Statelessness and Human Rights

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Miss I Hsuan Liu

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ความไร้สัญชาติกับสิทธิมนุษยชน

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วิทยานิพนธ์นี้เป็นส่วนหนึ่งของการศึกษาตามหลักสูตรปริญญานิติศาสตรดุษฎีบัณฑิต
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ถึงแม้ปฏิญญาสากลว่าด้วยสิทธิมนุษยชนจะได้แสดงให้เห็นว่ามีการรับรองสิทธิมนุษยชนสำหรับคนทุกคน แต่อย่างไรก็ตาม ในความเป็นจริงนั้น ยังมีผู้คนอีกหลายล้านคนที่ยังคงเป็นคนไร้สัญชาติและถูกปฏิเสธในสิทธิมนุษยชนของพวกเขา ภายใต้อนุสัญญาว่าด้วยสถานภาพคนไร้สัญชาติ ค.ศ. 1954 นั้น ประเทศภาคีในอนุสัญญาได้พยายามรับรองสถานภาพของบุคคลเสมือนคนชาติและบุคคลเสมือนคนต่างด้าวให้เป็นสิทธิของบุคคลไร้สัญชาติ แต่สิทธิต่างๆ หลายสิทธิเหล่านี้ก็ยังไม่มีความเฉพาะเจาะจงเพียงพอหรือยังขาดกลไกในเชิงสนับสนุนและปกป้องสิทธิ

สิ่งนี้จึงนำไปสู่การตรวจสอบสิทธิมนุษยชนที่ได้พัฒนาขึ้นหลังจากที่มีอนุสัญญาว่าด้วยสถานภาพคนไร้สัญชาติ ค.ศ. 1954 อีกครั้ง ดังนั้น วิทยานิพนธ์นี้จึงมุ่งหมายที่จะตรวจสอบว่าสิทธิมนุษยชนที่เกิดขึ้นตามมาดังกล่าวนั้นมีส่วนเพิ่มประสิทธิภาพในสิทธิและความคุ้มครองแก่คนไร้สัญชาติภายใต้กฎหมายระหว่างประเทศอย่างไร ข้าพเจ้ามีความเห็นว่าตราสารด้านสิทธิมนุษยชนต่างๆ ที่เกิดขึ้นตามมานั้นไม่เพียงแค่สามารถนำมาปรับใช้กับคนไร้สัญชาติได้เท่านั้น แต่ยังมีส่วนในการสนับสนุน การขยายความ การทำให้เกิดประโยชน์สูงสุด และการเสริมหรือเพิ่มเติมในสิทธิต่างๆ ที่ได้รับการรับรองภายใต้อนุสัญญาว่าด้วยสถานภาพคนไร้สัญชาติ ค.ศ. 1954

ดังนั้น วิทยานิพนธ์ฉบับนี้จึงแสดงให้เห็นถึงสิ่งต่อไปนี้ 1) สถานภาพ สิทธิ และความคุ้มครองต่างๆ ของคนไร้สัญชาติในทางเสียเปรียบ เมื่อเปรียบเทียบกับคนชาติและคนต่างด้าว 2) สถานภาพ สิทธิ และความคุ้มครองต่างๆ ของคนไร้สัญชาติที่ได้รับการรับรองภายใต้อนุสัญญาว่าด้วยสถานภาพคนไร้สัญชาติ ค.ศ. 1954 และ 3) ความสัมพันธ์ระหว่างตราสารด้านสิทธิมนุษยชนต่างๆ กับคนไร้สัญชาติ และตราสารเหล่านี้มีส่วนในการสนับสนุน การขยายความ การทำให้เกิดประโยชน์สูงสุด และการเสริมหรือเพิ่มเติมในสิทธิและความคุ้มครองต่างๆ ภายใต้อนุสัญญาว่าด้วยสถานภาพคนไร้สัญชาติ ค.ศ. 1954 อย่างไร

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Although the Universal Declaration of Human Rights has expressed that human rights are guaranteed to everyone, however, the reality is that millions of people still remain stateless and their human rights are denied. Under the 1954 Convention relating to the Status of Stateless Persons, the Contracting States have attempted to guarantee quasi-national and quasi-alien status to the rights of the stateless persons. However, many of these rights have not adequately specified or in lacking an affirmative protective mechanism.

This leads to the re-examination of the human rights that are developed after the 1954 Convention relating to the Status of the Stateless Persons. Therefore, this dissertation aims to examine how the subsequent human rights have contributed in strengthening the rights and protections of the stateless persons under the international law. I argue that the subsequent human rights instruments are not just applicable to stateless persons but also have contributed in affirming, clarifying, maximizing and supplementing the rights as guaranteed under the 1954 Convention relating to the Status of the Stateless Persons.

Thus, this dissertation illustrates the following: 1) The disadvantaged status, rights and protections of the stateless persons as comparative to the nationals and aliens; b) The status, rights and protections as guaranteed under the 1954 Convention relating to the Status of the Stateless Persons; and c) The relevance of the human right instruments and stateless persons and how these instruments have contributed in affirming, clarifying, maximizing and supplementing the rights and protections under the 1954 Convention relating to the Status of the Stateless Persons.

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ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHR	American Convention on Human Rights
Art.	Article
ASEAN	Association of South-east Asian Nations
B.E.	Buddhist Era (NB. 543 years before A.D.)
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
CSW	Commission on Status of Women
C.U.P	Cambridge University Press
ICRMW	Convention on the Protection of the Rights of All Migrant Workers and of their Families
CRC	Convention on the Rights of the Child
Doc.	Document
ECOSOC	Economic and Social Council

ECOWAS	Economic Community of West African States
EU	European Union
GA	General Assembly
GC	General Comments
HRC	Human Right Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labor Organization
ILC	International Law Commission
ISI	Institute on Statelessness and Inclusion
Montevideo Convention 1933	Montevideo Convention on the Rights and Duties of States 1933
MDGs	Millennium Development Goals
NGO	Non-governmental Organization
NHRIs	National Human Rights Institutions (and Commissions)
No.	Number
OHCHR	Office of UN High Commissioner for Human Rights
OP	Optional Protocol

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OUP	Oxford University Press
Para.	Paragraph
PCIJ	Permanent Court of International Justice
1951 Refugee Convention	Convention Relating to the Status of Refugees(1951)
1954 Stateless Convention	The 1954 Convention relating to the Status of Stateless Persons
1961 Convention	The 1961 Convention on the Reduction of Statelessness
Res.	Resolutions
SR	Summary Records
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UNESCO	United Nations Education, Scientific and Cultural Organization
UN	United Nations
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Fund
UNIFEM	UN Development Fund for Women
UPR	Universal Periodic Review
VCCR	Vienna Convention on Consular Relations
Vol.	Volume

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Chapter One: Introduction

1.1Background

There are still millions of stateless persons lingering around the world.[1]

Under the international law, a stateless person is defined as someone,

> [W]ho is not considered as a national by any state under the operation of its law.[2]

When a person becomes stateless, that signifies that there is no legal bond between that individual and a state, therefore, he or she does not enjoy the rights, duties and the protections as incurred out of the national status and therefore, put the person in a challenging situation.[3]

These challenges have heavily affected the lives of the stateless populations. Due to their lack of nationality, it has caused them to become debilitated in the society as they cannot get marry, travel, pursue higher education, work in decent jobs nor owning a property; One example would the stateless persons' experience of hampered education, in which one of the stateless children expressed,

> My brother struggled a lot to send me and my sisters in school. To get higher education, I had to pretend to be a Bengali person.[4]

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[1] "Statelessness around the World " United Nations High Commissioners for Refugees(UNHCR) https://www.unhcr.org/statelessness-around-the-world.html, accessed 23 July 2019; see also "Four Years into Its #Ibelong Campaign to End Statelessness, Unhcr Calls for More Resolute Action by States." 13 November 2018.

[2] Art. 1 Para.1, The 1954 Convention Relating to the Status of Stateless Persons

[3] The protection in this sense is referring to the protection from the host country. However, under the international human rights law, everyone is protected.

[4] Maureen Lynch, "Futures Denied: Statelessness among Infants, Children, and Youth." *Refugees International* (2008): 10.

The Other problems would be their ineligibility to participate in any political processes, such as voting or pursue a position in the public sector.[5] As depicted by the Regional Expert Round Table,

> [S]tateless persons continue to face significant obstacles in the practical enjoyment of their rights and can find themselves politically, socially and economically marginalized. Among the common problems experienced are restriction on land or property ownership; limited access to education, especially beyond primary level; difficulties in lawfully contracting a marriage; and obstacles to full participation in the labor market.[6]

Take Malaysia as an example, the lack of access to the job market has forced some stateless persons to resort to jobs that are dirty, dangerous and difficult; they would also be more likely to resort to degrading criminal activities and prostitutions. [7] As a result, they basically do not exist in the eyes of the government and what's worse, is that such an identity is like a generation curse, which passes on in a vicious cycle.[8]

The question then raise: what cause these statelessness to occur? The answer may come in manifolds as there are many causes of statelessness, some incurred by the States, others due to the lack of knowledge or access to information from the stateless persons him or herself. The reason could even boil down to as simple as living at the border and frequently crossing between the two borderlines, which incurs the denial

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[5] Indira Goris, Julia Harrington and Sebastian Köhn. "Statelessness: What Is It and Why It Matters." *Forced Migration Review* no. 32 (2009): 4.

