection in their country of residence, (4) a comparison of two historical policies on restoration of nationalities which had been withdrawn in the context of political persecution, namely the case of the Jewish population who lost German nationality during the Nazi regime, and the case of the Faili Kurd population who lost Iraqi nationality during the regime of Saddam Hussain. I conclude that by adopting a rights-based approach, statelessness policies no longer need to draw their justifications from an unfounded idealization of nationality, and an equally unfounded demonization of statelessness. Instead of focusing on turning stateless persons into nationals, a rights-based statelessness policy empowers affected persons to choose whether, when, and how to invoke the relevant rights. This puts the power to define the problem as well as its solution in the hands of those affected by the policies.
**Samenvatting in het Nederlands**

In dit proefschrift wordt de stelling ontwikkeld dat het huidige beleid ten aanzien van staatloosheid geen prioriteit geeft aan de emancipatie van degenen wier bestaan door dit beleid wordt beinvloed. Om dit te veranderen, stel ik voor om een op de rechten van betrokkenen gebaseerde benadering toe te passen om dit probleem op te lossen. In Deel I bespreek ik de betekenis van de begrippen van nationaliteit en staatloosheid. Diepgewortelde maar ongegronde veronderstellingen, zoals dat nationaliteit per definitie goed is voor iedereen, en dat staatloosheid per definitie problematisch is, zijn de hoofdoorzaak van de tekortkomingen van het huidige beleid. Ik analyseer waar zulke veronderstellingen vandaan komen, en waarom ze zo invloedrijk blijven. In deel II wordt daartoe het huidige juridische en beleidsdiscours op het gebied van staatloosheid besproken, en wordt vastgesteld hoe dit tekortschiet bij het emanciperen van degenen op wie dit beleid zich richt. Voorgesteld wordt om in plaats daarvan een op de rechten van betrokkenen gebaseerde benadering toe te passen. Zo een benadering vereist het heroverwegen en opnieuw doordenken van het taalgebruik in het huidige juridische en beleidsdiscours in het algemeen, en het aanpassen van specifieke regels die geen prioriteit geven aan de emancipatie van de doelgroep, zoals bijvoorbeeld het verbod op vrijwillige staatloosheid. Ik bespreek vier casus van beleidsreacties op staatloosheid, ter illustratie van de praktische implicaties van de huidige benadering en het voorgestelde alternatief. De casus betreffen (1) een staatloze die de Armeense nationaliteit kan verkrijgen door een risicovolle militaire dienst te vervullen, (2) een nationaal registratiesysteem in Nederland dat als expliciet beleid heeft om het opnemen van staatloosheid te vermijden, (3) de staatloze Russisch-sprekende minderheid in Letland, die een hoog niveau van bescherming geniet in hun land van verblijf, en (4) een vergelijking van twee historische benaderingen van het herstellen van de nationaliteit die in het kader van politieke vervolging waren ontnomen, c.q. de Joodse bevolking die de Duitse nationaliteit verloor tijdens het Naziregime, en de Feili-Koerden die de Iraakse nationaliteit hebben verloren tijdens het regime van Saddam Hoessein. Ik concludeer dat bij een op rechten gebaseerde benadering het staatloosheidsbeleid niet meer gerechtvaardigd hoeft te worden met een ongegronde idealisering van nationaliteit en een evenzeer ongegronde demonisering van staatloosheid. In plaats van krampachtig te proberen alle staatlozen in staatsburgers te veranderen, stelt een dergelijk staatloosheidsbeleid mensen in staat te kiezen of, wanneer, en hoe
ze beroep willen doen op de relevante rechten. Dit geeft degenen die onder het beleid vallen de macht en vrijheid om zowel het probleem als de oplossing zelf te definiëren.
Funding

This thesis was funded by the Netherlands Organisation for Scientific Research (in Dutch – Nederlandse Wetenschappelijke Organisatie), under the ‘Mozaiek’ programme.
Acknowledgements

I remember looking at a humoristic drawing in a Ukrainian newspaper, entitled ‘Lenin eliminates illiteracy’. It made fun of a very successful campaign slogan of the early Soviet Union. The drawing featured a group of villagers receiving a letter from Lenin. The two soldiers that personally came to the village from Moscow to deliver the letter ask the villagers whether there is anyone among them who can read the letter. Two men raise their hands, and the rest are shot dead.

