

DENIAL OF CITIZENSHIP: A CHALLENGE TO HUMAN SECURITY

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EXECUTIVE BRIEF

In an age when international standards are continually refined to ensure protection and empowerment for all, millions of people are still prevented from exercising their legitimate rights. They are the 'non-citizens': people who are denied the right of citizenship. Citizenship is denied for reasons of political power and is most prevalent in situations of conflict. Non-citizens are denied access to suffrage, justice, services, and rights in their countries and often become political scapegoats.

This paper purports to add to the analytical data gathered in *Denial of Citizenship: A Challenge to Human Security*, a study commissioned by and prepared for the Advisory Board on Human Security in June 2004. It seeks to draw attention to the impact of the denial of citizenship on human security. In addition to highlighting the effects of denial on the rights and well-being of individuals and communities, it reviews several cases of excluded populations and links denial of citizenship, discrimination and social exclusion. It explains the impact of denial on basic rights and freedoms. It considers the issue of disempowerment through the denial of civic rights and of education. Finally, it briefly reviews the relationship between denial of citizenship, conflict and migration.

The denial of citizenship is a problem that can be readily overcome with sufficient political will and/or sufficient international pressure. The paper draws the following conclusions:

1. Denial of citizenship worldwide bears further investigation. An exhaustive exercise of identifying a caseload of non-citizens should be undertaken; information and data should be systematically collected, analyzed and organized in a master classification.
2. Awareness of the issue should be raised, by means of a structured information campaign targeted at international and national actors such as research communities, NGOs, governments and international institutions. It should be impressed throughout the campaign that the international community has the right and obligation to work on behalf of the 'non-citizen'.
3. Models of effectively deployable integrated assistance programmes for the benefit of populations who are denied citizenship should be developed on the basis of the framework that would have been defined by the general principles.
4. The international community should press for the development of general principles on non-citizens similar to the one established a decade ago for addressing the issue of the internally displaced persons.
5. In this context, the international community should suggest that an international entity capable of monitoring the applications of these principles be designated or created.
6. Denial of citizenship resulting from bilateral issues should be dealt with by States concerned, with support from the international community.

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I. INTRODUCTION

In a world where States are increasingly pressed to conform to international norms and standards, the fundamental right to citizenship is still denied to some nine million persons.¹ They are scattered around the planet with the largest groups located in Central, South and Southeast Asia, Sub-Saharan Africa and Eastern Europe. For example, more than one million Rohingyas in Myanmar; 300,000 Estate Tamils in Sri Lanka and 300,000 Biharis in Bangladesh are denied citizenship. Other notable examples include the Banyarwanda population in the Democratic Republic of Congo, estimated at more than 1.5 million; some 500,000 ethnic Ethiopians and Eritreans in the Horn of Africa; and much smaller groups like the 15,000 Meskhetian Turks in Russia and the 17,000 'erased' citizens of Former Yugoslavia in Slovenia.

Denial of citizenship is closely linked to conflict and State building. Emerging States often deny citizenship to population groups they believe constitute a menace to their fragile integrity and the power base of influential groups. Post-conflict State building in the Balkans, for example, has seen a number of cases where citizenship was denied to populations whose ethnic origins associated them with former enemies. Beyond perceived direct threats to their territorial integrity, new States are also generally concerned with controlling citizen participation in the governance of their territory and resources. The outcome of the referendum held in Slovenia in April 2004 has shown that such concerns do not abate easily. More than a decade into the State building process, an overwhelming majority of voters still confirmed their desire to exclude from citizenship sizeable communities of former Yugoslavs. In countries where State building is led by a culturally or ethnically distinct group, non-members are liable to exclusion and denial of citizenship. In such cases, the right to citizenship is often denied in the context of voting rights. For instance, in Cambodia, extensive criteria pertaining to lineage were introduced to exclude ethnic Vietnamese from receiving Cambodian citizenship prior to elections. Cambodia is by no means unique and this practice has been repeated frequently around the world. Over time, as States mature, some exclusionary situations may be resolved through the assimilation and cooption of fringe groups. Other situations, however, linger because States may find it more convenient or safer not to acknowledge their root causes. Fear of change and fear of eventual shocks to established structures are other reasons for States to continue denying population groups citizenship.

Short-term goals of entrenched governments may lead to reversals as well. In some such cases, discrimination and the denial of citizenship have contributed to social unrest and armed conflict. The ongoing civil war in the Ivory Coast illustrates the marginalization of large population groups through a reversal of citizenship policies; the country's leadership fabricated a new national identity -- the 'Ivoirité' -- as a tool in the pursuit of nationalistic policies. This was used to justify the exclusion from governance and eventual expulsion of large population groups from the country. The question of citizenship polarized the country's population and exacerbated internal tensions; it caused the civil war and brought the Ivory Coast to the brink of international conflict.

While denial of citizenship is, for States who practice it, a radical instrument of exclusion, there exist other forms of discrimination which may erode people's citizenship right without making

¹ Statistics on people who are willfully denied citizenship are generally unreliable. States may tend to minimize figures, while support and advocacy groups may inflate them. The approximate total number of nine million stateless persons submitted by UNHCR in the 2003 edition of *Refugees by Numbers* reflects probably best the magnitude of the problem of citizenship denial.

them legally “non-citizens”. Such discriminatory practices are usually considered under the notion of “ineffective citizenship”. Millions of people suffer from ineffective citizenship worldwide. Women and ethnic minorities are the prime victims of differential treatment in effectively depriving them of some, or most, of the rights of citizenship. Ineffective citizenship is widespread and often is a prelude to the formal denial of citizenship.

The “denial of citizenship” impacts directly on human security. The international community has an interest and a duty to address situations which, if left to deteriorate, will perpetuate and spread conditions of human insecurity.

In its report, *Human Security Now*,² the Commission on Human Security (CHS) acknowledges critical linkages between governance and citizenship and between violent conflict and citizenship. The quality of governance determines a State’s effectiveness in managing common resources and protecting its people from fear and want. Governance, in turn, is closely linked to the empowerment of people and communities through the exercise of their due rights. Hence, the right to vote, to hold public office and to participate in decision-making pertaining to the management of economic resources at different levels are essential components of empowerment; the exercise of citizenship is a necessary condition for good governance.

Granting of citizenship is considered to be a sovereign function. When States use citizenship to exclude segments of society they often resort to arguments of State security. Juxtaposing the concept of human security with the denial of citizenship, thereby emphasizing people’s interests, dignity and basic freedoms serves as an important counterpoint to concerns of State security. This is especially true in situations where the enforcement of restrictive citizenship policies breeds conflict and poses a direct threat to State security. Ensuring citizenship based on human security is therefore an intrinsic part of State security.

The CHS Report defines human security expansively as covering “the vital core of all human lives in ways that enhance human freedoms and human fulfillment.” It states that “Human security means protecting fundamental freedoms- freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people’s strengths and aspirations. It means creating political, social, environmental, economic, military, and cultural systems that together give people the building blocks of survival.”³ Citizenship is one such process or system, while its denial makes for critical and pervasive threats and situations. The integrated approach proposed in the human security framework can serve as a basis for analyzing the relationship between people’s security and the denial of citizenship.

This paper purports to add to the analytical data gathered in *Denial of Citizenship: A Challenge to Human Security*, a study commissioned and prepared for the Advisory Board on Human Security in June 2004. Applicable definitions are reviewed within the context of human security. Selected cases of non-citizens are then examined, followed by a study of the consequences of the denial of citizenship. Discriminatory norms and patterns are deduced from actual cases. The current multilateral normative framework pertaining to denial of citizenship is briefly presented with

² *Human Security Now: Protecting and Empowering People*, New York, 2003.

³ *Human Security Now: Protecting and Empowering People*, p. 4

reference to some measures/ initiatives to address the phenomenon. The paper also offers recommendations for future action.

II. DEFINITIONS AND CONCEPTUAL FRAMEWORK

1. The Notion of Citizenship

Citizenship means membership in a State. It represents the condition of integration of the individual within the political framework of that State. This however implies the existence of mutual rights and duties which constitute the relationship between the citizen and the State. Citizenship is an instrument of empowerment rather than merely a set of passive rights. Indeed, citizenship, the essential link between the individual and the State, has been referred to as the “right to have rights”.⁴

Citizenship carries three basic rights: first, the right of an individual to reside permanently within the territory of a State and to return to it from abroad; second, the right to be protected by the State within and outside its territory and third, a set of rights pertaining to the empowerment of the individual: the right to vote, hold office and participate in decision making in the allocation of the State’s resources. Included also are rights to social action, protection and economic rights, which in sum are key determinants of the quality of life for an individual. Granted by the State, citizenship confirms the individual’s full membership in the national community and his or her right to enjoy the same rights and freedoms as any other member of that community. Citizenship is therefore an instrument of empowerment as well as of protection and is a key determinant of the well being of an individual. Citizenship not only means protection by the State, but also protection from the State; it concerns the access to justice, the benefit of the rule of law, equality before the law and the right to be heard. Granted by the State, citizenship confirms the individual’s full membership in the national community and his or her right to enjoy the same rights and freedoms as any other member of that community.

2. The Link between Citizenship and Human Security

The concept of human security was first formulated in the 1993 Human Development Report published by UNDP.⁵ The report indicated that the individual must be placed at the centre of international affairs. It argued that “*the concept of security must change from an exclusive stress on national security to a much greater stress on people’s security, from security through armaments to security through human development, from territorial security to food, employment and environmental security*”.⁶ In 1994, the next Human Development Report formalized the concept of human security.⁷

Similarly, the human security framework presented in Human Security Now centers on the individual and the community and not the State. It focuses on strategies that protect and empower people and gives them the building blocks of survival, livelihood and dignity. The human security

⁴ Hannah Arendt - *The Origins of Totalitarianism*, Andre Deutsch, 1986.

⁵ UNDP, Human Development Report 1993 – People’s Participation.

⁶ Ibid.

⁷ UNDP, Human Development Report 1994 – New Dimensions of Human Security.

concept is fundamentally rights-based, establishing the need to preserve the core values that all people are entitled to under universal human rights. In this regard the right to citizenship appears fundamental to ensuring conditions of human security as most human rights derive from and depend upon it. Citizenship provides individuals the means to determine the structures of the State and its government. It enables them to participate in the establishment of priorities and policies for the safeguarding and development of their vital freedoms. The exercise of citizenship is by definition people-centered and benefits the individual and the community.

In keeping with a human security approach to the issue of citizenship denial three elements offer a practical tool for evaluating the consequences of disenfranchisement: protection, empowerment and the concept of vulnerable group. As protection and empowerment are inherent to the notion of citizenship, lack or denial of citizenship creates conditions for human insecurity.

In practice, however, not all States fully respect the rights granted by citizenship. Dictatorships disregard the basic rights of their citizens. Even in established democracies discrimination occurs, often against minorities. Notwithstanding, normative citizenship is a condition *sine qua non* for the protection and the empowerment of individuals and communities.

3. The Denial of Citizenship and the 'Non-Citizen'

Most people become citizens at birth. All but three States have ratified the 1990 Convention on the Rights of Child which *inter alia* provides that a child should be granted citizenship at birth. It is therefore a globally recognized right. Nevertheless, it is as yet far from universal in its application. There are a number of people and groups who are denied citizenship, either at birth or later. There are people who lose their citizenship and cannot obtain another one.⁸

As a sovereign prerogative of the State, citizenship may be used as an active tool for exclusion, by according some people a specific status in relation to others to whom this status is not granted. Deliberate enforcement of exclusionary citizenship policies usually stems from a deliberate intention to keep segments of the population in a condition of vulnerability. Non-citizens face radically different risks to their human security owing to their economical, social and political marginalisation. Not only are they more vulnerable and exposed to threats, they are also in no position to make the choices that would allow them to mitigate their exposure to those threats or determine their own future.

The core of human insecurity for non-citizen groups is vulnerability as the risks faced are not only severe but are also cumulative. The non-citizen populations experience the most serious and the most numerous threats to their lives and their livelihoods. Hence, while in some cases, a protracted situation of denial may evolve into neglect, the lack of resolve of the State or States involved must be considered equally unacceptable. Because so many rights and protections flow from state institutions, individuals not recognized as citizens of the state where they live, constitute an extremely vulnerable group.