[6] "Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia ". In *Regional Expert Roundtable. Amari Watergate Hotel, Bangkok, Thailand: United Nations High Commissioners for Refugees*(2010): 29.

[7]Bureau of Democracy, Human Rights and Labor. "2009 Country Reports on Human Rights Practices-Malaysia ", (2010): 29.

[8] Robin Guittard, "Americas Leaders Must Wake up to Drama of "Ghost Citizens", Amnesty International,2016, https://www.refworld.org/docid/575fa6a94.html:

of citizenship from both states; it might also be because of conflicts in the nationality laws between States, in which a person renounces his or her nationality without claiming a new one.

The most common reason would be the lack of birth registration, in which either they were denied registration due to discrimination[9] or an individual failed to acquire the citizenship of the successor state in time when there was changes in borderlines. [10]

In order to address these concerns, the United Nations have come up with two international treaties that are directly addressing to the stateless persons-the 1954 Convention Relating to the Status of Stateless Persons (1954 Stateless Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention). The former one is a pioneered instrument which addresses directly to stateless persons and ascertaining the basic rights and protection towards them; while the later aims solely at the reduction of statelessness.

Besides the above mentioned two instruments, several international human rights treaties have subsequently followed after the 1954 Convention relating to Status of Stateless Persons. The most familiar one would the international Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights, which both of them come in force on 1966. Afterward, more specific human right instruments emerged, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, the International

[9] Such is the case of Jessica, a child of Haitian heritage and her parents did not receive her birth certificate due to racial discrimination. This has posted significant problem as when Jessica grow up, she couldn't pursue higher degree of study which includes neither high school nor university. Guittard, Robin. "Americas Leaders Must Wake up to Drama of "Ghost Citizens"." https://www.refworld.org/docid/575fa6a94.html: Amnesty International 2016.

[10] Goris, Harrington and Köhn. "Statelessness: What Is It and Why It Matters," 4.

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Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990(ICRMW) and the Convention on the Rights of the Child 1989(CRC).

The above mentioned specific human rights instruments address the particular human right concerns of some group of people. Take the CRC as an example, it has provisions that protect children from potential risk of statelessness by ushering that,

> [T]he child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality.[11]

Similarly, the Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women('CEDAW') also protects women from gender discrimination by stating that they shall have 'equal rights with men to acquire, change or retain their nationality'.[12]

As the issue of the statelessness has gradually turned into a focal concern, the international society has also become active in addressing this issue, especially the United Nations High Commissioners for Refugees(UNHCR). The UNHCR has initiated several campaign, seminars and expert meetings in heightening the awareness of stateless persons to international community.

A recent example would be the #IBelong Campaign[13], in which UNHCR, contracting and non-contracting States alike have put up more resolute plan called Global Action Plan to set up agenda in putting a definitive end to this human suffering by the year

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[11] Art. 7 para. 1, United Nations Convention on the Rights of the Child (1989)

[12] Art. 9 para. 1, Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res/ A/RES/34/180, 1979.

[13] UNHCR, "I Am Here, I Belong: The Urgent Need to End Childhood Statelessness, "UN High Commissioner for Refugees (UNHCR) 2015.

2024. Numerous States, regardless whether they are the Contracting States of the 1954 Stateless Conventions, have pledged to do so.

Under this campaign, it establishes a guiding framework of ten Actions to be undertaken by States, not just to resolve current situations of statelessness, but also to end statelessness and better protect the stateless populations. [14] Some of the goals would be: scrutinizing the nationality laws of the States and ensure that that it does not permit the denial, loss or deprivation of nationality on a discriminatory grounds (Action 4), Grant the stateless migrant workers a protection status by encouraging the use of stateless determination procedures and facilitate naturalization(Action 6) and most commonly, the ensure of the birth registration to prevent prospective statelessness(Action 7). [15]

Furthermore, the UNHCR-as compared to the past which render limited budgets to statelessness-have tripled its expenditure on statelessness from 12 Million Dollar to 36 Million Dollar.[16] It has implemented several cooperative projects in assisting the state to recover the citizenship for the stateless persons.

Typical example would be in Sri Lanka, in which the UNHCR cooperated with the United Nations Development Program ('UNDP') in installing mobile registration

[14] Refugees (UNHCR), UN High Commissioner for. "Global Action Plan to End Statelessness." https://www.refworld.org/docid/545b47d64.html: Division of International Protection, UNHCR, 2014.

[15] UNHCR, "Global Action Plan to End Statelessness," https://www.refworld.org/docid/545b47d64.html: Division of International Protection, UNHCR, 2014.

[16] Ibid, 6.

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clinics and these enable the Estate Tamils who were the 'forgotten people'[17] from the Government's radar to have the chance in obtaining the identity documents. [18]

1.2 Statement of Problem

Even though the 1954 Convention relating to the Status of the Stateless Persons has attempted to guarantee the rights and protections to the stateless persons through giving quasi-national and quasi-alien status on various rights, however, these rights and protections are at the minimum standard.

1.3. Research Question(s)

Based from the above statement of the problems, I would like to examine the following questions:

1.3.1 How are the Stateless Persons at disadvantaged position in terms of status, rights and protections as comparative to the Nationals and Aliens under the International Law?

1.3.2 How are the human rights in relevance with stateless persons?

1.3.3 What are the Status, Rights and Protections as ascertained under the 1954 Convention relating to the Status of Stateless Persons?

1.3.4 How have the subsequent human right instruments following the 1954 Convention relating to the Status of Stateless Persons addressed the rights and protections of the Stateless Persons?

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[17] Persaud, Mark Manly and Santhosh. "Unhcr and Responses to Statelessness." *Forced Migration Review* no. 32 (2009), page 7..

[18] Persaud and Manly, "Unhcr and Responses to Statelessness", 7.

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1.4 Hypothesis

Even though the 1954 Convention in relating to the Status of the Stateless Persons has attempted to ascertain quasi-national and quasi-alien status for the stateless persons to enjoy various rights, however, such human right and protections as guaranteed under the 1954 Stateless Convention are not adequate. However, the subsequent human rights instruments as developed after the 1954 Stateless Convention have contributed in maximizing, supplementing and specifying the rights and protections of the Stateless Persons.

1.5 Objective(s)

This dissertation aims to do the following things:

1) To illustrate how are the stateless persons at disadvantaged status, rights and protections as comparative to the nationals and aliens;

2) To find out the relevance between statelessness and human rights;

3) To examine the status, rights and protections as ascertained under the 1954 Convention relating to the Status of Stateless Persons;

4) To find out how the subsequent human right instruments have contributed in enhancing the status, rights and protections as originally ascertained under the 1954 Convention relating to the Status of Stateless Persons.

1.6 Limitations of the Study

In this dissertation, some group of stateless persons will not be addressed, such as those who are: disabled stateless persons, senior stateless persons or stateless persons as incurred due to armed conflicts are also not included.

Furthermore, I didn’t include the examination of the entire human right conventions. The conventions that are excluded under this dissertation are: Convention on the

Rights of Persons with Disabilities (CRPD), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families(ICRMW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention for the Protection of All Persons from Enforced Disappearance (CED), etc. are not within the field of this paper.

This is because in evaluating the challenges as faced by stateless persons in general, I find that the specific human right conventions as selected, namely, the Convention on the Rights of the Child (CRC) and the CEDAW would ascertain the status, rights and protection as most relevant to the imminent need of the stateless persons.

For instance, at present there are many stateless persons facing the challenges of passing their nationality due to gender discrimination or not capable of enjoying an ownership to property. However, there was very little percentage experiencing Enforced Disappearance.

1.7 Significance of the Study

1) Identify distinctively the status, rights and protections as ascertained under the 1954 Convention relating to the Status of the Stateless Persons;

2) Provide insights as how human rights can be invoked in the context of stateless persons;

3) Clarify how have the subsequent human right instruments such as the ICCPR, ICESCR, CRC and CEDAW as following the 1954 Convention relating to the Status of Stateless Persons have contributed in affirming, maximizing, clarifying or

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specifying the rights and protections of the 1954 Convention relating to the Status of Stateless Persons.

1.8 Research Methodology

This research is conducted using doctrinal method. Such method is used mainly on the part of examining the human right provisions as how it could possibly be linked with stateless persons and the 1954 Convention relating to the Status of Stateless Persons.

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1.9 Literature Reviews

In the following, I will review the debate over the concept of statelessness among the scholars and practitioners.

1.9.1 The Concept of Statelessness

Discerning a clear concept of 'who and what constitutes a real stateless persons' recognized both internationally and nationally is extremely important. Such clarification will avoid the overlaps of works within government and agencies, in which suitable measures and international laws can actually enter to protect the status of the stateless persons.

The word *'statelessness'* is not uncommon to many people. As stipulated in the *1954* Convention, stateless person is 'a person who is not considered as a national by any State under the operation of its law.'[19] This seems to be the worldwide definition of stateless persons, yet, it doesn't symbolize that all States will have an equivalent interpretation.

