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Refugeeness doesn't trump statelessness: A call to reject the UN's "protection hierarchy" for stateless refugees

Jason Tucker

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In this blog, Jason Tucker, Associate Senior Lecturer at Malmö University, challenges the ways in which the international community programmatically engages with stateless refugees. Drawing on his research investigating the governance of stateless refugees, Jason argues that the statelessness of stateless refugees is systematically and chronically under-valued, sometimes with devastating consequences.

A person can be a refugee, a stateless person, or both. It is those who are both refugees and stateless, amounting to over [six million](#) people globally, that are the focus of my research. In a recently published chapter in [Statelessness, Governance, and the Problem of Citizenship](#), I critically engage with what I call the "protection hierarchy" norm. The protection hierarchy is a central norm in the governance of refugeeness and statelessness, shaping how we understand the relationship between the two. The protection hierarchy frames the causes, impacts, and consequences of, and solutions to, the statelessness of stateless refugees as secondary, even inconsequential, compared to those stemming from their refugeeness. This norm has been enacted through the policy and practice of key international actors working with stateless refugees for six decades and has, until now, remained largely uninterrogated.

But does refugeeness trump statelessness? To answer this question, I turned to the empirical research on stateless refugees. The answer, in short, is no. The research reveals that statelessness is both very impactful and highly intertwined with refugeeness. In addition to this, and very worryingly, the research also reveals that at times the protection hierarchy creates, perpetuates, or exacerbates serious protection concerns for stateless refugees. As such, I call for the rejection of the protection hierarchy, and the development of evidence-based policy on stateless refugees.

This hierarchy (of refugeeness over statelessness) is not one which can be seen in the international conventions: the [1951 Refugee Convention](#) and the [1954 Statelessness Convention](#). The two statuses found within these conventions are not ranked: the protection concerns stemming from each are not compared and there is no reference to a tension between being protected as both a refugee and a stateless person. Instead, the hierarchy was born over the last fifty to sixty years from the operational practices of the United Nations High Commissioner for Refugees (UNHCR) - the agency mandated to work with both refugees and stateless persons. These practices were then adopted as an official policy position from about 2010 onwards, with the involvement of a small and close-knit community of key international actors, academics and civil society working on statelessness.

The emergence of the protection hierarchy is perhaps understandable. One justification was that the 1951 Convention includes certain rights that are not present in the 1954 Convention. As such, it makes sense that people should be protected as a refugee first and foremost. More practically, UNHCR had to try to find a way to manage its dual mandates when the almost exclusively refugee-focused organization began more actively working on statelessness around 2010. Stateless refugees were seen as very problematic for UNHCR as there was a demand to be able to clearly differentiate between their two mandates: stateless refugees however, muddied the water. Without a clear distinction between stateless persons and refugees, there would be inevitable operational and political tensions, both within the organization and externally. There were also financial implications given that UNHCR's stateless and refugee operations are funded by two separate budgets. Pragmatically, given the lack of [Statelessness Determination Procedures](#) (SDPs) and protection for stateless people in most states, being recognized as a refugee, or some variation thereof, was often the only available option.

However, the protection hierarchy has a serious limitation. It is not an evidence-based policy, but one built on normative, pragmatic, and operational concerns. During the first sixty years of UNHCR's work, research on stateless refugees was very limited. As such it was not possible to develop evidence-based policy. But this is no longer the case. Statelessness studies has flourished into a vibrant multidisciplinary field with a breadth and depth of research upon which we can draw.

Based on a systematic literature review of the empirical research (presented in the chapter this blog is based on), it is clear that refugeeness does not always trump statelessness, neither legally nor as a lived experience. Statelessness matters: indeed, it is hugely impactful for stateless refugees. Further to this, the relationship between refugeeness and statelessness is fluid and highly interrelated. As such, statelessness and refugeeness cannot be differentiated or ranked. What is most worrying is that the protection hierarchy is, at times, increasing the vulnerability of some stateless refugees. For example, statelessness has been shown to be a [barrier](#) in being recognized as a refugee and being granted a protection status as such. The research also sheds light on the specific protection concerns stateless refugees face, as compared to non-stateless refugees, and that these can only be addressed if their statelessness is [identified](#). Finally, in numerous contexts the statelessness of refugees obstructed the securing of durable solutions to their refugeeness. The multiple and disastrous attempts to repatriate the [Rohingya](#) refugees from Bangladesh to Myanmar provide a harrowing example of this.

The times are changing though, with academics and civil society leading the way in moving beyond the problematic protection hierarchy. For many, myself included, this means that we must engage in self critique. We must reflect on our part in the perpetuation of this norm and how it has impacted our research agenda. Indeed, we are even seeing UNHCR recognizing some of the problems with this policy norm, such as issues relating to [recognition of refugee status](#) and [durable solutions](#). However, these few instances should not be seen as an evolution in UNHCR's position on the protection hierarchy. The ranking and subordination of statelessness as compared to refugeeness for stateless refugees is still the party line: for now, at least.

In moving beyond the protection hierarchy some very difficult questions will arise. For example, how can the statelessness of refugees be identified in practice? How will, or can, UNHCR manage this operationally, financially, and politically? Will there be negative impacts of an additional stateless 'label' for those upon whom it will be imposed? Despite these significant challenges, we should remember that the research that undermined the justifications for this norm are also the very tools we can use to rebuild policies that will better protect stateless refugees. But, to do so, we must embrace evidence-based policy on stateless refugees.

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