⁸ Statelessness and non-citizenship refer to similar conditions. An important difference, however, needs to be highlighted for the purpose of the discussion in this paper. Statelessness focuses on the inability of some individuals to avail themselves of the protection of a State, be it the State they reside or were born in. From a human security perspective, the concern with the non-citizen lies primarily on an individual's inability to obtain participative membership in a given State despite that individual's meeting the citizenship requirements generally identified under international standards.

4. Ethnicity and the Denial of Citizenship

Most of the cases discussed in this paper are in the context of State building in multi-ethnic environments. Some States were built from mosaics of ethnic groups, as in West Africa. Others emerged from the break down of larger multi-ethnic States like the Soviet Union or Yugoslavia. This has generated some confusion about the proper use of such terms as the nation, the State, the nation State, nationality and citizenship: in particular, with regard to the concepts of nationality and citizenship. Hence, while in the Soviet Union people were citizens of the USSR, they retained a normative “nationality” that linked them to specific territories and an ethnic group.⁹

The emergence of new States often concerned/involved societies that lacked a democratic culture and in most cases a sense of national identity. Consequently **the “people” or the “nation”** were defined along existent cultural markers such as ethnic group, language or religious denomination. Group membership became thus politicized as a means of inclusion or exclusion from the State and society. The politicization of group membership/ethnicity impacted on the substance of citizenship. It is by the politicization of ethnicity that the denationalization of large groups was made possible in most of the cases reviewed therein.

The European Convention on Nationality is, to date, the most comprehensive international instrument to codify the main principles and rules applicable to nationality. According to the Convention, nationality is the legal bond between a person and a State and “does not indicate a person’s ethnic origin”.¹⁰ The norm of “nationality” is considered equivalent to the norm of “citizenship”. For the purpose of this paper the two terms are considered synonyms and would be used interchangeably.

III. SELECTED CASES OF DENIAL OF CITIZENSHIP

1. The Rohingyas in Myanmar

More than one million Rohingyas are denied citizenship in Myanmar as a result of the State’s long term policies of discrimination and exclusion and prospects for a change in their situation seem non-existent.¹¹ The Rohingyas were not recognized as an ethnic group indigenous to the nation¹² and were systematically denied their civil, political, economical and social rights. The growing discrimination culminated in the enactment of the Citizenship Act of 1982 which set restrictive criteria for defining full citizenship. The 1982 Citizenship Act distinguishes between three categories of citizens: full citizens, associate citizens, and naturalised citizens. Full citizens are those belonging to one of 135 “national races” among which the Rohingyas do not feature, or those whose ancestors had settled in the country before 1823, the start of the British colonisation.

A third category, citizenship by naturalization was conditioned on proof of birth in Myanmar as well as proof of descent from parents who had settled in the country before 4 January 1948. The

⁹ Similar use of the term “nationality” continues to be applied in the Peoples Republic of China which recognizes some 21 “nationalities” in Yunnan Province alone.

¹⁰ Article 2.a. of the European Convention on Nationality, 6 November 1997, European Treaty Series - No. 166 <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>

¹¹ Myanmar. The Rohingya Minority: Fundamental Rights Denied, Amnesty International, AI Index ASA 16/005/2004.

¹² Chris Lewa – Conflict, Discrimination and Humanitarian Challenges in Northern Arakan State, Burma Day 2003 Conference, 8 October 2003, Brussels

Rohingyas were denied citizenship, as they were considered by the authorities unable to meet the requirements of any of the categories.

Formal discrimination, pressure and repression by the State prompted the Rohingyas to flee into Bangladesh several times in the past twenty years. The first exodus started as early as in 1978. Several repatriation movements took place in the 1990s and by 2002 there were only an estimated 20,000 Rohingyas left in camps in Bangladesh. During 2003 some 3,000 Rohingyas were repatriated to Myanmar amid reports¹³ of the Bangladesh authorities coercing them to return. Nevertheless, the condition of the more than one million Rohingyas currently in the Rakhine State has not improved.¹⁴ At the beginning of November 2004 more than 15,000 people had entered Bangladesh from Myanmar¹⁵. The Rohingyas who crossed into Bangladesh said they left to escape persecution by the military and asked to settle permanently in Bangladesh. However, Bangladeshi officials consider them to be economic migrants and are unwilling to recognize them as legitimate refugees.

2. The Banyarwanda in the Democratic Republic of Congo

About 1.5 million Banyarwanda living in the North and South Kivu¹⁶ provinces of the Democratic Republic of Congo (DRC) are denied citizenship. The issue of ethnicity as basis for citizenship, manipulated to political ends in the past 40 years, has been at the centre of every single conflict in the Great Lakes Region. Ethnic cleavage is largely a by-product of the colonial past and the system of indirect rule¹⁷, i.e., a dual system of civic and customary rule used by Belgium for administering Congo, Rwanda and Burundi.¹⁸ This system gave rise in the post-colonial State to a dual notion of citizenship: one that drew distinctions between the indigenous and the stranger.

At the time of Congo's independence in 1960, the Banyarwanda considered themselves to be citizens of the new State. In January 1972 citizenship was granted to all natives of Rwanda and Burundi who had settled in the country before 1950. In 1981 in response to significant pressure from the majority of the constituency in the eastern provinces, President Mobutu enacted a Citizenship Law invalidating the 1972 decree. The new law provided that only individuals with an ancestral connection to the population who had been residing in Congo in 1885 would retain Congolese citizenship, thus stripping the Banyarwanda of citizenship. The Banyarwanda have faced systematic discrimination ever since. The issue of citizenship of the Banyarwanda has been

¹³ Refugees International, "Lack of Protection Plagues Burma's Rohingya Refugees in Bangladesh", 30 May 2003

¹⁴ *Forgotten People: The Rohingyas of Burma*, report prepared by Kavita Shukla and Joel Charny for Refugees International, 15 March 2003, <http://www.refugeesinternational.org>.

¹⁵ Thousands of Myanmar Muslims flee to Bangladesh, Reuter News Alert, 4 November 2004, <http://www.alertnet.org/thenews/newsdesk/DHA18911.htm>

¹⁶ The Banyarwanda, a Kinyarwanda speaking people have lived in the Eastern provinces of Congo since before the colonization. Successive economic migrations during colonial times and post-colonial refugee influx added to the numbers of Banyarwanda in DR Congo. In what is now called North Kivu, there are important settlements of Banyarwanda, while in the southern parts of the Kivu highlands there is a group of Banyarwanda that are mainly of Tutsi-origin and are known as Banyamulenge.

¹⁷ Through the practice of customary law, which was different for each "tribe", this system created and shaped identities enforced by native authorities whose absolute power was backed by the State. Law was used as an administrative tool, defining the people as well as the means by which they would be ruled.

Georges Nzongola-Ntalaja - The Politics of Citizenship in DRC, Annual International Conference, 19-20 May 2004, "States, Borders and nations: Negotiating Citizenship in Africa", Centre of African Studies, University of Edinburgh

¹⁸ Belgium administered Congo, Rwanda and Burundi as a single colonial entity.

the cause of internal and regional conflict since 1996 drawing in numerous actors and proxy groups from the neighbouring countries, Burundi, Rwanda and Uganda, each pursuing different politically motivated goals. The Lusaka Cease Fire Agreement of 1999 and the Sun City Inter-Congolese Dialogue of 2001 failed to bring about a sustainable solution.

In 2004 the council of ministers of the DRC adopted a new bill on nationality providing for the right to nationality based on place of birth as well as based on parentage.¹⁹ The new bill on nationality of the DRC would solve the nationality problem of the Banyarwanda people, whose Congolese nationality is at the core of disputes in the region. However, obstacles remain as the Parliament and Senate have passed different versions²⁰ of the Nationality Law. Moreover, conflict has re-ignited in the region. Tensions rose sharply after the massacre of more than 150 Banyamulenge²¹ in the Bukavu region in mid-August. At the end of November 2004 the Rwandan forces were moving into DRC. It is clear that both Rwanda and Uganda still control large parts of eastern Congo through proxy rebel groups and find in the lack of citizenship and ethnic persecution of some populations a justification for intervention.²²

3. The Bihari in Bangladesh

There are an estimated 300,000 Bihari non-citizens currently in Bangladesh. They have been willfully denied citizenship by the State since the early 1970s. The vast majority still resides in refugee camps and the prospects for a change in their status or condition seemed until recently very dim.²³

The case of the Biharis in Bangladesh is different from other cases of denial of citizenship because the government considers them as a foreign group of individuals that ought to return to Pakistan. In fact Biharis never resided in Pakistan, but originally entered East Pakistan as refugees fleeing India at the time of its accession to independence. The Biharis assimilated quickly and with support from the ethnic Punjabis, who dominated the politics of the newly independent State of Pakistan, established themselves in key positions over the Bengali majority. This situation prevailed until the secession of East Pakistan and the creation of the independent State of Bangladesh. At the time, the new Government of Bangladesh granted citizenship to the Bihari, but soon revised its position. Biharis came to be seen as Pakistanis who had supported the armed intervention of West Pakistan during the Bengali struggle for independence. They were subsequently stripped of their citizenship and related rights and placed in camps to await “repatriation” to Pakistan. Some 170,000 Biharis were indeed resettled in Pakistan after a tripartite agreement was concluded between India, Pakistan and Bangladesh.²⁴ Thereafter, the Government of Pakistan has refused to accept further resettlement, fearing possible ethnic conflict and instability.

¹⁹ <http://www.reliefweb.int> , source: UN Office for the Coordination of Humanitarian Affairs, 23 July 2004

²⁰ USAID Field Report DR Congo, 30 September 2004, www.reliefweb.int

²¹ *Democratic Republic of the Congo: Confronting Impunity*, Human Rights Watch Briefing Paper, January 2004, <http://www.hrw.org>

²² BBC News – Rwanda controls DR Congo, UN says, 10 December 2004, <http://news.bbc.co.uk/2/hi/africa/4085463.stm>

²³ *Bangladesh, Country Report*, Country Information & Policy Unit, Immigration & Nationality Directorate, Home Office, United Kingdom, April 2004.

²⁴ *Citizenship and Statelessness in South Asia*, Gerrard Khan, The Fletcher School of Law and Diplomacy, October 2001.

In 1999, the Government of Pakistan reiterated that the Biharis were Bangladeshis and not Pakistanis. Indeed, by that time almost all the Biharis living in Bangladesh had been born in that country.²⁵ In June 2003, a decision of the Bangladeshi High Court granted citizenship to ten Biharis. It was hoped that the High Court's decision would eventually pave the way for Bangladeshi citizenship to all Biharis and finally allow them to leave the camps and enjoy the full rights of nationals.²⁶ However, the government appealed the case. Moreover, the ten persons who obtained Bangladeshi citizenship met with rejection and opposition from the part of their own community²⁷ and were threatened with being evicted from the camps. The generational split within the Bihari community is likely to further complicate the issue. Many, older generation Biharis still hope to return to Pakistan while the younger generation is increasingly seeking citizenship rights in Bangladesh.²⁸

4. The Lhotshampas of Bhutan

There are about 103,000 Lhotshampas in refugee camps in southeast Nepal. They have been assisted by UNHCR for the past 12 years.²⁹ The Lhotshampas, who are ethnic Nepalese from the plain belt in the south of the country, have migrated into neighbouring Bhutan since the nineteenth century. No restrictions had been placed on their settlement in southern Bhutan or movement across the border and, until 1958, the question of their citizenship had not been raised. This tacit policy, however, changed at an increasing pace thereafter.

The 1958 Citizenship Act required ownership of land and ten years of residency in Bhutan in order to be eligible for citizenship. This was revised in 1977 and the residency requirement set at 20 years. In addition, applicants were required proficiency in the official language and knowledge of the history and culture of Bhutan. In 1985, in a bid to perfect a policy akin to ethnic cleansing, the Government enacted the Citizenship Act. The Act required all individuals born after 1958 from only one Bhutanese parent to formally apply for citizenship. Consequently, Lhotshampas started asking for democratic reforms. This, together with the strict application of the Citizenship law, paved the way to disturbances which led to evictions, followed by the exodus of a large group in 1992. Successive rounds of bilateral talks³⁰ between Nepal and Bhutan primarily focused on the types of categories that should be established to classify the Lhotshampas refugees and failed to produce any concrete solution to the issue. Meanwhile, Nepal refuses to formally integrate them, and Bhutan continues to contend that the Lhotshampas had emigrated and hence had knowingly relinquished their citizenship as per the provisions of the Citizenship Act.