In the *Nationality Matters* by Laura van Waas, she touches on the concept of

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[19] Art. 1, Convention relating to the Status of Stateless Persons 1954.

statelessness from her actual interaction with a stateless person (with a pseudonym 'Omar') in Netherland. [20] She further points out the severity of this issue and explains that there's a lack of universal interpretation and application of the term 'stateless', as different states still prefer to create their own definition, their own procedures of determining the status of the stateless person, and set up their own requirements on establishing the proof of statelessness. [21] Statelessness can also come in two forms, basically individually and in a big group, which makes it a truly time-draining process to determine those who actually lost their nationality.

Large portion of her article covers the sufferings which the stateless persons will encounter: First, the incapability of conducting 'normal' tasks. This would include the incapability to go to university, get a job, travel, enjoying legal protection or register the birth of the child.[22] Second, there are challenges of conducting normal tasks. This is especially obvious on the part of registration of birth, marriages or deaths. Birth registration, in particular, is considered as the initial first step in curbing statelessness.[23] Third, the mental problems. Due to the long term of soaking in the 'sense of worthlessness'[24], many stateless person suffers from depressions. The future is unforeseeable for them, and the panic of being arrested or failing to make a decent living drain their stamina from time to time.

[20] Laura van Waas, *Nationality Matters: Statelessness under International Law*, (Portland: Intersentia, 2008), 8.
[21] Waas, *Nationality Matters: Statelessness under International Law*, 9.
[22] UN High Commissioner for Refugees (UNHCR), *What would life be like if you had no nationality?* (UNHCR:1999), 3
[23] Waas, *Nationality Matters: Statelessness under International Law*, 13.
[24] This expression is cited in Waas's book as: UNHCR, Statelessness in Canadian Context-A Discussion Paper, Ottawa, July 2003, page 3; Ibid.

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An equally comprehensive view of stateless persons can be found in The *Human rights of Non-Citizens* by David Weissbrodt, in which David gives an abridged glimpse of statelessness under international law. He points out the importance of 'nationality' by referring it to the Universal Declaration of Human Rights, in which 'everyone has the right to a nationality' and 'no one shall be arbitrarily deprived of his nationality'. [25] This fundamental right is reflected in numerous other international human rights treaties,[26] among which the Convention on the Rights of the Child placed a requirement that children 'shall be registered immediately after birth…the right to acquire a nationality…where the child would otherwise be stateless.'[27]
Similar to Laura, David recognizes the two key stateless conventions-the 1961 convention on the Reduction of the Statelessness (1961 convention) focuses on reduction of statelessness, while the 1954 Convention Relating to the Status of Stateless persons(1954 Convention) emphasizes more on the protection.[28]
When it comes to the part of discerning stateless persons, David equates 'the human right not to be stateless' as the 'right to a nationality.'[29] This right, from his interpretation, sound's rather anti-cultural in the beginning as most of the people perceive nationality as something that can be acquired only through birth, while the right to claim diplomatic protection can be acquired by citizens alone. [30]

However, this notion would contradict with the principles of international human

[25] David Weissbrodt and Clay Collins. "The Human Rights of Stateless Persons," *Human Rights Quarterly* 28, no. 1 (2006): 78.
[26] Weissbrodt and Collins, "The Human Rights of Stateless Persons," 80.
[27] Art. 7, Convention on the Rights of the Child 1990.
[28] Weissbrodt and Collins, "The Human Rights of Stateless Persons," 81.
[29] Ibid.
[30] Ibid.

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rights law, as human right is inherited by all human being and it has the element of universality.[31] If nationality is incorporated as a type of fundamental right, then the right to nationality[32], or having a state, should not derive from some other resources, but be able to enjoy such right 'simply because one is a human being'.[33]

The principle of non-discrimination is also highlighted as in supporting the 'non-distinctive' treatments toward stateless persons.[34] In Daniel Moeckli's *Equality and Non-Discrimination,* he points out the importance of equality and non-discrimination as the fundamental rule in all rights. Daniel divides the equality into two types: formal equality and substantive equality.

Formal equality derives from Aristotle's concept of 'likes must be treated alike.'[35] Which the interference from the States are limited; as for Substantive equality, it is further sub-categorizes into equality of opportunities and equality of results.[36] Treatment without distinction is an important concept under international human rights laws, but it is the writer's concern as whether such equality can be manifested on the right to nationality.

David also mentions two types of statelessness: *de jure* statelessness and *de facto* statelessness. *De jure* statelessness is a purely legal description of statelessness, which the Article 1 definition of stateless persons of the 1954 Convention falls under this category.[37] On the other hand, there's *de facto* statelessness, which is referring to a

[31] Daniel Moeckli, Sangeeta Shah, & Sandesh Sivakumaran, ed. *International Human Rights Law(*New York: Oxford University Press, 2010), 43.
[32] Art. 15(1), Universal Declaration of Human Rights 1948.
[33] Weissbrodt and Collins, "The Human Rights of Stateless Persons," 82.
[34] Ibid, 83.
[35] Cited in Daniel's article as: Aristotle, The Nicomachean Ethics of Aristotle (1911) Book V3, paras 1131a-1131b. :191
[36] Moeckli, Shah and Sivakumaran, *International Human Rights Law*, 103.
[37] Weissbrodt and Collins, "The Human Rights of Stateless Persons," 84.

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person who actually possess a nationality, but this nationality is not effectively functioned.[38] In reality, stateless people fall into either of this category or are the combination of both. However, David criticized the false notion that those who falls under the de facto stateless category will be protected by the 1951 Refugee Conventions,[39] and thereby, *de facto* stateless persons are often not protected neither by the 1954 nor 1961 stateless Conventions. In this sense, large number of stateless persons might remain unprotected.

To drill further in-depth on the concept of *De facto* statelessness, Hugh Massey, the author of the *UNHCR and De Facto Stateless* points out the following considerations prior to concluding a person as *de facto*: First, whether the rights in question are provided under international human rights laws alone? Second, are these rights reserved specifically for nationals? Third, what is the extent of such denial of rights and why such denial would end up in statelessness?[40] After analysis of the premises and hypothesize scenarios, Hugh concludes that non-enjoyment of rights attached to nationality does not push a person into a de facto stateless situation, except when it is in the non-enjoyment of diplomatic protection situation.[41]

Hugh has delivered an extremely detail explanation of *de facto* statelessness, however, such explanation can hardly be helpful in identifying the common statelessness nor is it implementable in the case of Thailand. The writer places a higher priority clarifying the confusions between the stateless and other non-citizen status. With this

[38] Ibid.
[39] Ibid, 85.
[40] Hugh Massey, "UNHCR and *De Facto* Statelessness " In *Legal and Protection Policy Research Series* (Geneva: Division of International Protection, 2010), 37. .
[41] Massey, "UNHCR and De Facto Statelessness,"40.

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notion in mind, this article is rather complicated in structure and would be more helpful for those States with only a few categories of stateless persons.

1.9.2 The Causes of their Statelessness

In this section, I would like to compare the background situations of the stateless persons from various countries. This would provide a more concrete insight as to the causes of their statelessness.

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First, as we review the situation of the stateless persons, the writer finds that they don't always started from being a born stateless themselves. In the case of the stateless persons from Thailand, it is depicted by Chie Komai and Fumie Azukizawa, there have been people illegally entering Japan from Thailand since the 1900s. [42] These groups of 'Thai' people were born of the Indochinese refugees and bear no actual Thai citizenship, they could be originally from Vietnam or Laos, in which their home country adopted the principle of *jus sanguinis* and they had lost the tie with their country.[43]

What actually caught them in a limbo was that many of these 'Vietnamese and Lao Refugee' children had previously entered Thailand with their 'Indochinese refugee' parents without Thai nationality.[44] As Thailand was not a signatory state of the 1951 Refugee Conventions, the subsequent generations followed their parents' footstep and it exacerbated their legal status from refugee to stateless. Many of them lived on a fake Thai identity and lived in constant fear of being arrested by both the Thai and Japanese government.

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[42] Fumie Azukizawa and Chie Komai, "Stateless Persons from Thailand in Japan," *Forced Migration Review*, no. 32 (2009): 33.
[43] Azukizawa and Komai, "Stateless Persons from Thailand in Japan," 33.
[44] Ibid.

As we turned to another group of stateless persons, the way in which the Faili Kurds are drastically different. In accordance with the Refugee International, the Faili Kurds are mostly a Shi'a community living in Baghdad, and for centuries they have lived in the border area between Iraq and Iran on both sides of the Zagros Mountain.[45]

For the Faili Kurds, their statelessness is derived from discrimination against in Iraq, which unavoidably triggered the deprivation of the nationality from the former Iraqi government in the 1980s.[46] Prior to that, they were forcibly deported on numerous occasions too. [47]This decree had made stateless to around 220,000 of the Faili Kurds population.[48],[49] Even though the Government repealed this decree in 2006 through the Iraq Nationality Law, however, many of the Faili Kurds lack the documents to prove themselves a Iraqi.

In this case, we could see that the causes of the Faili's statelessness were initiated by the Iraqi State.

Another group of stateless persons who have become stateless due to severe discrimination are the Kenyan Nubians. The Kenya Nubians are a group of people who belongs to different tribes and they were being dispersed into the Kenyan

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[45] Elizabeth Campbell, "The Faili Kurds of Iraq: Thirty Years without Nationality," *Refugees International* (2010).