I started working on statelessness in 2011, curious about the phenomenon’s ability to startle any bureaucratic system it encountered. It was not until 2014 when the UNHCR announced its ‘End Statelessness in 10 Years’ campaign that I found my doctorate’s research question. Needless to say, I never doubted that the UN policy makers are deeply committed to improving the lives of stateless persons. But the exultation of elimination and its various understandings throughout history gave me pause for thought. The bad joke on how Lenin eliminated illiteracy somehow stuck. The ‘End Statelessness’ slogan raised a question for me about how a global statelessness policy can stay true to the complex commitment to the welfare and empowerment of an extremely diverse and often marginalized group such as the stateless, especially in the face of the temptation of simplicity of quantitative solutions. A study on statelessness thus evolved into a quest about balancing the elimination of vulnerability against the empowerment of the vulnerable.

I am endlessly grateful to everyone who has supported me in various ways on this journey.

I feel exceptionally lucky with my two supervisors. Leonard Besselink, you were the reason I at all considered writing a doctorate, which in retrospect I think we can agree was not a bad idea! I really value your unconditional supervision at every step of this adventure: during the intense writing phases as well as during the distracted random explorations. I really appreciate all the freedom you gave me without letting me feel lonely. Our long discussions and your insightful comments helped me more than anything else to shape my ideas, make sense of them, and find a way to confidently express them. Prof. René de Groot, it was truly a pleasure to have worked under your supervision and to have benefitted from your unprecedented goldmine of knowledge of all things nationality and statelessness! As many of your students I am sure will agree, your passion for research in this field is highly contagious.

Angela Moisl, thank you for making me feel so welcome from day one at Amsterdam Center for European Law and Governance, which hosted me during this project. I am grateful for your very generous support with absolutely everything I embarked on during this time, from exploring the world of academic publishing, to figuring out financial reporting, to organizing ad-hoc classes for legal practitioners, to setting up photography exhibitions. You made everything achievable.

Alison McDonnell, thank you for your valuable input during the final editing rounds, as well as for your continuous optimism and encouragement to pursue this project at the moments when I needed that most!

Special thanks go to Laura van Waas, Amal de Chickera, Zahra Albarazi, Ileen Verbeek, and other on and off staff, interns, friends, and passers-by of the Institute on Statelessness and Inclusion. You were a great source of energy, expertise, inspiration, and mental support for me. I
am grateful for all the events on statelessness you organize, all the people you involve and educate.

I am grateful to Chris Nash and the wonderful, inspiring, compassionate and dedicated people I got to know and to work with through the European Network on Statelessness. Thank you for all the unique opportunities to put my knowledge to practical use.

Tendayi Bloom, Caia Vlieks, Gábor Gyulai, Tamás Molnár, Olivier Vonk, and Betty de Hart - thank you for the inspiring discussions, heated debates, and encouragements to follow my curiosity even when it led me across the borders of academic disciplines.

Many thanks to numerous policy makers, civil servants and legal representatives who spoke to me about their thoughts on statelessness, and listened to mine. I am particularly grateful to Inge Sturkenboom, Melanie Khanna, Edit Bleeker, Pieter van Krieken, Rene Bruin, Karel Hendriks, and Jelle Klaas for cultivating exchange with academics by organizing and attending joint conferences, and always being open for a discussion. Conversations with you convinced me that constructive criticism from academia is not only welcome, but highly appreciated by practitioners.

I am grateful to everyone who has shared their personal stories of citizenship and statelessness with me in what started as semi-structured interviews and evolved into highly unstructured joint attempts at finding loopholes in non-existent legislation. Without your stories I would have never been able to tell mine.

One of the many things I learned in the process of writing a doctorate is that I am blessed with an amazing family of relatives and friends. I am grateful to my parents, from whom I inherited the passion for travel, and that strange sense of comfort that can only be found in the space between origins and destinations. Special thanks to Nicolette, for being a believer, and to Henk for his ability to reference everything with a Bible quote; to Joris, Tijmen, Marieke, Edwin, and Caroline, you all supported me in writing of this thesis in so many different ways! Thank you for your curiosity, and for all the help behind the scenes with essential practical issues such as childcare. You give me strength, happiness, and safety, making every life undertaking easier and brighter.

Daniel, since you entered my life everything became more meaningful, including this thesis. Olivier, things I am grateful to you for go far beyond the scope of this foreword. Thank you for being my most critical reader and the world’s most statelessness-savvy physicist!