As refugees in camps assisted by the international community and Nepalese authorities, the situation of the Lhotshampas was until recently less immediately endangered than that of other groups of non-citizens. A verification process in view of repatriation was eventually agreed upon

²⁵ Case#3 of "Being Recognized as Citizens: a Human Security Dilemma in South and Southeast Asia", a paper prepared for the Commission on Human Security by John W. Hefferman, November 2002.

²⁶ U.S. Committee for Refugees, Press Release, 16 June 2003; BBC News – Mixed Feelings over Bihari Ruling, 28 May 2003.

²⁷ Bangladeshi identity brings miseries to 10 youths in Geneva Camp - New Age, Dhaka, Bangladesh 19 October 2004, <http://www.newagebd.com/2004/oct/19/met.html#2>

²⁸ Biharis demand Bangladesh citizenship – The Bangladesh Observer, 15 July 2004, <http://www.bangladeshobserveronline.com/new/2004/07/15/front.htm>

²⁹ UNHCR, World Refugee Survey 2004, *Unending Limbo: Warehousing Bhutanese Refugees in Nepal*.

³⁰ Between 1993 and 2003 some fifteen bilateral meetings were held, but failed to produce a long term solution to the crisis. In 2001 the two governments agreed to conduct a verification campaign of the camps population.

and conducted in one of the camps, but the results of the verification campaign³¹ are largely controversial and contested. Although the United Nations High Commissioner for Refugees (UNHCR) has been administering the Bhutanese refugee camps since the start of the crisis in 1991, it has been systematically excluded by both governments from playing any role in the status determination and repatriation process. As a result UNHCR decided³² to gradually phase out its direct involvement and declared its intention to close the camps in Eastern Nepal by December 2005.³³ The phase-out process would be marked by a shift from assistance to self-reliance projects to facilitate local integration of those willing to remain in Nepal. As it is denied access in Bhutan, UNHCR is not able to monitor the return process and would not promote returns, although it would assist in verifying that returns from Nepal are voluntary. The proposed phase-out of involvement from the part of UNHCR in the absence of a durable solution could endanger the overall situation of the Lhotshampas refugees especially in the context of the Maoist rebel movement in Nepal. Recently Bhutan's National Assembly accused³⁴ the Lhotshampas of involvement with Maoist groups in a bid to oppose their repatriation. Nepal in turn stepped up security around camps effectively restricting the freedom of movement of the refugee population and making it impossible for them to obtain work outside the camps.

5. The Estate Tamils in Sri Lanka

In 1834, the Estate Tamils, or Sri Lanka Indians, were brought in large groups to Sri Lanka by the British colonial tea producers to work in the plantations. **As** bonded labourers on the Tea Estates, they occupy the lowest socio-economic strata of Sri Lankan society and have historically been subjected to stereotypes from both Sinhalese and Sri Lankan Tamils. Nevertheless, the groups co-existed peacefully prior to independence and under constitutional reforms of 1928, the Estate Tamils were given the right to vote. In 1948, shortly after independence, Sri Lanka enacted the 1948 Ceylon Citizenship Act whereby Sri Lankan citizenship could be claimed by descent. This text required that an applicant's father or both the applicant and a grandfather be born in Sri Lanka. The requirements however restricted the access to citizenship for the majority of the Estate Tamils. Proof of descent was difficult to provide because official birth registration was not instituted until 1897 making it almost impossible to prove that a grandfather had been born in Sri Lanka. Moreover, many Estate Tamils had observed a tradition of returning to India to find spouses and have children.

In 1949 the Indian and Pakistani Residents Act was enforced which initially appeared less restrictive than the previous year's text. It stipulated, however, a seven or ten-year "uninterrupted residence" requirement, which disqualified those who returned periodically to India. Furthermore, applicants were bound to an unrealistic income level. Consequently, an estimated 95 percent of the Estate Tamils found themselves disenfranchised and marginalized, while the Government of Sri Lanka contented that they were in effect British citizens.

³¹ Human Rights Watch – Nepal Bhutanese Refugees Rendered Stateless, 18 June 2003, New York, www.hrw.org

³² Barbara Crossette, Refugees In Limbo Where The U.N. Isn't Welcome, 29 December 2003, U.N. Wire, www.unwire.org

Sudeshna Sarkar, UNHCR to dissociate itself from Bhutanese refugee issue, South-Asia Monitor, 1 October 2003, <http://www.southasiamonitor.org/bhutan/2003/oct/01oct.html>

³³ Executive Committee Of The High Commissioner's Programme, Standing Committee 30th Meeting, Protracted Refugee Situations, EC/54/SC/CRP.14, 10 June 2004, www.unhcr.ch

³⁴ P. C. Dubey – Slapped with terror links, Bhutanese refugees get raw deal in Nepal, One World South Asia, 31 August 2004, <http://southasia.oneworld.net/article/view/92955/1/569>

Since 1954, negotiations between India and Sri Lanka resulted in the repatriation to India of some 500,000 Estate Tamils. In 1988, under pressure from civil strife in the north supported by India, Sri Lanka **enacted** legislation granting citizenship to all Estate Tamils. Problems persisted though for those whose parents or grandparents may have applied for Indian citizenship under former agreements with India, but who never repatriated to India. Officially included on an application for Indian citizenship, they were not entitled to Sri Lankan citizenship despite being born on the island. Moreover, reports of discrimination and hostility in India against the repatriated Estate Tamils led to a stalemate of the process. As of October 2003 an estimated 300,000 people of Indian origin in Sri Lanka were still deprived of citizenship rights.

This longstanding problem is currently being resolved. In October 2003, a bill was passed by the Sri Lankan parliament³⁵ and in December of the same year, a registration campaign was undertaken by the Government of Sri Lanka and UNHCR.³⁶ The bill provides for the granting of citizenship to all persons of Indian origin who had lived in Sri Lanka since 30 October 1964, and their descendents. So far citizenship was granted to approximately 168,141 Estate Tamils.³⁷

6. The Case of “the Erased” of Slovenia

More than 18,000 people have effectively been confirmed as non-citizens in Slovenia after a referendum on their fate was held in April 2004. Called “the erased”, this group includes primarily citizens of the Former Yugoslavia republics who lived in Slovenia at the time of independence. Ethnic Slovenes were systematically given citizenship by the new State, while others were required to apply for naturalization. Those who failed to apply within one year thereafter lost their permanent resident status and the pertaining privileges. As a result “the erased” lost also the right to such basic human security requirement as the right to health and social protection.³⁸

In 2003, a Constitutional Court ruling recommended that the rights of “the erased” be restored, but in April 2004 a referendum that largely mobilized Slovene voters failed to support the initiative. About 95 percent of the electorate voiced their opposition to a change of status of the non-citizens. One main argument of the Slovene nationalists has been that granting legal rights to the group would open the door to endless judicial action against the State, which if forced to pay compensation to non-citizens for their having been “erased” would end up bankrupt. Slovenia’s accession to the European Union in May 2004 is hoped to bring positive changes for this group of non-citizens although the issue was never formally made a condition³⁹ for accession.

³⁵ “Grant of Citizenship to Persons of Indian Origin”, Citizenship Bill Proposal in front of the Parliament, Peace Process of Sri Lanka, 7 October 2003, <http://www.peaceinsrilanka.com/insidepages/Archive/October/Citibill.asp#top>.

³⁶ Sri Lanka makes citizens out of stateless tea pickers, Relief web, 7 Oct 2004, <http://www.reliefweb.int/w/rwb.nsf/0/6f5ffd9876d3582749256f2700117476?OpenDocument>

³⁷ Ranga Jayasuriya - Citizenship for 168,141 stateless persons, Daily News, 12 July 2003, <http://www.dailynews.lk/2003/07/12/new14.html>

³⁸ *THE ERASURE: “Eleven Years After”*, Public lecture organized by the Association of the Erased Residents of the Republic of Slovenia, Faculty for Social Work, February 27, 2003 by Jasminka Dedi_, Human Rights Researcher, the Peace Institute, Ljubljana.

³⁹ Slovenia’s Erased People, 27 November 2004, Deutsche Welle World, <http://www.dwworld.de/dw/article/01564140856400.html>

7. Denial of Citizenship in the Ivory Coast

The Ivorian Government citizenship policy after 1993 is an example of how partial citizenship, based on informal tolerance, can evolve into full denial and eventually into full fledged conflict. The 2002 civil war has caused immense damage to the human security of most common Ivorians.⁴⁰

Ivory Coast greatly encouraged immigration under the rule of President Houphouët Boigny between 1960 and 1993 and comprises some 60 ethnic groups of various religions. Migrant workers were needed to support the Government's program for economic development. Until the 1990s, ethnic and religious tolerance preserved a harmonious social fabric in the Ivory Coast. The country was widely regarded as a model of successful economic and social development. Citizenship was not an immediate issue as migrants were allowed free movement across borders and simple registration granted them the right to vote.

The situation, however, dramatically changed in the course of the past ten years with President Konan Bédié introducing in the political arena⁴¹ of the term "Ivoirité" in order to distinguish between "pure Ivorians" and inferior "circumstantial Ivorians". Subsequently, those born from immigrant parents, mainly concentrated in the northern part of the country, were progressively marginalized. Their right to land ownership was challenged and some were expelled to Burkina Faso in 1998.⁴² In 2000, a new Constitution was drafted and approved by referendum, which required all candidates for civil service to have been born from Ivorian parents and to have never held another nationality.⁴³ In addition, the attributes of citizenship, i.e. passport and identity documents, were thereafter granted only to applicants who could demonstrate that they came from a "native" Ivorian community. This excluded a large part of the population from political participation and notably prevented Alassane Ouattara, an ex-prime minister and a leading figure in the north, from running in the last presidential elections.⁴⁴

In September 2002, Côte d'Ivoire became entangled in a violent crisis that effectively split the country. The North of the country is under the control of rebel forces, the majority of whom are Muslim and have family ties to Burkina Faso or Mali, while the South remains under governmental control. Under the Marcoussis Agreement, both rebels and Government have agreed to make concessions in order to achieve a peaceful resolution to the conflict. However, the Government has made little progress in adopting reforms on citizenship, eligibility to contest presidential elections, and land tenure which it makes conditional on the disarmament of the rebels. The rebels in turn have withheld disarmament until such legal reforms are instituted.⁴⁵ The recent

⁴⁰ Ivory Coast report: The underlying causes: Violence and Displacement, Medecins sans Frontieres, 10 July 2003, <http://www.msf.org>.

⁴¹ Although "*l'Ivoirité*" was initially introduced as a cultural concept by Nianguran Porquet, Professor of literature at University of Abidjan and theatre director, President Bédié was responsible for introducing it into the political arena and replacing its cultural content with a political one.

⁴² *Ivory Coast: Expect Further Displacement Unless Xenophobia is Curbed*, Report by Sayre Nyce for Refugees International, 5 July 2003, <http://www.refugeesinternational.org>.

⁴³ Côte d'Ivoire: The New Racism. The Political Manipulation of Ethnicity in Côte D'Ivoire, Human Rights Watch, Vol. 13, No.6 (A), August 2001.

⁴⁴ Arnim Langer - Policy Levers in Côte d'Ivoire, CRISE Policy Context Paper 3, December 2003, Centre for Research on Inequality, Human Security and Ethnicity, CRISE, Queen Elizabeth House, University of Oxford, <http://www.crise.ox.ac.uk/pubs.shtml>

⁴⁵ Human Rights Watch - Côte d'Ivoire: Ending Impunity Key to Resolving Crisis, New York, 7 October 2004, www.hrw.org

outbreak of violence in Ivory Coast is a continuation of the civil war between the Northern provinces and the central authorities and a direct consequence of the government's citizenship policies. Until this stalemate is resolved, concern remains over a complete breakdown of the peace process.⁴⁶

8. The Russians in Estonia and Latvia

There are about 170,000 and 500,000 non-citizens, in Estonia and Latvia respectively.⁴⁷ Most of these are Russians and persons labeled as nationals of other republics of the former Soviet Union.⁴⁸ Estonia and Latvia had been annexed to the Soviet Union only in 1940 and subsequently subjected to large scale Russian colonization, including through the implantation of extensive military facilities. At independence, Russians were broadly perceived as a major threat both to the national identities and to the integrity of these States. In this context, nationality was rediscovered by the newly independent States as a convenient tool for discriminating against and excluding from citizenship large minorities perceived as threats to the very existence and identity the State. Consequently, they enacted restrictive citizenship laws. Estonia's law provided for systematic access to citizenship of only those individuals, and their descendants, who had been citizens before the 1940 annexation. The remainder, were permitted to apply for citizenship after a minimum residency period of five years. This naturalization process included a discriminatory language proficiency condition. Latvia's law provided for the same pre-1940 citizenship requirement, a similar language clause and, in addition, a ten-year residency requirement.