[46] The decree 666 which deprived the Faili Iraqi of their Nationality was not the first discriminative undertaking from the Iraqi government. Tracing back to the 1969 and mid 1970s, the Iraq government had expelled and deported around 40,000 Faili Kurds to Iran by falsely alleging them as Iranians. Also, many of the Faili's houses were confiscated and their son were arrested and disappeared. See Campbell, Elizabeth. "The Faili Kurds of Iraq: Thirty Years without Nationality ". reliefweb.int: Refugees International 2010; Directorate, Research. "Iraq: Information on the Kurdish Feyli(Faily/Falli) Families, Including Their Main Area of Residence and Their Relationship with Other Kurdish Groups and the Iraqi Regime." https:// www.refworld.org/docid/3ae6ac008.html 1996.

[47] Research.Directorate, "Iraq: Information on the Kurdish Feyli(Faily/Falli) Families, Including Their Main Area of Residence and Their Relationship with Other Kurdish Groups and the Iraqi Regime," https:// www.refworld.org/docid/3ae6ac008.html 1996.

[48] Forced Migration Review, "Statelessness around the World, " 27.

[49] Campbell, "The Faili Kurds of Iraq: Thirty Years without Nationality", Refugee International..

territory. However, the British colonial authority had deliberately left the Nubians out of the social set-up of Kenya. [50] As reported, the Nubians are not included in the census report and they were treated unfairly.[51]

We also come to look at the Rohingya, which is another minority groups that were being denied and continuously persecuted. Most of the Rohingya resided in the North Arakan('Rakhine') State in Burma, which is next to the Bangladesh and they were related to the Bengali and they were believers of Sunni Muslim. [52]In 1982, a new Citizenship Law was introduced and there was a strong suggestion such law was designed to exclude the Rohingya.[53]

Since the writer has compared the causes of the different types of stateless persons, the writer deems that it would be equally paramount to examine how the States involve as a trigger to these groups of stateless populations.

1.9.3 The United Nations initiatives in resolving the issues of statelessness

The problem of statelessness became an international concern after the events as happened mainly in Europe in the first half of the 20th century. As comparative to refugees, the issue of statelessness was rather subtle. Even though later on the UNHCR was entrusted with the responsibilities to address stateless issues in the mid-1970s, however, it was observed that the UNHCR 'was more or less indifferent to the fate of stateless persons…the term "stateless person" hardly ever appears in UNHCR

[50] Adam Hussein, "Kenyan Nubians: Standing up to Statelessness, " *Forced Migration Review* no. 32 (2009): 19.
[51] Hussein, "Kenyan Nubians: Standing up to Statelessness," 19.
[52] Chris Lewa, "North Arakan: An Open Prison for the Rohingya in Burma," *Forced Migration Review* no. 32 (2009): 11.
[53] Lewa, "North Arakan: An Open Prison for the Rohingya in Burma," 11.

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publications."[54]

However, the efforts in resolving statelessness began way back to 1930s. These legal instruments serve as harbingers in laying a cornerstone for the human rights instruments in taking hid of resolving statelessness from various angles.

In this section, I acclaim that these early instruments have contributed in laying out the foundation of integrating human rights in resolving stateless issues. In order to do so, the writer has layout three of the legal instruments in chronological order, ranging from the Harvard Draft of the 1929, Convention on Certain Questions Relating to the Conflict of Nationality Law in 1930, the 1957 Convention on the Nationality of Married Women_and finally, the 1961 Convention on the Reduction of Statelessness and Stateless Persons. Through the following, we shall examine the positive works as conducted under these instruments in resolving statelessness.

1.9.3.1 Harvard Draft, "The Law of Nationality" 1929 and Stateless Persons

The Harvard Draft, "The Law of Nationality" 1929 was perhaps, one of the most comprehensive drafts which not just provide a series of provisions and commentaries addressing to Nationality issues but also contains a number of Nationality Laws from various countries. It is one of the earliest instruments in providing a guideline on dealing with conflict of nationalities.

I argue that these instruments are in relevance with stateless persons started from the objective of the draft. Under the General Introduction, it put forth the intention of 'progress of justice and maintenance of peace to define, improve and develop international law' and also in recognition of 'international labor legislation, the

[54] Independent Commission on International Humanitarian Issues, *Winning the Human Race* (1988), 112, quoted in UNHCR, *The State of the World's Refugees 1997-1998: A Humanitarian Agenda*, 227.

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suppression of the traffic in women and children, the protection of minorities, as well as the recent resolutions concerning legal assistance for the poor.'[55]

The Law of Nationality is consisted of twenty-two provisions and basically provides the general rules on rendering nationality; simultaneously, it also provides clarification on certain important terms. In the following, the writer would like to go over a few provisions which would be of direct connection with stateless persons.

The Law of Nationality has contributed in providing a general explanation under the international law: nationality, national and naturalization. In its commentary, the Law of Nationality provides that 'the relation between a state and a natural person who is its national is based upon the allegiance owed by the natural person to the state'. But it later adds that 'the draft itself does not spell out these obligations, since they are quite different in different societies.'[56] To this end, the writer deems that the Law of Nationality has positioned itself as explaining solely under the context of this convention.

Interestingly, the Law of Nationality allocated numerous provisions on conditioning the state in rendering nationality. For instance, under Article 3, it put forth the situations where states cannot confer the nationality at birth except when a) the birth of such person within its territory or a place assimilated thereto (*jus soli*), or b) the descent of such person from one of its nationals(*jus sanguinis*). [57]

Further conditionings were set forth under Article 4, in which the state 'may not confer its nationality at birth upon a person born in the territory of another state…if

[55] "Harvard Draft, the Law of Nationality ". *Supplement to the American Journal of International Law* 23, no. 1 (1929): 1.
[56] "Harvard Draft, the Law of Nationality ". *American Journal of International Law* 23, no. 1 (1929): 23.
[57] Ibid, Art. 3.

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such person has the nationality of such other state.'[58] One other conditions of not conferring would be when the person is the child of an alien having diplomatic immunity.[59]

It was not until Article 7 in which the Law of Nationality provides the situation in which the State could confer the nationality. This situation would be in the case where 'a person born within its territory'[60] and that he or she may even have more nationalities.[61]

The Law of Nationality then moved on to the conditions of naturalization. Under Article 13, the Law of Nationality authorized the State 'to naturalize a person who is a national of another state, [however] such person shall thereupon lose his prior nationality.'[62] However, in the later article it further stressed that such naturalization cannot take place without the consent of the individual, unless the person is a minor. In this case, the consent would be from the parents.[63]

This clause of supporting 'one nationality' is in accordance with the later human right conventions on supporting everyone should have a state and preferably one state. From the international law perspective, the writer believes it is linked with the notion of allegiance as required under building up of the statehood. Such allegiance is reflected under Article 16, in which it authorized the power of the former state to even re-impose the nationality. As stated under Article 16,

> When a person, after having been naturalized by a state, establishes a residence of a permanent character within the territory of the state of which he was formerly a

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[58] Ibid, Art. 4.
[59] Ibid, Art. 5.
[60] Ibid, Art.9.
[61] Ibid, Art.11, 12.
[62] Ibid, Art.13.
[63] Ibid, Art. 15.

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> national, the latter state may re-impose its nationality upon such person without his consent, whereupon he shall lose the nationality acquired by naturalization.[64]

Under this provision, it establishes the personal jurisdiction of the state in preserving its control.

Talking about the personal jurisdiction, the Law of the Nationality even provides further solution when the whole territory is acquired by another state. Under Article 18(a), it provides that 'those people who were nationals of the first state become nationals of the successor state, unless in accordance with the provisions of its law they decline the nationality of the successor state.'[65]It further provides that the state may not refuse to receive into its territory a person, 'if such person is a national of the first state or if such person was formerly it's national and lost its nationality without having or acquiring the nationality of any other state.'[66]

At last, the Law of Nationality touches on the nationality issue of women who marries an alien. In order to prevent her from losing a nationality, it provides that the '[I]n the absence of a contrary election on her part, retain the nationality which she possessed before marriage, unless she becomes a national of the state of which her husband is a national and establishes or maintains a residence of a permanent character in the territory of that state.[67]

Conclusion

Based from the above, I find that the effort in directly preventing statelessness have been well-incorporated under the Law of Nationality. From the stance of the conflict

[64] Ibid, Art. 16.
[65] Ibid, Art. 18, para. (a).
[66] Ibid, Art. 20.
[67] Ibid, Art. 19.

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of law, the provisions provide concrete solutions in regards to preserving the right to nationality in various occasions, such as in tackling the nationality of married women, state succession, naturalization and the occasions in which nationality can be and cannot be conferred. I also find many of the provisions under the Law of Nationality as simple and had set forth a base in preventing statelessness.

1.9.3.2 The Convention on Certain Questions Relating to the Conflict of Nationality Law 1930 and Stateless Persons

Based from preamble of this Convention, the intention of resolving statelessness is well-manifested under the Convention on Certain Questions Relating to the Conflict of Nationality Law (‘Hague Convention 1930’). Adopted on the 13 April 1930, The Hague Convention 1930 resolved the conflicts in Nationality as arising out of various circumstances, which is a great contribution in preventing statelessness and preserving the nationality of an individual.

The goal of recognizing and protecting the nationality of an individual is spelled out in the general principles of the Convention. Under its preamble, the Convention emphasized that 'it is in the general interest of the international community' and uphold that 'all its members should recognized that every person should have a nationality and should have one nationality only'. [68] It also directly put forth that 'the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality',[69] in which it is 'desirous...as a first step toward this great achievement, of settling in a first attempt at progressive

[68] League of Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930 ", 89: League of Nations, 1930: *Preamble.*
[69] Ibid.

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codification'.[70] To this end, the goal of the Convention is very clear in its intention to embark on resolving statelessness.

The Hague Convention 1930 has also recognized some limitations yet it's still bearing a positive, forward looking spirit to lay a foundation for future treaties in addressing statelessness. Under the *Preamble*, it further states that resolving statelessness might not be plausible 'under the economic and social conditions which at present exist in the various countries', that 'it is not possible to reach immediately a uniform solution'.[71]

The normative context of the Hague Convention 1930 went on in layout out the various principles and circumstances in addressing statelessness, mostly in the situation where there involved a conflict of laws. Principle wise, the Convention acknowledged that that the considerations of nationality fell within the reserved domain of States. It specify that the rendering of nationality 'shall be determined in accordance with the law of the State'[72], as long as such determination is in consistence with the 'international conventions, international custom, and the principals of law generally recognized with regard to nationality.'[73]

The Hague Convention 1930 bears many elements of preventing statelessness from arising by identifying various circumstances. Some of these circumstances would include: dual nationalities, adoption, Nationality issue of the married[and divorced] women, and at all time, these provisions offered protections that are in coherent with the general principles as layout under this Convention.

[70] Ibid.
[71] Ibid.
[72] Art. 2, League of Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930, " 89.
[73] Ibid.

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Based from above, we could see that the Hague Convention has focused on addressing the stateless persons from the angle of conflict of law in resolving the nationality issues. It layout what to do under those circumstances where a person possess dual nationalities, that they should firstly be treated 'as if he had only one.'[74]

Under the Article 5, it provides further guidance on which country's nationality shall prevail, in which it states that,

> a third State shall, of the nationalities which any such person possesses, recognize exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.[75];

The Hague Convention 1930 also addresses the issue of married women. For instance, in the event when the married woman lost the nationality under the nationality law of her own state, then the Hague Convention provides a specific solution that such married woman shall be protected by acquiring the nationality of her husband.

As stipulated under Article 8, it states,

> If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditioned on her acquiring the nationality of the husband.[76]

Another consequential contribution of the Hague Convention 1930 to married women is that it provides a non-discriminative and non-dependable solution. For instance, under the circumstance where the husband's nationality is changed due to naturalization, Hague Convention 1930 then provided that such change shouldn't affect the nationality status of the wife. As stipulated under Article 10,

[74] Art.5, *Hague Convention 1930.*
[75] Ibid, Art.5.
[76] Ibid, Art. 8.

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> Naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.[77]

The Hague Convention 1930 not just addresses the risk of statelessness among married women, but also extended toward the nationality of the children. Similar to how it addresses the nationality of the married women, the Convention layout various circumstances that might possibly cause the children to lose their nationality, such as in the case of naturalization[78], children with either unknown parents[79]or parents of unknown nationality[80] and adoption.[81] The writer would like to bring specific attention to Article 15, as it is directly addressed to the issue of risk of statelessness among children. Under Article 15, it states,

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> Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.[82]

It also prevents prospective loss of nationality in the event that the child is illegitimate. Under Article 16, it provides, '[R]recognizes that such nationality may be lost as a consequence of a change in the civil status of the child (legitimation, recognition), such loss shall be conditional on the acquisition by the child of the nationality of

[77] Ibid, Art. 10.
[78] Ibid, Art.6.
[79] Ibid, Art. 14.
[80] Ibid, Art. 15.
[81] Ibid, Art. 17.
[82] Art. 15, League of Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law", 13 April 1930, 89.

another State under the law of such State relating to the effect upon nationality of changes in civil status.'[83]

All in all, we could witness a well-integrated convention that attempts to resolve and protect stateless persons from various perspectives.

To this end, I can conclude that the Hague Convention 1930 has been consequential and directly relevant to stateless persons. It attempts to resolve the issue of statelessness by ascertaining the nationality of individuals under different status and circumstances in life through the use the perspective of conflict in laws.

1.9.3.3 The 1957 Convention on the Nationality of Married Women and Stateless Persons

The 1957 further affirms the issues of conflict of nationality law from the Hague Convention 1930 in terms of married women in the 1957 Conventions on Nationality of Married Women ('1957 Convention'). This Convention scope down the work of protection of nationality right to married women alone.

The 1957 Convention has affirmed its protection of nationality to married women as non-dependable on the spouse. Under Article 1, it states that,

> [N]either the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.[84]

The 1957 further on affirms the absolute protection from the risk of statelessness toward married women under Article 2. It provides that,

[83] Ibid, Art. 16.

[84] UN General Assembly, "Convention on the Nationality of Married Women, " ed. by UN General Assembly. https://www.refworld.org/docid/3ae6b3708.html UN General Assembly, 1957: Art.1

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> [N]either the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.[85]

To this end, we could observe that a stronger protection is offered as even the individual herself couldn't relinquish the nationality at her discretion.

Finally, the 1957 Convention extends its protection towards the married women in alien status by offering a privileged naturalization procedure. Under Article 3, it provides that,

> [A]lien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.[86]

1.9.3.4 The 1961 Convention on the Reduction of Statelessness and Stateless Persons

Another legal Instrument that directly addresses the plights of Stateless persons is the *1961 Stateless Convention*. While the *1954 Stateless Convention* focuses on defining the classes of Stateless persons, regulating and improving their status[87], the *1961 Convention* requires and adopts further actions and cooperation from the State parties in harmonizing their domestic laws.[88]

I also undertaake to examine the merits of the *1961 Conventions* and its relevance to the human rights of Stateless persons. He argues that under the *1961 Convention*, the concerns of human rights protection and security is addressed parochially vis-a-vis

[85] Assembly, "Convention on the Nationality of Married Women,." Art. 2.
[86] Ibid, Art.3.
[87] Goodwin, AV 1961
[88] ECOSOC Resolution, 319 A and B (XI)

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human right to nationality only.[89] A detailed observation further reveals the existence of residuary discretion of domestic laws of which its application can in numerous ways lead to the exclusion of human rights protection to Stateless persons.

Furthermore, the *1961 Stateless Conventions* has attempted to resolve many incidental problems which widely inures against Stateless persons. These incidents would include ways to resolve the nationality of the foundling[90] and those children birthed on board ships or aircrafts.[91] The *1961 Convention* is not without merit, as it imposes positive obligations on States to grant nationality in certain circumstances.[92] This move is positively directed to leaven the condition of Stateless persons when compared to the stipulations of the *1930 Hague Convention*. Under *Article 1* of the said Convention, it obligates a Contracting State to grant its nationality to a person born in its territory who would otherwise be rendered Stateless.[93] It posits that,

> The person who becomes Stateless de facto should as far as possible be treated as Stateless de jure, to enable them acquire an effective nationality.

It can be seen from the above that the cardinal focus of the *1961 Stateless Convention* is the prevention and loss of the nationality of a Stateless person by all means.

1.9.3.5 Conclusion

Based from the above, we could observe that the international society has been keen in tackling the issues of statelessness since the early twentieth century. Even though it has not reached the point of comprehensiveness in covering all aspects of the

[89] AV 1961, See also: Art.15, UDHR, Art. 5, CERD, Art. 24 (3), ICCPR, Art. 7 and 8, 1989 CRC
[90] Art. 2, 1961 Stateless Convention
[91] Art. 3, 1961 Stateless Convention
[92] AV 1961
[93] AV 1961

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concerns of the stateless persons, however, it has laid a good foundation and source of for the establishment of the human right instruments.

1.10 Organization of the Study

This research is organized into the following Five Chapters:

Chapter One displays the layout of this dissertation and provide the background of the causes of statelessness and some of the early human right instruments in addressing to stateless persons. In this Chapter, I hypothesize that even though the 1954 Convention relating to the Status of the Stateless Persons have guaranteed a quasi-national and quasi-alien status, rights and protections toward stateless persons, however, the rights are to the minimum, neither is there a solid protection mechanism in place. I then claim that human rights instruments as following the 1954 Convention relating to the Status of the Stateless Persons have enhanced the status, rights and protections of the stateless persons in various aspects.

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In Chapter Two, I conducted a thorough examination on the distinctive disadvantaged of the status, rights and protections of the stateless persons as comparative to the nationals and aliens under the international law. This Chapter provides a glimpse as to why it is necessary to look into the 1954 Convention relating to the Status of the Stateless Persons and human right instruments at the later stage.

Chapter Three examines the normative content and the status, rights and protections as ascertained under the 1954 Convention relating to the Status of the Stateless Persons. Questions that are probed in this Chapter are: what are the status, rights and protections as guaranteed under the 1954 Convention relating to Status of Stateless

Persons? It is important to note that as the 1954 Convention relating to the Status of Stateless Persons largely modeled on the 1951 Refugee Conventions, I have drawn much references from the 1951 Refugee Convention in interpreting the similar terms as existed under the 1954 Convention relating to the Status of the Stateless Persons.