With the prospect of joining the European Union in May 2004, formal discrimination has been somewhat alleviated by the introduction of measures contributing to the enforcement of the basic rights of non-citizens.⁴⁹ In Latvia, for example, a law on the "Status of Former Soviet Citizens who are not Citizens of Latvia or any other State" has been enacted. This law has granted to non-citizens some social and economic rights, including the right to exit and re-enter Latvia as well as the right to family reunification. Bills were presented to the Estonian parliament in May 2003 and February 2004, which would have eased the naturalization requirements by shortening the period for review of and reforming the language requirement. They were, however, rejected.

The two Baltic States became members of the European Union in May 2004. So far major policy improvements from the part of the States are not immediately visible. However, in Latvia the accession to the EU has had the effect of motivating a larger number of non-citizens⁵⁰ to apply for naturalization. Although the language and history requirements remain strict a pragmatic approach prevails. Similar trends are being observed in Estonia. As in the case of Slovenia, the European Union had not made the resolution of the citizenship issue a condition for accession but it is widely

⁴⁶ Corinne Dufka - Now, Protect Ivorian Civilians, Human Rights Watch, 16 November 2004, www.hrw.org

⁴⁷ *Nationalism and Citizenship in Latvia*, Country Report 1998, British Helsinki Human Rights Group.

⁴⁸ In the Soviet Union passports contained a mention of Soviet citizenship as well as of origin, ethnic nationality of the bearer.

⁴⁹ *International Rights Protection of Ethnic Minorities in Estonia and Latvia in the process of EU Accession*, Ivan Kuznetsov, Paper presented at the Conference hosted by the Helsinki University on the 10 of January 2003, "Enlargement of the EU. Nordic and Baltic Views."

⁵⁰ The problems of becoming a natural born Latvian, *The Baltic Times*, 10 November 2004, <http://www.baltictimes.com/latvia.php>

believed that it would exercise due pressure⁵¹ on these two States in order to regularize the situation of their large populations of non-citizens. The pressure is twofold: political, as the nationality issue in these countries contradicts the notion of European Citizenship which is based on member countries citizenship; and judicial, as the European Court of Human Rights⁵² has recently ruled in favour of a Latvian non-citizen born in the country judging that he should automatically be granted citizenship.

9. Non-Citizens in China

About 300.000 ethnic Chinese who left Vietnam in 1979 sought refuge in China.⁵³ They live in the southern provinces of the country. While they are allowed the same social and economic rights as the national population, they have not been granted Chinese citizenship. According to UNHCR, most of these non-citizens are self sufficient, with a minority of destitute persons assisted by the agency through micro-credit schemes.

Their situation is the object of an argument between China and Vietnam. Vietnam considers they have repatriated to China while China argues they are refugees from Vietnam. These people have been on the UNHCR refugee statistics for the past 25 years.

Ethnic Chinese, especially in South East Asia, in spite of having lived for generations in countries like Indonesia, Myanmar, etc., are not recognized as citizens. On occasions they can fall victim to discriminatory treatments.

10. Koreans in Japan

There are approximately 700,000 North and South Korean nationals in Japan. They are descendants of the Koreans that migrated or were forcibly brought⁵⁴ to Japan starting with the 1910 annexation of Korea by Japan. The majority of Koreans today are third, and even fourth generation descendants that have been brought up in Japan. Yet, Japanese nationality is based on lineage and these Korean descendants are not automatically awarded Japanese citizenship.

The Japanese government stripped Koreans residing in Japan of their right to vote in December 1945. The Koreans residing in Japan became subject to the Alien Registration Ordinance. The policy adopted by the Japanese government just before the 1946 general election intended to suspend the right of Japanese nationals from the former colonies of Korea and Taiwan to vote and stand for election. This policy made use of an existing distinction in the household registration system between people whose families were registered in the “inner territories” and those registered in the “outer territories”, i.e. the colonies including Korea and Taiwan. After the war,

⁵¹ Ian Barnes, Claire Randerson - Enlargement and transient conditionality - the case of ethnicity, Paper delivered to the Standing Group on International Relations, 5th Pan-European International Relations Conference, Netherlands Conference Centre, The Hague, 9-11 September 2004

⁵² Integration and Minority Information Service, 1 December 2004, <http://www.humanrights.org.lv/html/monitor>

⁵³ *The Exodus of Hoa Refugees from Vietnam and their Settlement in Guangxi: China's Refugee Settlement Strategies*, Abstract, Journal of Refugee Studies, Volume 13, Issue 4, December 2000.

⁵⁴ Fukuoka Yasunori - Koreans in Japan: Past and Present, *Saitama University Review*, Vol.31, No.1, 1996. Between 1939 and 1945, many Koreans were forcibly brought to Japan as workers. During this same period, the Japanese military forcibly brought many young Korean women to serve them as "comfort women". When Japan was defeated by the Allied Forces in 1945, it is estimated that there were approximately 2,300,000 Koreans in Japan. <http://www.han.org/a/fukuoka96a.html>

being registered in the “inner territories” and thus ethnically “Japanese” was made a condition for the right of political participation. The residents of the “outer territories” nevertheless remained “Japanese nationals”⁵⁵ until Japan regained its independence under the San Francisco Peace Treaty. After the San Francisco Peace treaty, on 28 April 1952, the Japanese government unilaterally stripped Korean residents of their Japanese nationality. As foreign nationals, they were placed under the management and care of the Immigration Bureau. Moreover, the Korean minority in Japan had become the subject of assimilation pressure in 1948 when the Ministry of Education imposed an obligation on Korean families to send their children to Japanese schools. The Korean minority was also encouraged to adopt Japanese names in order to iron out ethnic identities and differences.

In 1991, the Japanese government awarded permanent residency to those who lost Japanese nationality in accordance with the Peace Treaty of 1952 and their descendants. In 1992, the Japanese government started taking steps to reduce the official discrimination that it practiced against Korean permanent residents, such as eventually eliminating the finger-printing requirement associated with alien registration. Nevertheless, legal barriers prevent the full and fair participation of Korean permanent residents in Japanese society, as evidenced by the refusal of the government to allow non-Japanese nationals to serve in most levels of the civil service, the absence of opportunities for Korean-language high school graduates to sit for Japanese university entrance exams, and the denial of voting rights for permanent residents with foreign nationalities.

Although this population group is formed by descendants of migrant workers and their situation is sometimes likened to migrant communities in other countries⁵⁶ the complexity of the issue would warrant considering the Korean minority in Japan as a non-citizen group. A few distinctive features should be taken into consideration: 1) Until 1945, as Japanese colonial subjects, the Koreans were considered Japanese citizens and had citizenship rights, including the right to vote, accorded to male heads of family; 2) In 1952, the Koreans were arbitrarily stripped of their Japanese citizenship rights; 3) This population group represents a highly assimilated community that has the characteristics of an ethnic minority rather than a foreign or migrant group.⁵⁷

After the war most Koreans returned to South Korea. In the 1950s and 1960s there was a major campaign of repatriation to North Korea during which some 100 000 people left Japan.⁵⁸ Both South Korea and North Korea recognize “overseas” Koreans and provide registration and passports. However, South Korea regards this population as foreign and mostly lobbies for its recognition as a national minority in Japan. Japan, on the other hand, does not recognize North Korea or North Korean citizenship. In fact, the treatment of South Korean permanent residents does not differ much from that of special permanent residents (the term used for people without any recognised citizenship and known North Korean links). In other words, there has been little incentive for Koreans in Japan to take South Korean citizenship.

⁵⁵ Kang Sangjung - Ethnic Minority Citizenship and the Japanese Constitution, http://rspas.anu.edu.au/pah/human_rights/papers/2001/Kang.pdf

⁵⁶ Erin Aeran Chung - Korean Voluntary Associations in Japanese Civil Society, Japan Policy Research Institute Working Paper No. 69, July 2000, <http://www.jpri.org/publications/workingpapers/wp69.html>

⁵⁷ As third/fourth generation descendants and as a result of long standing assimilation policies of the Japanese government, this population can establish a legitimate “effective link” to Japan.

⁵⁸ Some of them left together with Japanese spouses who have not been able to visit Japan ever since. The “homecoming visits of Japanese wives” has become one of the difficult diplomatic issues between North Korea and Japan.

11. Gender asymmetries in citizenship rights

In global terms, women are the largest group⁵⁹ of people who are denied full citizenship rights. In some countries, women are denied citizenship outright. In others, women are declared in the constitution to be full and equal citizens, but customary laws, personal status laws dealing with issues of family and inheritance often contradict and undermine national and international commitments to equality.⁶⁰ The denial of civil and political rights has consequences for social and economic entitlements. Access to resources and protection is affected by ideas of who is a legitimate and full national citizen. Under current political systems it is essential for women to have full legal citizenship as a prerequisite for all other areas of rights and entitlements.

The domestic arena is highly relevant for determining women rights because it is often reflected in the public space. Women may experience the denial of their citizenship and fundamental human rights at any one, or all, of these levels – family, community and State. The relations between and within groups of women and men differ across cultures, have changed over time, and are constantly shifting. However, across the globe women are disadvantaged in access to resources and power when compared with men of the same race, class, or ethnic group. Women may often suffer double exclusion. Women living in minority ethnic communities, for example, can be discriminated against on account of their race and their gender. Realizing women's fundamental rights requires addressing women's unequal access to economic, political, social and cultural resources, which are located not only in formal, public spheres but also in private and semi-private places, households and communities. The roots of women's exclusion from full citizenship are to be found in the patriarchal conception of traditional societies whereby women are subjected to kinship male agency for the fulfillment of their needs or the achievement of their rights. Discriminatory features of state processes and practices restrict the character of citizenship in diverse ways. Moreover, among all human rights treaties, CEDAW has accumulated the greatest number of reservations, with the potential to modify or exclude most of the terms of the treaty from effective implementation in national law.⁶¹

In many countries⁶² the right to pass on national citizenship applies only to men. Women who are national citizens cannot pass on their citizenship to a “foreign” husband or to children born of marriages to foreign nationals. In such cases husbands continue to be foreign citizens and since

⁵⁹ Shamim Meer, Charlie Sever - Gender and Citizenship, Bridge Overview Report, Institute of Development Studies January 2004, <http://www.ids.ac.uk/bridge>

⁶⁰ Andrew Grossman - Gender and National Inclusion, Law, Social Justice and Global Development (LGD), 2001, <http://elj.warwick.ac.uk/global/issue/2001-1/grossman.html>

⁶¹ Reservations to the Convention on the Elimination of All Forms of Discrimination against Women Weakening the protection of women from violence in the Middle East and North Africa region, Amnesty International, Stop Violence against Women, AI Index: IOR 51/009/2004, www.amnesty.org

⁶² Comprehensive studies have been conducted in Arab countries of North Africa and the Middle East although the problem is not limited to these regions. Other countries in Africa, like Nigeria, or in South Asia, like Nepal, apply the same discriminatory rule. In south Asia, women are particularly affected by oppressive gender discriminatory social regimes; the patriarchal states while affirming equality of citizenship have in law and practice provided for gross inequalities and denial of rights to women as citizens.