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Chapter Four focuses on the comparative studies of how the subsequent human right instruments such as the ICCPR, ICESCR, CRC and the CEDAW have contributed in enhancing the human rights of stateless persons as guaranteed under the 1954 Convention relating to the Status of the Stateless Persons. This chapter is divided into rights and protections, in which the 1954 Convention relating to the Status of Stateless Persons is used as central point in concluding whether the subsequent human right instruments has affirmed, clarified or supplemented the 1954 Stateless Convention. I also identify additional human rights that would be beneficial in enhancing the rights and protections of the stateless persons.

Chapter Five is the last chapter and it touches on the recommendations and conclusions of this study. In this chapter, I re-affirm that subsequent human rights, especially the specific human rights instruments such as the CRC and CEDAW, have contributed in building on the rights and protections as guaranteed under the 1954 Convention relating to the Status of the Stateless Persons. In this Chapter, I also present that stateless persons may access the treaty-based and charter-based protection mechanisms as they don't set restrictions on who can submit the communications. I conclude by saying that specific human rights instruments and the protection mechanism are applicable to stateless persons and contribute in specifying,

maximizing and supplementing the gaps as existed under the 1954 Convention relating to the Status of the Stateless Persons.

The above five chapters will provide a through understanding of how human rights could be applicable to stateless persons and strengthen the 1954 Convention in relating to the Status of Stateless Persons. At this point, we shall firstly turn to observe the status, rights and protections of different individuals under the international law.

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Chapter Two The Status, Rights and Protections of Individuals under the International Law

The goal of this chapter is to illustrate the disadvantaged status, rights and protections of the stateless persons through a comparative examination with the nationals and aliens under the international law. This would provide us with a foundation as to the necessary involvements of the human rights in strengthening the stateless persons' rights and protection, which will be touched in the subsequent Chapters.

In the following, I will first introduce the formation of statehood which leads to the introduction of the individuals under the international law. I will then divide these individuals into three groups -the nationals, aliens and stateless persons, and compare their status, rights and protections side by side.

Several questions would be explored in this Chapter, such as: what is the significance of status? How does it arise anyway? Also, what are the rights and duties incur out of such status and what are the right and responsibility of the states?

In order to understand these questions, it would be beneficial to examine firstly the concept of statehood under the international law.

Concept of Statehood

Prior to examine status, rights and protections of the different individuals, it would be helpful to first understand the status of these individuals in terms of state formation. Under the international law, these criteria are often referred as a 'classical criteria for statehood'.[94]

In accordance with the Article 1 of the *Montevideo Convention on the Rights and Duties of States* (Montevideo Convention 1933), the essential elements of statehood under the international law have been clearly defined to include the following:

(a) Permanent population;

(b) A defined territory;

(c) Government; and

(d) Capacity to enter into relations with the other states. [95]

It is important to note that lacking any of these criteria would affect the formation and existence of a State. Among these, one of the core elements we could see here is the criteria of 'permanent population'. This population is crucial in a sense that they are the one who develop the country's economy, the cultural life and the political

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[94] James R. Crawford, "State " In *Max Planck Encyclopedia of Public International Law [MPEPIL]*: (Oxford University Press, January, 2011) para.13.

[95] Art.1, "Montevideo Convention on Rights and Duties of States, Opened for Signature 26 December 1933, 165 Lnts 19." 1933

experience.[96] Without the existence of permanent population, a territory cannot be transformed into a State.[97]

But what does it mean by 'permanent population'? as depicted by Henkin, he mentioned that,

> [The Permanent Population] permanently attached to the territory by way of nationality on the basis of either one of jure soli or jure sanguinis or by naturalization in accordance with the domestic law of the state.[98]

Based from the above definition, we could observe that the State can exercise personal jurisdiction over it's nationals within its jurisdiction.[99] Such personal jurisdiction is a legal consequence of nationality, which is a link between the States and it's own nationals. Based on this link of nationality, it gives rise to the rights which the nationals can enjoy and the duties in which they have to comply.

Therefore, within this population, we could find different type of people with various types of status, and each status come with different scope of rights and level of protections. Yet, not all of them are nationals of that particular country. On the contrary, we could find three groups of people among the population, they are: the nationals, the aliens and the stateless persons.

As previously mentioned, the States can exercise personal jurisdiction over it's own nationals and nationality is the linkage between the nationals and the States. Prior to

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[96] Yaffa Zilbershats, *The Human Right to Citizenship*, (New York: Transnational Publishers, Inc., 2002), xv.
[97] Ibid.
[98] Henkin et al., International Law: Cases and Materials, West Publishing Company (1980), 173.
[99] Oliver Dörr, "Nationality, ".Max Planck Encyclopedia of Public International Law [MPEPIL]: (Oxford University Press, 2006), para. 42, 43.

examine on the status, rights and protections of each individuals, I would further elaborate on the part of nationality.

The Nationality

As depicted by the International Court of Justice (ICJ) in the *Nottebohm* Case regarding the significance of nationality, the ICJ provides,

> [N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Thus, the legal term 'nationality' reflects upon the formal relationship of individuals with a State and not on their ethnic origin or affiliation. The sum of its nationals, and thus the concept of nationality as such, determines the 'personal dimension' of a State in its international relations and gives rise to specific rights and duties of States.[100]

In principle, according to Hudson,

> [T]he determination of questions of nationality falls within the domestic jurisdiction of each state.[101]

[100] Dörr, "Nationality, "para.1.

[101] Manley O. Hudson, "Nationality, Including Statelessness", *ILC Yearbook* A/CN.4/50, Vol. II (1952), 3 at 7. See also Manley O. Hudson, *Cases and Other Materials on International Law*, 2nd edn. (St. Paul: West Publishing Co., 1936), 201; and Hudson, *Cases and Other Materials* 3rd edn. (1951), 138.

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Nationality leads to the collision of rights (eg of diplomatic protection) and duties (eg of allegiance, of military service etc.)[102] This will be touched in the later section.

Personal jurisdiction is referring to a recognized criteria under the international law for establishing a state's competence in matter and cases that have a transnational element. Such personal jurisdiction can extend beyond it's own state's border without the concern of violating other state's sovereignty.[103]

Nationality is still a valid way of establishing the jurisdiction of the State, certainly distinguishing its relations with other States and people. When an individual falls under the personal jurisdiction of a State, it means that particular state would be able to exercise the legislation, the administrative and judicial proceedings over that individual.[104]

Furthermore, nationality is a pre-condition prior to exercising jurisdiction. For instance, under Article 12 para. 2 of the Rome Statute reads,

> [T]he Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3,
>
> (b) The State of which the person accused of the crime is a national.[105]

By virtue of Nationality, it allows the States to exercise personal jurisdiction over it's own nationals. This also connotes that the individual is attached to the State and as

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[102] Dörr, "Nationality," para.22.
[103] Ibid, para.45.
[104] Ibid, para. 43.
[105] *Art. 12 para.* 2, Rome Statute of the International Criminal Court

part of the population.[106] Therefore, by virtue of nationality, the individual is attached to the States.[107]

Furthermore, as the national of a particular State travels overseas, the rights and duties which that particular individual has toward his State of nationality do not diminish. It is because the bond of nationality still continue to attach with that individual and so are the rights and duties as extended to them overseas.[108]

We that in mind, we shall now move on to examine the different status of the individuals.

2.1 The Status of Individual under International Law

The term status is referring to an individual's position that is not dependable neither upon the act of law nor the consensual agreement between parties. It is a 'standing; a state or condition or social position.'[109] It is also a legal relation of individual to rest of the community. Subsequently, a status would determine 'the rights, duties, capacities and incapacities' of a person.[110]

Based from the above definition, having a legal status would give rise to subsequent rights and protections. For example, during the Roman era, the Romans would proudly boast '*civis romanus sum'*(meaning: I am a Roman Citizen), in which such status as a Roman Citizen would bring forth certain privileges and rights.[111] Similarly, in the civil law context, an individual with a status of a minor would limit their right or vote, sitting on a jury, entering into contract or writing valid will.

[106] Dörr, "Nationality," para. 42.
[107] Ibid, para.1.
[108] Ibid, para.44.
[109] *Black's Law Dictionary* 2nd ed. https://thelawdictionary.org/status/: Free Online Legal Dictionary.
[110] *Black's Law Dictionary* 6th ed. West Publishing Company 1990.
[111] Brian Opeskin and Ivan Shearer, ed by Richard Perruchoud Brian Opeskin, Jillyanne Redpath-Cross, 93-122.(United Kingdom: Cambridge University Press, 2012), 94.

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In the following, we will start by examining the status of the Nationals, followed by the status of aliens and observe how are they in contrast with the status of the stateless persons.

2.1.1 The Status of Nationals under the International Law

2.1.1.1 Concept of National Status

In general, a 'national' is referred as,

> A person, who, either by birth or naturalization, is a member of a political community, owning allegiance to the community and being entitled to enjoy all its civil and political rights and protection; a member of the State, entitled to all its privileges a person enjoying the nationality of a given State.[112]

A national, or citizen then, would mean that the specific individual is a full membership of a State.[113] That Their existence is legal and under the care of the States. In principle, each State shall determine under its own law who are its nationals.[114] A person is deemed as a national of a state when there is a legal relationship established between the individual and that State, which such linkage is referred as 'Nationality'. [115] Again, as depicted by the International Court of Justice in the *Nottebohm Case,*

> [N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. [116]

[112] Opeskin, Foundations of International Migration Law, 434.
[113] Yaffa Zilbershats, *The Human Right to Citizenship.*, (New York: Transnational Publishers, Inc., 2002,) 3.
[114] Art.3, Europe, Council of. "European Convention on Nationality Ets 166." 1997.
[115] Dörr, "Nationality," para. 1.
[116] *Nottebohm (Liechtenstein V Guatemala) (Second Phase)*, ICJ Rep. 4 (1955).

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2.1.1.2 Difference between Nationals and Citizens

Nationality is a legal concept of both domestic and international law, in which the National status is often interchangeably used with the term ‘citizens’, and the term ‘citizen’ is most commonly used domestically while ‘national’ as a legal status would entail the consequence of rights and duties under the national law.[117] Traditionally, the term ‘citizenships’ seems to denote fuller entitlement of civil and political rights. As formerly mentioned, sometimes the term ‘citizens’ and ‘nationals’ would be differentiated, depends on how closely connected the individual is with the States. Therefore, ‘citizenship’ might refer to an ‘internal life of the state.’[118]

The International gives discretion to the State to determine the nationality of its own national[119] and such differentiations would be acceptable as long as it doesn’t draw distinction in a discriminatory manner.

Such discretion is reflected under the citizenship/nationality policy in the United Kingdom. Under it’s British Nationality Act 1981, the people are distinguished into different categories: the British Citizens, British Overseas, Territories Citizens and British Nationals(Overseas).[120]

There is also another category called ‘the Commonwealth citizen’, in which they were restricted from entering the United Kingdom. However, due to their former ties, these Commonwealth citizens have the right to sit as juries, to vote and to stand for election to the British Parliament.[121]

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[117] Dörr, “Nationality,”para. 1.

[118] Isin, Bryan S. Tumer and Engin F. *Handbooks of Citizenship Studies* SAGE Publications, 2003, 278.

[119] Art.1, Nations, League of. *Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930* League of Nations.

[120] Anthony Aust, "Nationality, Aliens and Refugees," Chap. Eight In *Handbook of International Law*: Cambridge University Press, 2005, 179-951, 80.

[121] Aust, "Nationality, Aliens and Refugees,” 180.

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As we have an understanding of the concept of national, now the question is: how can an individual acquire such national status? This is what we will be touching on in the next section.

2.1.1.3 Principles of Acquiring the National Status

In regards to the method of acquiring the nationality, each country has its own nationality law in governing the criteria for acquiring the nationality. Often time, it will be based upon the principle of either *jus sanguinis, jus soli* or naturalization. Over here, I will focus on the conferment of nationality through *jus soli*, *jus sanguinis* and naturalization. Knowing how these principles entail would be beneficial in understanding why stateless persons are at disadvantaged under the international law.

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Basically, each country has its own nationality law and requirements for Nationality acquisition. For example, in Portugal, it has set forth some criteria for birthright acquisition of nationality and even extend to stipulate the acquisition of nationality by underage or disabled children.[122] In terms of birthright acquisition of nationality, the Portugal Nationality Law reads,

> a) Children of Portuguese mother or father born in the Portuguese territory;
>
> b) Children of Portuguese mother or father born abroad if the Portuguese parent is there at the service of the Portuguese State;
>
> c) Children of Portuguese mother or father born abroad if their birth is registered in the Portuguese civil registry or if they state that they wish to be Portuguese;
>
> d) Individuals born abroad with at least one 2nd-degree ascendant of Portuguese nationality in straight line who has not lost this nationality, if they

[122] *Art.1 and 2, Portugal: Nationality Law (N. 37/81, as Amended by Organic Law N. 2/2018).*

state that they wish to be Portuguese, have bonds of effective connection to the national community and, having met requirements, register their birth in the Portuguese civil registry;

e) Individuals born in the Portuguese territory, children of foreigners, if at least one of the parents was also born here and has residence here, regardless of title, at the time of birth; etc.[123]

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Based from the above, we could observe that the Portugal Nationality Law has provided a comprehensive list of criteria and circumstances for the acquisition of nationality. The Portugal Nationality Law has provided numerous specific details as when an individual can acquire nationality. Such circumstances include the acquisition of nationality by adoption,[124]by naturalization,[125]or in the case of marriage or civil partnership.[126]

Under the international law, there are three ways to achieve the status of national: through the principle of *jus sanguinis* (blood ties), *jus soli* or naturalization; Other forms of obtaining national status would be through marriage (or divorce) and adoption. Due to the limitation of this paper, I will solely focus on the principle of *jus sanguinis*, *jus soli* and naturalization respectively.

2.1.1.3.1 Acquisition of National Status through the principle of *jus sanguinis*

National status as conferred under the principle of *jus sanguinis*, or right of blood, means that children acquire by birth the nationality which at the time of their birth the

[123] *Art.1(a)-(e), Portugal: Nationality Law (N. 37/81, as Amended by Organic Law N. 2/2018).*
[124] Art. 5, *Portugal: Nationality Law (N. 37/81, as Amended by Organic Law N. 2/2018).*
[125] *Art.6, Ibid.*
[126] Art.3, *Portugal: Nationality Law (N. 37/81, as Amended by Organic Law N. 2/2018).*

parents possess.[127] In another word, the national status conferred in following the principle of *jus sanguinis* would be based on the blood tie or the race or other ethnic identity of the parents.

The principle of *jus sanguinis* could even be applicable in terms of decease of the parents, regardless whether it occurs at the time or after the child is born. As further stipulated under the Austrian Nationality Act 1985,

> (2) The death of a parent who meets the requirements set out in subparagraph 1 to 4 of paragraph (1) above prior to the birth of the child shall not preclude the acquisition of nationality if that parent was a national at the date of his or her death.[128]

Some of the countries that mainly follow the *jus sanguinis* principle would be Chile, China, Czech Republic, and etc. Take Austria for instance, under its Federal Law concerning Austrian Nationality (1985 Nationality Act), it provides,

> Article 7.(1) Children shall acquire nationality at the time of their birth if at the time:
>
> i. the mother, as defined in article 143 of the Civil Code, Compendium of Laws and Regulations(JGS) No. 946/1811, is a national;

Further example is reflected under the Portugal Nationality Law, which we have previously reviewed. The Portugal Nationality Law also adopts the principle of *jus sanguinis*, as it provides that the person may acquire national status if he or she is,

a) Children of Portuguese mother or father born in the Portuguese territory;[129]

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[127] Dörr, Oliver. "Nationality, "para. 12.
[128] Art. 4 para. 2, "Austria: Federal Law Concerning the Austrian Nationality(Naitonality Act 1985)(Last Amended 2006) ". National Legislative Bodies, 30 July 1985.
[129] *Art. 1(a), Portugal: Nationality Law (N. 37/81, as Amended by Organic Law N. 2/2018).*

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As we have a thorough understanding of nationality acquisition through the principle of *jus sanguinis*, it is now appropriate to turn to another principle, which is *jus soli.*

2.1.1.3.2 Acquisition of National Status through the principle of *jus soli*

Jus soli is often referred as the right of the soil. It is when States confer their nationality upon children who are born in their territory.[130] Many of the English common law countries adopt the principle of *jus soli*. Under the European Convention on Nationality, it provides,

> Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality.[131]

Based from the above, the article emphasizes on 'born on its territory', which reflects the principles of *jus soli.*

Typical country which adopts the principle of *jus soli* would be the United States, in which the Citizenship clause of the 14th Amendment to the United States Constitution provides,

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.[132]

From the above, we could see that the *jus soli* principle works in a way in which National status is automatically conferred once the individual is born on specific state's territory. Such way of conferring nationality works better in preventing statelessness.

[130] Dörr, Oliver. "Nationality, "para. 13.
[131] Council of Europe, "European Convention on Nationality Ets 166," 1997, Art. 6(2).
[132] Section 3 clause 1, "United States Constitution ". edited by US Congress, 1866.

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2.1.1.3.3 Acquisition of National Status through Naturalization

2.1.1.3.3.1 The Concept of Naturalization

In accordance with the scholar Oliver Dörr , voluntary naturalization is,

> the conferment of nationality onto an alien by a formal individual act with the consent of, and usually upon special application by, the person concerned.[133]

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Naturalization provides a leeway for aliens to be naturalized. Each country has it's own process of naturalization. For instance, as we traced back to the Portugal Nationality Law, it reads,

> 1. The Government grants Portuguese nationality, by naturalization, to foreigners who cumulatively meet the following requirements:
>
> a) They are of age or emancipated under Portuguese law;
>
> b) Legally residing in the Portuguese territory for at least five years;
>
> c) Know the Portuguese language sufficiently;
>
> d) Have not been convicted, with a final sentence of imprisonment equal to or greater than 3 years;
>
> e) Do not constitute a danger or threat to security or national defence due to their involvement in activities related to the practice of terrorism, in accordance with the respective law.
>
> 2. The Government grants nationality, by naturalization, to minors, born in the Portuguese territory, children of foreigners, provided that they meet the requirements of points (c), (d) and e) of the preceding paragraph and provided that, at the time of application, one of the following conditions is fulfilled: a) One of the parents has had residence here, regardless of title, for

[133] Dörr, Oliver. "Nationality, " para. 18.