CRTD - Gender, Citizenship and Nationality Programme”, Denial of Nationality: The Case of Arab Women, CRTD and UNDP POGAR, February 2004, Beirut, Lebanon, www.pogar.org

Simona Drenik - Human Rights of Women and their Acceptance in Muslim Societies, Human Security Perspectives, Volume 1, Issue 1, 2004, <http://www.hs-perspectives.etc-graz.at/content/view/27/77/>

children are required to take on their father's citizenship, they become foreigners in their mother's country. The various research conducted highlighted the insecurities arising from this practice, both for the women in question as well as their family and especially their children. The legal status of children as "foreigners" in their mother's country leads to difficulties with registering births, difficulties in access to education or state welfare benefits. Foreign husbands may be denied the right to work in the public sector. They often have difficulties finding work in the private sector and are not allowed to own property. When fathers are no longer legally entitled to remain in the mother's country, children are forced to leave with them. In some cases where fathers are expelled from the mother's country as a result of political turmoil, mothers and children are separated. Women often live in fear that husbands will leave with their children, and at times remain in abusive marriages in order avoid losing their children. However, this last characteristic was found to apply equally to marriages between nationals due to the enforcement of discriminatory personal status laws or the prevalence of customary laws.⁶³

The requirement for "kinship male mediation/tutelage" restricts many of the freedoms women should enjoy: freedom of movement is denied to women in some Arab and African countries that require the permission of a male guardian, father or husband, in order to issue women with passports or travel authorizations; family laws which regulate marriage, divorce, child custody and inheritance often discriminate against women in complete violation of international norms; finally, women have unequal access to social security schemes⁶⁴ even when they are the main providers for their families, the perception being that men are the primary income earners and the heads of their households.

Needless to say that in the context of the cases of non-citizens already described the women make for the most vulnerable group among the vulnerable. Citizenship denial, displacement and /or conflict, and the prevalence of unequal status under customary law often result in heightened human insecurities for women, who very often fall victims to violence, be it domestic or conflict related, or to human trafficking.⁶⁵

IV. THE IMPACT AND CONSEQUENCES OF THE DENIAL OF CITIZENSHIP

Human rights have been described as the core of human security⁶⁶ and as a normative framework⁶⁷ for human security. Indeed, many of the threats to human security as presented in the various

⁶³ CRTD - Gender, Citizenship and Nationality Programme", Denial of Nationality: The Case of Arab Women, CRTD and UNDP POGAR, February 2004, Beirut, Lebanon, www.pogar.org

⁶⁴ Ibid.

⁶⁵ Domestic violence was documented and reported among the Biharis in camps in Bangladesh as well as among the Lhotshampas in Nepal. Rape has always been an instrument of war waging and victims often endure the added violence of their own communities that exclude them once "defiled". Human trafficking is a widespread problem in South Asia and most of the victims, forced or consenting, are to be found among non-citizen vulnerable groups like the Rohingyas or the Lhotshampas.

⁶⁶ Sabina Alkire, Conceptual Framework for Human Security paper presented at Kennedy School, Harvard University, 2002, www.humansecurity-chs.org/doc/0206harvard.html, at p.5, referring to human rights as the "vital core of human security".

⁶⁷ See the declaration adopted by the Workshop on Relationship between Human Rights and Human Security, San Jose, Costa Rica, 2 December 2001, <http://humansecurity-chs.org/doc/sanjosedec.html> "We reaffirm the conviction that human rights and the attributes stemming from human dignity constitute a normative framework and a conceptual reference point which must necessarily be applied to the construction and implementation of the notion of human security".

definitions⁶⁸ of human security are a result of human rights violations. Non-citizens suffer from multiple threats due to violations of internationally recognized fundamental human rights that provide for conditions of justice, equity, freedom, tolerance, good health, access to adequate food, education, social security and a healthy environment for all people.⁶⁹ Denial of citizenship renders people unable to claim some or all of these rights and makes them defenseless in face of discrimination and exclusion.

Generally, exclusion can be quantified and evaluated according to social or economic indicators. The comparative review and correlation of a set of socio-economic indicators would point to situations of social exclusion. This method is particularly suitable in analyzing well defined groups for which statistical data is readily available. Unfortunately, with regard to non-citizen populations data is yet mostly unavailable, while the size and characteristics of the populations concerned are insufficiently documented.

In light of such constraints, the human security framework offers a more practical approach. Identifying areas of insecurity, threats to basic rights and freedoms and overall gaps in the protection of people allows for a broader understanding of the effects the denial of citizenship may have on populations. Through the notion of empowerment human security is a dynamic approach that takes into account opportunities for change. Finally, human security is a comprehensive approach that integrates the notion of social exclusion and links it to an extended framework that includes economic security, health, education, conflict, governance and migration perspectives. Threats should not be addressed in isolation from each other, but as being interconnected, and interdependent. Human security is an inclusive approach, examining the symptoms of human insecurity while seeking to produce recommendations that address root causes. It explicitly aims to connect issues of protection, rights, development, and governance.

1. Threats to the Basic Rights and Freedoms of the ‘Non-Citizen’

1.1. Denial of Citizenship and Disempowerment

Disempowerment is a prime multiplier of the threats posed to people’s basic rights and freedoms by the denial of citizenship. The insecurity non-citizens face from discrimination and social exclusion compounds with their inability to participate in or influence decision making which affects their lives. Consequently, exclusion is formalized and reinforced through a vicious cycle where people living in insecurity remain powerless to improve their fate. Disempowerment can result from various forms of exclusion. Illiteracy and innumeracy, restrictions on communication or freedom of movement disempower people. Nevertheless, denial of the right to vote is considered as the most explicit threat to people’s empowerment.

By definition, citizenship supposes the endowment of citizens with civic rights which they may use to communicate with their government’s structures and their political leadership. These core citizenship rights include the fundamental right of vote. Citizens may opt to use or not their right of vote to participate in the formulation and management of public policy. They usually can do this at various levels determined by the administrative structures of the State, through various

⁶⁸ A comparative compilation of human security definitions can be found at:
http://www.hsph.harvard.edu/hpcr/events/hsworkshop/reference_resources.html

⁶⁹ Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, 1985.

consultation tools. The degree of access to these tools and the impact of consultations on government policy determine the quality of governance and democracy of a given State. The ability of a group of citizens to call for a national referendum, whose outcome would steer the government's policy in the direction chosen by the majority of citizens, is generally considered good governance. Denial of citizenship, however, excludes people from governance altogether. The loss of civic rights is its first formal consequence. It is the legal basis used to establish durable conditions of political, economic and social exclusion. States which enact negative citizenship legislation, usually aim at the immediate disempowerment of targeted population groups. This is easily achieved once civic rights and the right to vote are revoked. Disempowered individuals and communities become in effect non-entities, which then can be manipulated as seen appropriate by the State. The case of the Biharis in Bangladesh shows how a community, which had participated in the higher levels of government, once disempowered was eventually rounded up in camps. After the creation of Bangladesh in 1972, the citizenship of the Bihari was revoked. Their property was confiscated, their houses destroyed and they were forced into camps to await "repatriation" to Pakistan.

1.2. Economic Insecurity

Citizenship denial policies are often accompanied by strategies restricting access to economical and social power within the State that help marginalize entire population groups. Laws, barring non-citizens from access to land, labour and trade are widespread. In DR Congo the Banyarwanda, once stripped of citizenship, were also denied land rights. The land they owned and occupied was claimed as ancestral land by the indigenous groups among whom they lived. The denationalization of the Banyarwanda is in part due to competition over land, exploited to political ends by the Mobutu regime.⁷⁰ In some African countries women access to land ownership is restricted.

Non-citizens rarely have access to credit and banking facilities that could allow them to regain some degree of economic empowerment. These difficulties are further compounded by inadequate access to justice. Thus, States exclude non-citizens from the competition for national resources and maintain them in precarious conditions, often in poverty. The Estate Tamil population, while a major contributor to the national economy in Sri Lanka, is discriminated against on trade and labour markets. As a result, they are among the poorest in Sri Lanka.

The World Bank notes three dimensions of poverty: lack of income and assets; inability to influence society and the institutions of State; and vulnerability to adverse shocks. Being a non-citizen involves all three dimensions. Poverty can lead to resorting to negative survival tactics, such as child labour, prostitution or human trafficking. Informal economies develop around camps and non-citizen settlements exploiting the availability of cheap labour these populations represent.

The policies implemented by the Government of Myanmar against the Rohingya provide an extreme example of the impact that the denial of citizenship can have on people's economic security. The Rohingyas are subject to strict restrictions of movement which virtually confine them to their villages. They are required to apply and pay for a travel pass to visit even neighbouring villages and their names are deleted from their family list if they overstay. Under these conditions,

⁷⁰ Koen Vlassenroot, Chris Huggins - Land, Migration and Conflict in Eastern DR Congo, African Centre for Technology Studies, Eco-Conflicts Volume 3 No. 4, October 2004, <http://www.acts.or.ke/Eco%20Policy%20Brief%20Vol%203%20No%204.pdf>

employment and trading are practically impossible. In addition, they are subject to arbitrary taxation by local authorities. A paddy tax is also applied by the government, based on a land surface quota rather than yield, which can represent as much as half of the farmers' production.⁷¹ All economic sectors are regulated by the government through a monopoly system based on licences that are granted or revoked annually. Anyone selling a product must sell it below market price to the licence holder or pay a tax. Finally, forced labour continues to be exacted by the army and other administrations for construction and maintenance of their facilities, as well as for a variety of other tasks required by the authorities.⁷²

In Ivory Coast, the right of non-citizens to own land and shelter is not clearly determined and their material assets are often destroyed or confiscated. As a matter of government policy, the shantytowns inhabited by non-citizens around large cities are considered as potential support bases for rebels and are systematically brought down in times of strife.⁷³

In the Russian region of Krasnodar, Meskhetian Turks were refused permanent registration by the local authorities. Consequently, they were denied most basic rights, such as the right to social protection, to work, to obtain official documents or register their marriages. The land leases they held were revoked. This situation has prevented them from improving their condition and excluded them from the economic life of the region.

“Erased” citizens of Former Yugoslavia in Slovenia, Ethnic Eritreans expelled from Ethiopia and the Ethnic Chinese in Indonesia among others, all face the same economic and social insecurity brought upon them by the denial of citizenship. Examples show that economic insecurity results from the compounded effect of policies States develop to reinforce the exclusion condition of the non-citizen. In pursuing a broad range of targeted discriminatory policies, States are able to achieve in practice the exclusion process they had formally initiated through the denial of citizenship.

1.3. Health Deficit

By reducing or eliminating access to food, clean water and medical care, the denial of citizenship has a clear and direct impact on the health of non-citizens. For example, Meskhetian Turks in southeastern Russia obtained their food from the land parcels they cultivated, but the revocation of their land leases brought them to the brink of famine. Malnutrition, in turn, made them more vulnerable to disease and increased their need for health care. Yet, as non-citizens they were barred access to public health services. In Myanmar, the lack of identity cards prevents the Rohingyas from accessing public health services, while those who fled to Bangladesh live in overcrowded camps where they are not allowed to work or farm to supplement their food basket. As a result, more than half of their children suffer from chronic malnutrition.⁷⁴ Similarly, Estate Tamils in Sri Lanka face difficulties accessing health care, partly because of disproportionately scarce coverage and poor road networks in their region. In the Ivory Coast, before the civil war, access to health services was tolerated throughout the country for non-citizens able to pay for medication. The

⁷¹ Chris Lewa, “Conflict, discrimination and humanitarian challenges in Northern Arakan State” Forum Asia, 2003.

⁷² Ibid.

⁷³ G.R.Ntegeye, “A Human Security Dilemma: Citizenship and Identity in Sub-Saharan Africa”, CHS, 2002.

⁷⁴ J.W. Hefferman, “Being Recognized as Citizens: a Human Security Dilemma in South and Southeast Asia,” 2002.

Bihari in Bangladesh live in overcrowded camps and public health facilities such as clean water and sanitation are very limited.

Denial of citizenship has also severe consequences on mental health. Those confined to camps are particularly vulnerable to depression, which in turn leads to violence, suicide and increased emotional and psychological strain on the community. The mental health of many Lhotshampas men living in the refugee camps of South East Nepal has degraded over the past ten years and alcoholism, domestic violence and suicide are not uncommon.⁷⁵

In sum, people who are denied citizenship are also denied the means to safeguard their health. Widespread discrimination in access to health services negatively impacts the quality of life and other opportunities on the part of non-citizens.

1.4. Education Deficit

Primary education, adult education and education for women are major tools of empowerment. Education brings to non-citizen children the tools and hope of empowerment. It creates conditions favourable for integration and for productive economic activity. Education of women and girls is, in addition, directly related to important health issues and has a direct impact on the health of their families and communities. Moreover, as stated in the Universal Declaration of Human Rights, education can support human rights and fundamental freedoms. It can promote understanding, tolerance and friendship among nations, racial and religious groups.

In most cases, denial of citizenship deprives children and adults of the right to public education. States do not often overtly contest the right to education of the non-citizen, yet they maintain conditions that limit or prohibit access to schools. Identity papers required for school registration are either difficult or impossible to obtain for the majority of non-citizens. Physical access to educational facilities can also be difficult as a result of restrictions applied on the movement of non-citizen populations or as a function of distance. States bar non-citizens from holding government employment and this often includes teaching positions in government schools. Finally, the cultural identity of non-citizens may also be challenged by the unwillingness of governments to allow teaching in the languages of the minorities. Non-citizens are often subjected to assimilation pressure: the Korean minority in Japan was obliged to educate their children in Japanese schools and encouraged to adopt Japanese names; Bhutan imposed strict cultural and language requirements on the Lhotshampas. Lack of access to education disempowers future generations and contributes to making eventual integration more difficult. The case of the Bihari, most of whom were born and educated in camps, suggests that their integration into Bangladeshi society is likely to be an enormous social challenge.

2. Vulnerable Groups: Impact on Women, Children and the Elderly

2.1. Women and Children

There is currently little data available to assess the impact of denial of citizenship on women and children. As vulnerable groups in any society, it is likely that they are more vulnerable when denied citizenship. Studies on women and citizenship show that in a number of countries

⁷⁵ Unending Limbo: Warehousing Bhutanese Refugees in Nepal, <http://www.refugees.org/wrs04/pdf/98-105.pdf>

legislation provide differential treatment for men and women.⁷⁶ Non-citizen women face increased hardship as they can be discriminated against not only by State actors but also by their own community group. A survey conducted in the Lhotshampas camps in Nepal by Human Rights Watch⁷⁷ documented some of the insecurities non-citizen women face in conditions of prolonged vulnerability and disadvantage. Lhotshampas women and girls have reported rape, sexual assault, polygamy, trafficking, domestic violence, and child marriage in the camps. Women fleeing domestic violence were subsequently unable to obtain safety or humanitarian aid because of discriminatory refugee registration procedures, based on household cards listed under the name of a male member and inadequate protection measures. Refugee women are not entitled to register their children as refugees, if not born of a Bhutanese refugee father as registration procedures are based on Nepalese law, which denies women the ability to transfer citizenship to their children. This discriminatory policy deprives unregistered children of access to rations of food, education and health, and makes them ineligible for repatriation to Bhutan.⁷⁸

Birth registration is a critical issue for human security of children everywhere. Many States lack effective systems for recording births. According to a 2002 UNICEF study⁷⁹ every year, about 50 million newborns go unregistered around the world, i.e., about 41 per cent of all births world-wide. Without birth certificates, these children grow up with no official identity and as far as the State is concerned they are non-persons. As non-persons they are denied the privileges and protection afforded by citizenship. A birth certificate is the key to claiming numerous rights such as nationality, education and medical care. Children without access to these are significantly disadvantaged in their childhood as well as in their adult life. Unregistered children lack the most basic protection against abuse and exploitation and become a more attractive commodity to child trafficking or illegal adoption rings. Registration is a critical measure to secure the recognition of every person before the law, to safeguard the protection of his or her individual rights. Proof of age is an important first step in protecting children from age-related abuse and exploitation, including military recruitment and involvement in armed conflict, child labour and early marriage.

Restricted access to health care has disastrous consequences on the health of non-citizen women and their children. In Sri Lanka, for example, infant and maternal mortality is highest among the Estate Tamil population. Lack of food, inadequate shelter and the pressure of destitution also impact the physical and mental health of women and children.

Substance abuse among children is a severe problem usually identified in conflict areas. Instances in or around camps, however, are not uncommon. It is generally admitted that in children, substance abuse is a consequence of desperation and of major disruptions in their communities' social fabric.

In situations of conflict, women and children suffer the most. Ethnic conflicts target women – the purveyors of group identity. Among the most severe threats women and children may have to face

⁷⁶ See Section III, Case 11 above.

⁷⁷ Human Rights Watch – Bhutan/ Nepal: Trapped by Inequality: Bhutanese refugee Women in Nepal, September 2003, www.hrw.org

⁷⁸ Ibid.

⁷⁹ Birth Registration - Right from the Start, Innocenti Digest, No. 9, March 2002, <http://www.unicef-icdc.org/publications/pdf/digest9e.pdf>

are the risk of rape, sexual humiliation, prostitution, exploitation and trafficking.⁸⁰ The high vulnerability of women and girls to HIV infection and to other sexually transmitted infections (STI) is also a critical problem. In many populations, victims of HIV-AIDS are rejected by their families and ostracized from their community. Moreover, their chances of survival are impaired by lack of availability or access to appropriate treatment. Violence against women is widespread in nearly all situations involving concentrations and confinement - villages as the Rohingyas or camps as the Biharis or the Lhotshampas, of non-citizens. In addition to physical harm, women and children may suffer lasting psychosocial damage.

Finally, it should be noted that in areas like eastern Congo or the Ivory Coast, many children have been enrolled as combatants, with all the disastrous consequences on their and their communities' security.

2.2. The Elderly 'Non-Citizen'

Elderly non-citizens make for some of the most vulnerable groups. The elderly face heightened survival risks as they are often in no condition to compete for care and resources through informal channels. When living within a community, they may be perceived as a burden and further marginalized. When isolated, they often live in conditions of extreme poverty and deprivation. They tend to suffer from illness and lack of health care, and from inadequate access to food and material resources. Dramatic examples of the misery endured by the elderly non-citizen can be found throughout the Commonwealth of Independent States. After the breakdown of the Soviet Union, in 1991, millions of elderly ethnic Russians, Ukrainians and Byelorussians found themselves without citizenship rights. Many had come to the republics to work in industrial plants decentralized in the 1940s or later and had never needed to integrate with the local communities. The disintegration of the Soviet Union brought industrial production in the republics to a stop and erased social protection. While younger ethnic Russians left for Russia, the elderly stayed on. Over the past 12 years, hundreds of thousands have died prematurely⁸¹, unable to support themselves in shrinking communities, excluded from mainstream society.

Households headed by the elderly in communities of non-citizens are among the most destitute. Children from such households are most likely to be forced out of school and into wage labour, thus hampering their development and predisposing them to continued social exclusion. Elderly-headed households are common in or around conflict areas, like the Caucasus, the Balkans or Central Africa.

3. Consequences for Surrounding Communities

⁸⁰ Amnesty International – Women and War, Stop Violence against Women Campaign, December 2004, AI Index: ACT 77/075/2004

⁸¹ Although no comprehensive statistics are made available by the new Newly Independent States, it is generally surmised that the total number of ethnic Russian elderly or 'pensioners' who died prematurely since the break down of the Soviet Union in these States is in the hundreds of thousands. It should be noted, however, that during the same period life expectancy in these States has dropped significantly with the lowest at 57.7 years in 1994. WHO Press Release, *Life Expectancy at Birth Plummet in the Countries of the Former Soviet Union and Premature Death in the New Independent States*, José Luis Bobadilla, Christine A. Costello, and Faith Mitchell, editors The National Academies Press, 1997.

The social exclusion of non-citizens can have mixed consequences on surrounding communities. In the short-term, the economic differential between the two populations may seem to favour the neighbouring groups. The potential availability of cheap labour and the ability to sell services to individuals devoid of bargaining power may be attractive. This is common around settlements and camps which generate in their surroundings zones informal economies. In situations where external assistance is provided to the non-citizen population, national communities often find their own share of the injected resources. In southeastern Nepal, for instance, the presence of 100,000 Lhotshampa refugees assisted by the international community has substantially stimulated the local economy.

In most cases, however, prosperity may be short lived. The exploitation of the non-citizen population by their neighbours is likely to create both interdependence and tensions. Social exclusion breeds desperation, violence and crime. Trafficking in women, sexual exploitation, addiction to drugs or alcohol are frequent occurrences around camps and settlements and equally erode the social and cultural fabric of both communities.

Areas inhabited by excluded populations may be redefined as decaying zones, and hence, subject to disinvestment. Services could be withdrawn without regard for the consequences on the national population, which would then suffer from the same conditions of social exclusion as the non-citizens. This happened in parts of the State of Arakan, in Myanmar, where health care and education services were virtually abandoned by government authorities.

In sum, denial of citizenship is unlikely to foster social harmony between the non-citizen population and the surrounding communities. Instead, it destabilizes both groups in a process that naturally leads to social unrest and generalized insecurity.

4. Denial of Citizenship, Conflict and Migration

Understanding the root causes of citizenship denial is necessary for understanding the linkages such policies have with conflict and migration. A few elements can be distinguished as premises for disenfranchisement: 1) State building processes are usually pursued along homogenous/mono-ethnic lines – as is the case of Bhutan, Japan or Myanmar; 2) State succession processes seek to define national identity in opposition to former and potential future/perceived threats to national identity and security – as is the case with Estonia, Latvia, Slovenia⁸²; 3) Post-conflict situations can lead to the denationalization of a group of people in retaliation to their association with the enemy - as is the case of the Biharis in Bangladesh or the Bedoon in Kuwait; 4) Weak states or failed States may chose to pursue exclusionary policies in order to cope with an ailing social, political or economic system and reinforce national unity and mobilize support for the country's leadership – as in the case of DRC and Ivory Coast. These policies had disastrous effects and can often lead to conflict.

⁸² The “erased” population of Slovenia is composed of individuals from various ethnic backgrounds linked to the republics of the former Yugoslavia. As such, the “erased” not only represent the threat associated with a foreign population, but also a collection of individuals linked to threats from specific ethnic entities perceived in the country's independence process.

Thus, population groups can be denied citizenship in post-conflict situations either because they are identified with former oppressors, or in retribution of their association, real or perceived with the enemy. Citizenship denial can also be a cause for conflict.

In Bangladesh, the Bihari were stripped of their citizenship because they supported West Pakistan during the war for independence. The Bedoon faced increased discrimination after the first Gulf War accused of collaborating with the invaders. In DRC the regime manipulated competition over land and resources between native Congolese and Banyarwanda groups to political ends and created the conditions for continued regional conflict. In the Ivory Coast, where after years of harmony the government has stimulated nationalism and discrimination, the denial of citizenship rights to large groups of people resulted in violent internal conflict.

Conflict can be open and violent or latent, internal or international. Denial of citizenship is linked in various degrees to all forms of conflict. It may first cause internal unrest and civil strife, and in the next stages result in international tensions and eventually in violent conflict.

Denial of citizenship often causes migration and creates refugees. Non-citizens may choose to migrate hoping for a better life in another country, may be forcibly expelled or they may be forced to flee from conflict.

4.1. Internal Conflict

Denial of citizenship, exclusion and insecurity, further aggravated by unfair and unequal access to resources between different groups, creates situations of “horizontal inequality”⁸³ that are often the cause for unrest and internal conflict.

Denationalization always causes people’s marginalization and their exclusion from mainstream society. In the absence of civil rights and peaceful means for mitigating inequalities, the outcome is often violent. Contrary to social exclusion, which is a condition related to the will of the State which actively denies citizenship rights to individuals or communities, violent conflict may be also linked to the will of the excluded.

Violent conflict, however, commands a much higher threshold and active engagement on the part of the excluded. The probability of having a situation of exclusion escalating into violent conflict can be roughly determined from several basic variables: a) desperation and determination of the excluded; b) expected results; c) expected consequences of failure; d) the risks the excluded are willing to take; e) perceived State resolve and means of repression and, possibly, f) expected external mitigating factor (international condemnation etc.). Conflicts, however, may flare up from a single incident and spread far beyond its origins. In a number of cases, populations gradually deprived from citizenship rights rose against the State and national communities.

The Lhotshampas, for example, were increasingly marginalized in Bhutan during the 1980s. Citizenship requirements had been revised to their disadvantage and their ethnic identity challenged. They demanded democratic reforms and organized several demonstrations, which

⁸³ Stewart, Frances, "Crisis Prevention: Tackling Horizontal Inequalities", paper prepared for the World Bank Conference on Evaluation and Poverty Reduction, June 14-15 1999. Horizontal inequalities are defined as group situations where identity differences coincide with unequal access to social status.

turned into violent conflict. Subsequently, Bhutanese security forces persecuted them and in the end forced them out of Bhutan. Similarly, the rights of the Meskhetian Turks living in the Ferghana Valley had been challenged by the Uzbek authorities in the late 1980s. Tensions between communities resulted in violent conflict, the intervention of Soviet troops and the deportation of some 50,000 Meskhetian Turks. In Arakan, in the late 1970s, the Rohingya resisted the government's programme of nationality verification. Subsequently, the government dispatched troops to the region, and imposed repressive measures.

In some instances, internal conflict may pave the way for the denial of citizenship. The exclusion of the Bihari in Bangladesh was a consequence of internal conflict. Often it is difficult to determine whether conflict preceded or followed denial of citizenship. Revocation of citizenship rights may be a gradual process stretching over many years, like in Nepal or Congo.

4.2. International Conflict

Linkages between the denial of citizenship rights to identifiable groups and international conflict can be easily established in a number of situations. The connection, real or perceived, between a population group and another State may be a cause of international conflict. Conflict, may not need to be linked to the formal revocation of rights, but merely to *de facto* discrimination or persecution. Furthermore, anticipated threats or fear of persecution against an ethnic group may be enough to trigger a conflict. Thus, while every single conflict in the Great Lakes Region is obviously linked to issues of citizenship and nationality, the complexity of the linkages is overwhelming. The same can be said of conflicts in the Balkans.

4.3. Migration

Voluntary and forced migration is an important consequence of the denial of citizenship.⁸⁴ Clearly, the loss of fundamental rights sets non-citizens in untenable situations. Discrimination, exclusion from mainstream society or the inability to keep a different cultural identity and in general insecurity are all elements which press non-citizens into considering voluntary migration. The willingness of people to migrate is a function of the differential they perceive between conditions in one place and in another. This differential varies along developments in either place, and it is not uncommon for people to move out and then return.

The Rohingya, for example, have migrated out of Myanmar and into Bangladesh when conditions were particularly difficult in Arakan. Many lived some time in refugee camps and then decided to return to Myanmar when conditions improved. Similarly, a number of Estate Tamils migrated to India, but felt they could not integrate there and eventually moved back to Sri Lanka. Significant shuffling of populations linked to citizenship issues has also taken place in the aftermath of the disintegration of the Soviet Union and Yugoslavia. In Africa, important population movements have been linked to citizenship issues and related conflicts.

⁸⁴ Denial of citizenship can also be a consequence of migration. In some cases, long term migrants or their descendants, are denied citizenship in the country where they live, mostly for reasons based on discrimination. At the same time they have lost their ties with their country of origin and even when they can retain citizenship in their country, they find themselves in a limbo and deprived of the attributes of citizenship.

Non-citizens have also been involved in forced migration and repatriation. Estate Tamils were forcibly repatriated under various bilateral agreements between India and Sri Lanka, while Rohingyas were also repatriated from Bangladesh against their will.

V. FORMS AND PATTERNS OF DISCRIMINATION

Knowing and understanding the forms and patterns of discrimination States use in restricting access of certain population groups to citizenship rights is a prerequisite for addressing the issue of denial. States have proven imaginative in devising ways and means to erode the rights of people they decide to either bar from or strip of citizenship. Notwithstanding, general categories and patterns of measures can be drawn from correlating information currently available on major cases.

While the list of norms below is certainly not exhaustive, it constitutes a basic framework for identifying citizenship denial processes. The idea of such a framework could be further developed into a tool. This would not only allow for better knowledge of the issue, but could also set the basis for a crisis watch or early warning procedure specifically targeted at citizenship problems.

1. Legal Norms

Language requirements: States denying citizenship to populations on their territory often enact legislation that defines the cultural identity of the dominant ethnic communities and sets qualifications for membership. Language proficiency in the main national language is a condition widely used to reject citizenship claims from non-mainstream ethnic groups. It has been used in Bhutan, the Baltic States and Central Asia.

Lineage and ancestry: Ancestral connections and lineage traceable to the country's main ethnic groups, proof of birth of parents, grandparents, and presence in the country before historical dates are required by law in a number of states. In Congo, for example, citizens were required to prove their connections to the population of 1885 Congo. In Myanmar, citizenship has been conditional on membership in one of the 135 'national races' or on proof of lineage to populations living in the country before 1823.

Residency: Proof of continued residency over a long period of time is often required. In some countries, like in Sri Lanka or in former Soviet republics, residency status may be easily lost.

Income: Various income and ownership requirements may be applied to qualify for citizenship status. This further excludes socially and economically vulnerable non-citizens.

Electoral laws: Civic rights of targeted communities may be eroded through enactment of complex discriminatory electoral legislation. This is a first step towards revocation and denial of citizenship. Discriminatory law disempowers and weakens people; it causes marginalization and exclusion. Electoral laws may contain some of the requirements listed above for voting or running for office. In addition, electoral districts can be manipulated to further exclude communities from democratic representation. Revision of electoral laws is an important indicator of a State's intention towards the population on its territory.

Naturalization laws: Complex and discriminatory naturalization laws containing target specific requirements may in effect bar certain groups from ever acquiring citizenship.

2. Administrative Harassment and Red Tape

Non-citizens are subject to often systematic administrative harassment by the State. Public offices set administrative requirements and standards that are impossible to attain. Often the documents needed to submit a claim for access to some services can only be obtained by presenting other documents, certificates or permits, which cannot be obtained. Red tape is an effective means of discouraging people from regularizing their situation or claiming their rights. Entire populations are marginalized and disempowered through administrative harassment, like the Estate Tamils in Sri Lanka or the ‘erased’ in Slovenia. Deliberate withholding of information is another common pattern of discrimination. In Slovenia, for instance, procedures and deadlines for citizenship applications were not publicized. Administrative rules may be impossible to understand, because of their complexity and the language in which they are communicated.

3. Economic Exploitation and Creation of Conditions of Insecurity

Excluded communities are often forced to pay off the surrounding communities to fulfill their basic needs. This pattern can be informal, but tolerated or encouraged by the authorities. Unfair trade, labour conditions and remuneration, are not uncommon practice in the relations between the excluded and the surrounding communities. This allows non-citizens to escape complete destitution. Economic exploitation, however, is not in itself an indicator of the denial of citizenship rights. The presence of other patterns of formal discrimination may be more revealing. For instance, restriction on internal travel, forced labour, over taxation and the existence of exceptional discriminatory practices may more accurately suggest the emergence of exclusion policies against an identifiable group. Exploitation of women and children, high levels of violence, including sexual violence, prostitution and people trafficking are other possible indicators that deserve attention. Finally, government school curricula are reliable indicators of potential threats to the cultural identity of minority groups.

VI. THE RIGHT TO CITIZENSHIP: CURRENT NORMATIVE FRAMEWORK

There has been some progress in the past 50 years in formulating international standards pertaining to citizenship. Most recently, the 1997 European Convention on Nationality has introduced important definitions and opened the way to more inclusive citizenship legislation. Nevertheless, it will take years until new laws are enacted and applied.

International treaties, human rights and humanitarian law, together with regional and national law, constitute the broad framework for the protection of the ‘non-citizen’. A fundamental element of protection is the recognition that States have the primary responsibility of protecting the human rights of all persons within their territories. While the granting of citizenship to an individual remains a prerogative of domestic jurisdiction, international human rights and humanitarian standards set limits to the exercise of national sovereignty in relation to nationality issues. Despite significant developments in international law and practice relating to nationality numerous gaps remain giving rise to situations of statelessness. The principles embodied in multilateral declarations of standards on the right to enjoy citizenship status are not enforceable under

international law. Therefore, while the principles are clearly set down in law, the protection of non-citizen populations is inadequately ensured. A few factors contribute to this: 1) while international instruments confer rights and demand equal treatment of “all persons”, national legislation mainly guarantee rights to all “citizens”; 2) provisions regulating nationality/citizenship are scattered among several international instruments;⁸⁵ 3) States have the latitude to enter reservations, sign and ratify these treaties; 4) the international treaties are not directly enforceable upon States.

1. The State’s Duty to Avoid Statelessness⁸⁶

States may not be required to grant citizenship, but have a general duty not to create conditions resulting in statelessness. The obligation to avoid statelessness has become part of customary international law. The Convention relating to the Status of Stateless Persons (1954 Convention)⁸⁷ articulates minimum standards for the treatment by signatory States of stateless persons, defined as persons who are not considered a national by any State. In order to regulate and improve the status of stateless persons, the 1954 Convention generally provides that the basic human rights of stateless persons must be respected by their country of residence without discrimination on the basis of race, religion, or country of origin.

In 1961 the United Nations adopted the Convention on the Reduction of Statelessness, which came into force in 1975. Under the 1961 Convention, signatory States are to provide mechanisms for persons born on their territory to acquire nationality, and for limiting the circumstances under which persons might lose their nationality without acquiring another. Under the nationality rules contemplated by the 1961 Convention, many persons who would otherwise be rendered stateless are able to obtain a nationality. Although most States have not acceded to the 1954 and 1961 Conventions⁸⁸, the general principles embodied in those instruments are drawn from basic provisions of citizenship legislation and practice in the majority of States. The Conventions are therefore reference points for determining customary international law and reflect an international consensus on the minimum legal standards to be applied to questions of citizenship and statelessness.

Other international legal instruments dealing with the right to a nationality and the rights of non-citizens include the 1957 Convention on the Nationality of Married Women, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child, the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families.

⁸⁵ David Weissbrodt – Final Report on the Rights of Non-citizens, UN DOC E/CN.4/Sub.2/2003/23 (2003) at paragraph 33 makes the following recommendation: “Since problems relating to the treatment of non-citizens arise under each of the seven principal human rights treaties, it would be desirable for the treaty bodies jointly to prepare general comments/recommendations that would establish a consistent, structured approach to the protection of the rights of non-citizens. At a minimum, treaty bodies that have adopted specific standards should consider updating them and those bodies that have yet to issue interpretive guidance relating to non-citizens should do so. In addition, treaty bodies should intensify their dialogues with States Parties in regard to the rights accorded to, and the actual situation faced by, non-citizens within their respective spheres of concern.”

⁸⁶ Based on *Developments In International Law: The Avoidance Of Statelessness Through Positive Application Of The Right To A Nationality*, UNHCR Report by Carol A. Batchelor, 2003.

⁸⁷ Adopted by the United Nations in 1954 the Convention came into force in 1969.

⁸⁸ As of 1 January 2005 there are 57 State Parties to the 1954 Convention relating to the Status of Stateless Persons and 29 State Parties to the 1961 Convention on the Reduction of Statelessness.

In the long term, the interests of disenfranchised and stateless persons can be protected by State accession to the 1954 and 1961 United Nations Conventions. Even where formal accession does not occur, legislation embodying the norms of the 1961 Convention would prevent statelessness.

2. Regional Instruments: the European Convention on Nationality

The 1997 European Convention on Nationality is, to date, the most comprehensive and advanced regional instrument in the field of nationality. Adopted in 1997 by the Council of Europe the Convention codifies all major aspects related to nationality: principles, acquisition, retention, loss, recovery, procedural rights, multiple nationality, nationality in the context of State succession, military obligations in cases of multiple nationality and co-operation between States parties. The 1997 European Convention on Nationality contains the most exhaustive definition of nationality to date.⁸⁹ Moreover, the Convention takes a significant step forward in nationality/citizenship legislation and practice by recognizing habitual residence as a basis for granting nationality. The 1997 Convention firmly establishes lawful and habitual residence, of a minimum period of 10 years, as a legitimate means of granting nationality and hence reaches beyond *jus soli* and *jus sanguinis* in determining the link an individual has to a State.

3. Major Multilateral Declarations of Standards – Non-discrimination principle

Universal Declaration of Human Rights

Adopted in 1948, the Universal Declaration of Human Rights provides that all persons have the right to a nationality and that no person shall be arbitrarily deprived of one's nationality or the right to change nationality.⁹⁰ Although the Universal Declaration is not an official treaty among States, it is nonetheless a standard of customary international law which applies to all persons.

United Nations Charter

The rights of non-citizens are protected in a number of international instruments that embody the principles of equality and non-discrimination. The United Nations Charter, for example, contains a non-discrimination clause in Article 1(3), which states that one purpose of the United Nations is to promote and encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁹¹

The Convention on the Rights of the Child

⁸⁹ Article 2: Nationality means the legal bond between a person and a State and does not indicate the person's ethnic origin.

⁹⁰ Universal Declaration of Human Rights, Art. 15 stipulates: 1) Everyone has the right to a nationality. 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

⁹¹ UN Charter, art. 1 - paragraph 3.

The Convention on the Rights of the Child⁹² sets forth the principles State parties have to observe and ensure for the protection of children, without discrimination and irrespective of their or their parents' status.⁹³ The right to be registered immediately after birth and to acquire a name and a nationality is recognized under Article 7 of the Convention on the Rights of the Child.⁹⁴

The International Convention the Elimination of All Forms of Racial Discrimination⁹⁵

The general definition of discrimination found in Article 1, paragraph 1, is qualified by Article 1, paragraph 2, which States that: "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."⁹⁶ Furthermore, Article 5 refers to 9 rights which are inherent citizenship rights.

International Covenant on Civil and Political Rights

The provisions enumerated in the International Covenant on Civil and Political Rights apply generally to non-citizens⁹⁷ and are also based on the requirement of non-discrimination.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights⁹⁸ establishes social and economic rights that apply to everyone, regardless of citizenship.

Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live

On 13 December 1985 the General Assembly adopted by consensus a declaration on the human rights of individuals who are not citizens of the country in which they live.⁹⁹ This declaration was the result of a Sub-Commission study, completed in 1976, on the rights of non-citizens.¹⁰⁰ The

⁹² Adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

⁹³ Article 2, Convention on the Rights of the Child.

⁹⁴ Article 7 of the convention on the Rights of the Child states: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible the right to know and be cared for by his or her parents."

⁹⁵ International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19.

⁹⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1.2 and 1.3.

⁹⁷ International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171 entered into force 23 March 1976.

⁹⁸ International Covenant on Economic, Social and Cultural Rights, GA res. 2200A (XXI), part III, 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force Jan. 3, 1976. Most of the provisions in part III of the Covenant refer specifically to the "the right of everyone".

⁹⁹ Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, UN Doc. A/RES/40/144 (1985).

¹⁰⁰ Baroness Elles, *The Problem of the Applicability of Existing International Provisions for the Protection of Human Rights to Individuals Who Are Not Citizens of the Country in Which They Live*, Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/392 (1977).

declaration covers all individuals who are not nationals of the State in which they are present.¹⁰¹ The declaration calls for the respect of fundamental human rights of aliens (non-citizens). In addition, the declaration prohibits individual or collective expulsion on discriminatory grounds, and provides for trade union rights as well as the right to safe and healthy working conditions and the right to medical care, social security, and education.¹⁰²

4. Achievements, Limitations and Gaps

The issue of citizenship denial has recently gained prominence in the context of a thematic debate on issues regarding the rights of non-citizens organized by the Committee on the Elimination of Racial Discrimination.¹⁰³ Participants recognized that discrimination in matters of nationality often occurs along ethnic, racial, language or religious lines and that better protection instruments are needed to address the problem. The debate has had the immediate benefit of raising awareness concerning issues of arbitrary denial of citizenship for reasons of discrimination and several initiatives are to be noted. On 20 August 2004 the Committee on the Elimination of Racial Discrimination (CERD) adopted during its 65th session the General Recommendation 30 on Discrimination against Non-citizens.¹⁰⁴ The document sets forth authoritative principles on the minimum rights accorded to non-citizens.¹⁰⁵ The new General Recommendation marks a significant step forward in extending international principles of protection for non-citizens and highlighting the connection between racial discrimination and differentiation of citizenship status. The CERD suggests a number of actions to state parties to the Convention to secure that non-citizens are not discriminated against on the basis of race, colour, descent, or national or ethnic origin in access to citizenship.

The thematic debate had the merit of bringing into focus the issue of denationalization and several of the participant organizations have followed up by designing specific activities aimed at documenting the problem and raising awareness on the situation of non-citizen groups. The Justice Initiative¹⁰⁶ is proposing to conduct the “Africa Citizenship and Discrimination Audit” in fifteen African countries in order to identify legal patterns of discrimination as well as the underlying causes for the arbitrary denial in access to citizenship. Refugee International announced in November 2004 the undertaking of several field missions to “spotlight statelessness”¹⁰⁷ – the missions concerned the Russian minority in Estonia, the Biharis in Bangladesh and the Bedoons in Kuwait.

¹⁰¹ Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, UN Doc. A/RES/40/144, art. 1 (1985).

¹⁰² *Idem* 12, Article 7 and Article 8.

¹⁰³ Thematic debate on the rights of non-citizens organized during the Committee’s 64th session, Geneva, 23 February – 12 March 2004.

¹⁰⁴ <http://www.ohchr.org/english/bodies/cerd/docs/CERD-GC30.doc>

¹⁰⁵ The General Recommendation notes that it is concerned with all categories of non-citizens, including persons who cannot establish the nationality of the State on whose territory they live, even where such persons have lived all their lives on the same territory. It makes clear that international human rights law imposes certain limits on governments’ discretion to grant or deny citizenship. Thus, deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States Parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.

¹⁰⁶ www.justiceinitiative.org

¹⁰⁷ <http://www.refugeesinternational.org/content/mission/detail/4373/>

Because the problems of statelessness and refugee status often overlap¹⁰⁸, the UN High Commissioner for Refugees (UNHCR) is the agency designated under Article 11 of the 1961 Convention, to act as mediator between States and stateless individuals seeking to resolve nationality issues.¹⁰⁹ UNHCR also offers advisory and technical assistance to governmental bodies with mandates extending to issues of nationality and citizenship. UNHCR has expertise to assist States in drafting nationality legislation and, in cases of disputed nationality claims, to help determine whether an individual has means of redress with respect to nationality. UNHCR has played an active role in the process of resolving the problem of nationality of the Estate Tamils in Sri Lanka. Its continued involvement in matters of denationalization is important as, by virtue of its position, the agency can identify and exploit and create opportunities for solutions in addressing the root causes of displacement.

Most of the international instruments currently addressing issues relative to citizenship or to the denial of citizenship are not effectively binding on States. The sovereign interest of States remains the overriding motivation in the granting or the denial of citizenship.

However, States could eventually come closer to accepting the involvement of other States in their granting citizenship to non-citizens through bilateral talks or consultations between several States – as has been the case in the past with Sri Lanka and India resulting in mutual obligations regarding the repatriation and the citizenship of the Estate Tamils. The involvement of the international community is a necessity as UNHCR has recently proven in assisting the government of Sri Lanka resolve the nationality issue of the Estate Tamils. The mediation of the international community is especially important in cases where bilateral talks appear stalled, as is currently the case between Bhutan and Nepal, or where open conflict, internal or external, is revived as in the case of the Ivory Coast and between DRC and Rwanda.

Growing general interest in issues pertaining to the denial of citizenship coupled with a continued international policy debate addressing human security threats to vulnerable groups, and the duty of the international community to protect¹¹⁰ such groups, is likely to stimulate the involvement of international actors in seeking concrete solutions to the problem.

5. Supporting international human rights instruments and developing general principles for treating the denial of citizenship

While promoting, supporting and developing a legal framework addressing the issues of statelessness and citizenship is essential, the current lack of instruments specifically targeted at tackling denial of citizenship calls for the introduction of general principles of treatment.

International standards and monitoring systems are of fundamental importance to create external pressure for domestic reform. States need to sign and ratify international and regional treaties, in

¹⁰⁸ As evidenced in Section III some groups live in camps as refugees: Lhotshampas in Nepal, the Biharis in Bangladesh, the Rohingyas in Bangladesh and the Estate Tamils in India.

¹⁰⁹ This assistance formally extends only to persons who can prove they are *de jure* stateless and only in relation to signatory states.

Carol Batchelor – Developments in International Law: The Avoidance of Statelessness through Positive Application of the Right to a Nationality, UNHCR Report, 2003.

¹¹⁰ Report of the High-level Panel on Threats, Challenges, and Change: “A more secure world: our shared responsibility”, December 2004, <http://www.un.org/secureworld/>

particular the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961), and fully participate in the monitoring mechanisms already in place. Governments should continue to engage with new standards setting processes, in particular for persons belonging to minorities and indigenous peoples, and be supportive of processes aimed at strengthening UN human rights mechanisms. Treaty reservations, in particular to CEDAW which lower protection standards for women, should be revoked. Key international bodies, such as UNHCR and UNCHR, should be strongly supported in their endeavours to promote international legal instruments and awareness of the obligations they create among States.

In parallel, the international community should seek the development and recognition of general principles specifically applicable to the situation of persons or groups excluded from citizenship. Such general principles should provide a practical framework for identifying and addressing cases of exclusion. Mandates to assist populations excluded from citizenship should be defined and distributed among international actors. On the basis of this framework, integrated programmes should be developed, to provide for the concrete needs of affected populations. Models of programmes could be developed that would target typical needs of the excluded and allow for effective and prompt responses to developing situations of exclusion.

VII. CONCLUSIONS AND RECOMMENDATIONS

The review in this paper of several major cases where people have lost or have been denied citizenship suggests that citizenship is a fundamental element of human security. As well as providing people with a sense of belonging and identity, it entitles the individual to the protection of the state and provides a legal basis for the exercise of many civil, political and economic rights. Denial of citizenship affects large population groups in many countries and regions. **Overlapping forms of discrimination**, based on membership to a particular group, prevent individuals from accessing and exercising their rights on equal terms and result in disproportionate levels of poverty and high levels of vulnerability.

The problem of denationalization has forced its way onto the international humanitarian and security agenda as a result of several related factors: the rise of ethnic consciousness in certain parts of the world; the increased incidence of communal conflict; the associated disintegration of several federal polities; and the fear of large-scale population movements involving stateless people.

As the causes of persistent citizenship denial situations are political as well as legal, solutions must be sought to encompass both arenas. The identification of appropriate policy responses is further complicated by the fact that citizenship inequalities and citizenship denial are historically and culturally produced and are, therefore, context specific. For example, patrilineal kinship systems lead to a diminished citizenship status of women and their removal from participation in society other than by the bias of the family nucleus. What this suggests is that successful policy responses need to be tailored to the needs of the specific context and based on an analysis of the particular causes of discrimination and inequality in citizenship access and status.

In this respect the human security approach could prove a valuable instrument as it offers a comprehensive, right-based framework focusing on people's needs and dignity. In the long term, human security could represent a soft tool for the enforcement of international norms.

Citizenship disputes have become an important feature of the contemporary world, generating tension and even violence between different states and communities. Denial of citizenship is not only a source of human insecurity but also a cause of forced displacement and a threat to national and regional stability.

As a whole, individuals not recognized as citizens of the State in which they reside constitute an extremely vulnerable group. Scattered in different provisions of hard and soft law, the rights of non-citizens are inadequately enforced and often overridden by concerns of national security, cultural purity, economic welfare and public health. Furthermore, while the 1961 Convention on the Reduction of Statelessness reflects an international consensus on the minimum legal standards to be applied to citizenship issues nevertheless there is no binding instrument to prevent the denial of citizenship.

Humanitarian organizations have a valuable role to play in averting such situations, protecting non-citizen populations and finding just solutions to their plight. Ultimately, however, the problems of statelessness and disputed nationality can only be effectively addressed through the actions of States themselves.

Recommendations:

1. Denial of citizenship worldwide bears further investigation. An exhaustive exercise of identifying caseloads of non-citizens should be undertaken; information and data should be systematically collected, analyzed and organized in a master classification keeping in mind the ongoing work done under the Justice Initiative and the Refugee International's review exercises.
2. Awareness of the issue should be raised, by means of a structured information campaign targeted at international and national actors such as research communities, NGOs, governments and international institutions. It should be impressed throughout the campaign that the international community has the right and obligation to work on behalf of the 'non-citizen'.
3. The international community should press for the development of general principles on non-citizens similar to the one established a decade ago for addressing the issue of the internally displaced persons.
4. Models of effectively deployable integrated assistance programmes for the benefit of populations who are denied citizenship should be developed on the basis of the framework that would have been defined by the general principles.
5. In this context, the international community should suggest that an international entity capable monitoring the applications of these principles be designated or created.
6. Denial of citizenship resulting from bilateral issues should be dealt with by States concerned with support from the international community.