> at least five years immediately preceding the request; b) The minor has completed at least one primary or secondary school cycle here.[134]

Similarly, the Costa Rica Constitution also reads,

> The following are Costa Ricans by naturalization:
>
> 1. Those who have acquired this nationality under former laws.
>
> 2. Nationals of other countries of Central America and Spaniards and Iberian-Americans by birth, who have resided officially in the country for five years and meet any other requirements prescribed by the law.
>
> 3. Central Americans, Spaniards and Iberian-Americans who are not native-born, and other foreigners who have been domiciled in Costa Rica for at least seven years and meet any other requirements prescribed by the law.[135]

Base from the above, we could observe that the acquiring the national status through naturalization provides a chance for the aliens to be assimilated without the necessity of an actual blood tie as in jus sanguinis. Also, it doesn't require the individual to be born in the territory so as to build a link since birth.

On the contrary, naturalization is a rather 'forward looking' type of way which opens the possibility of other nationals to change their nationality and become a citizen of another state. As we could observe from the above two countries, the requirements would be on the basis of either good behavior or consecutive residence for a period of time. Again, this is an option as entirely opened to the people with national status.

The above is the general status of the nationals under the international law. In the following, we shall move on to the status of the aliens and how the status of aliens are acquired.

[134] *Art. 6 para.1 and 2, Portugal: Nationality Law (N. 37/81, as Amended by Organic Law N. 2/2018).*

[135] Art. 14, Costa Rica Constitutions

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2.1.2 The Status of Aliens under International Law

Based from the above, we could observe that due to the solid bonding status between the state and its national, the nationals subsequently receive the fullest scope of rights and protection. But within the jurisdiction of a state, its composition is not entirely consisting of the nationals, but various other types of people, which they could be categorized as aliens.

In the following, I argue that as comparative to the nationals, the status of the aliens who reside in the host country receive more limited scope of rights and protections as comparative to the nationals. Prior to moving to examine the status of the alien, let's have a brief overview of the status of the alien in the past.

2.1.2.1 The Background and Concept of the Status of Alien

2.1.2.1.1 Background

Over here, I would like to provide a brief background in regards to the transition of status of the Aliens. In the ancient times, aliens were classified as outcasts and enemies and denied legal capacity and rights.[136] This was because as comparative with the citizens during that time, they didn't share a common personal elements[137] such as the same language or with the same ethnicity. It was only through specific bilateral treaties, which at that time was referred as the Roman hospitium publicum agreement, that certain benefits are available to the aliens. Later on, during the Middle Ages, further changes such as the introduction of hospitality had led to the transition of the status of the aliens to be more amicable for the host State.

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[136] Kay Hailbronner and Jana Gogolin. "Aliens." In *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law(http://opil.ouplaw.com). Oxford University Press, 2013, para. 5.
[137] Hailbronner and Gogolin, "Aliens", para.5.

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The question then raise: how would the status of the alien in the present day look like and how is it in contrast with the status of the nationals? This will be touched in the next section.

2.1.2.1.2 Concept of the status of Alien

The status of the aliens is very much determined by the domestic law. Some scopes of aliens are broader while others are contextually restrictive. Take the Law of Ukraine on the Legal Status of Aliens, for example, it has provided a rather broad definition and scope to the legal status of the aliens. Under Article 1 on 'Definition of the term Aliens', it states,

> Foreign Citizens-persons who have citizenship of foreign states and who are not citizens of the Ukraine, as well as stateless persons-persons, who do not have citizenship of any state, shall be recognized as aliens.[138]

Under the *Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live*,[139] it also provide a definition of alien. Under Article 1, it provides that an 'alien' is an individual who is not a national of the State in which he or she is present.[140] From this definition, it is implicit that an alien does not owe allegiance to the state in which he or she currently resides.

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[138] Ukraine, (4 February 1994), "The Law of Ukraine on the Legal Status of Aliens", in article 1.

[139] UN General Assembly, *Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live*, (13 December 1985). http://www.refworld.org/docid/3ae6b37020.html.

[140] Carmen Tiburcio, *The Human Rights of Aliens under International and Comparative Law* (The Hague: Martinus Nijhoff Publishers, (2001), 1. Note that any reference to 'alien' is also reference to 'non-citizen' or 'non-national', and vice versa, except where it is otherwise stated.

While a citizen is considered a permanent resident of a state, an alien is a usually considered as a temporary resident, who comes into a particular state for a specific duration of time and given purposes.

However, despite not having the nationality of the host state, an alien still bears the nationality of his home state. Therefore, it was their home state which exercise the personal jurisdiction over them. In this case, the aliens are then subject to two jurisdictions: one from their State of nationality and another one form their host country.

The status of the citizen changes to that of an alien as soon as he or she travels from the home country into another. However, the fact of their nationality or citizenship to a specific country remains intact.

2.1.3 The Status of Stateless Persons under International Law

As comparative both the nationals and the aliens, the stateless persons do not have any State to exercise personal jurisdiction over them as they do not have the bond of nationality. This is the main reason why stateless persons are often being considered as one of the most vulnerable person in the world.[141] As they are without nationality, they would not have a responsible state to claim responsibility for their actions or even wrongful act if any.

The causes of such ambiguous status appear to be as a result of various factors, such as the succession or transfer of a territory through forced migration, changes in the nationality law, discrimination, and displacement or simply, the father of the child either refuses to recognize the child as his own or does not take the initiative in

[141] Harrington, Kohn and Goris, 'Statelessness: what it is and why it matters", 4.

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registering the child. What's challenging is that such causes do very little in better enhancing their status but create-an 'everlasting' gap between the host states and the stateless persons in a rather discriminatory manner.

2.2 The Rights of Individuals under the International Law

As we could observe above, under the permanent population there are three different status as derived, namely, the national, aliens and stateless persons; we also learn that the States may exercise personal jurisdiction over their nationals. Therefore, the question may rise: based on their statuses, what are the rights as incurred? In return, what are the duties and obligations for both the Contracting State and individuals? This will be explore in the following section. I will start with a comprehensive review of the rights of Nationals, followed by aliens as in contrast with that of the stateless persons. Again, I hold that stateless persons are in lacking of rights as comparative to the nationals and aliens under the international law.

2.2.1 The Rights of Nationals under the International Law

Based on the bonding through the Nationality, the States may exercise personal jurisdiction over it's own nationals. Under which, the nationals can enjoy the full rights and would need to perform certain duties in reciprocate for the protections and assurance of these rights by the States.

The question than raise: what type of rights and duties? In the following, I will start by explaining the rights as enjoyed by the nationals.

In general, it is the home State who are the one that set up criteria as to determine who shall be its nationals. Therefore, it is also the State, which by various constitutional and statutory provisions, ensures that their nationals could enjoy the rights.[142]

[142] https://www.britannica.com/topic/nationality-international-law

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Therefore, we could see that the bond between the State and its own national is very intimate. Once such national status is established, such bond incurs a series of rights (and duties) between the sovereign state and the national. As aptly put forth by Weis,

> Nationality denotes a specific relationship between individuals and state, conferring virtual rights and duties as distinct from the relationship of the alien to the state of sojourn.[143]

This notion is further supported by Yaffa, who depicted that, 'once a person become a national of a State, they enjoy all the rights of a citizen.'[144]It is this privileged status that enables the citizen to access to various rights and obtain the protection of the State,[145] and that is why many scholars depict such national status as 'the right to have rights.'[146] The significance of having a nationality is further echoed under the Inter-America Commission on Human Rights,

> Accordingly, nationality, being one of the most important rights of individuals, after the right to life itself, offers prerogatives, guarantees and benefits man derives from having a membership in a political and social community, the State, which stems from or are supported by rights.[147]

In the following, I find that the nationals enjoy the rights as following: Civil rights, Political rights, Social rights, Economic rights and Cultural rights. These rights are ascertained under the Constitution of each States toward their own citizens.

2.2.1.1 Civil Rights as enjoyed by Nationals

The term civil rights is used to imply that the state has a role in ensuring all citizens have equal protection under the law and equal opportunity to exercise the privileges

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[143] Paul Weis, Nationality and Statelessness in International Law, (1979), 4-5.
[144] Zilbershats, *The Human Right to Citizenship*, 5.
[145] Ibid, 4.
[146] US Supreme Court, *Trop v. Dulles*, Secretary of State et. al., 356 US 86, (1958).
[147] Tiburcio, *The Human Rights of Aliens under International and Comparative Law*, 5.

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of citizenship regardless of race, religion, sex or other characteristics unrelated to the worth of the individual.[148]

The type of civil rights that could be enjoyed by the nationals would include:

- Right to life
- Right to be free from torture and degrading treatment
- Right to personal liberty
- Right to privacy
- Right to fair trial
- Right to freedom of thought and expression
- Right to religion

Typical example of one of the civil rights as enjoyable by nationals is reflected under the Thai Constitution. Under the Section 28 of the Thai Constitution 2017, it provides,

A person shall enjoy the right and liberty in his or her life and person.

Also, under Section 4 of the same,

Human dignity, rights, liberties and equality of the people shall be protected.[149]

2.2.1.2 Political Rights as enjoyed by Nationals

The political right is referring to the right that involve participation in the establishment or administration of a government and are usually held to entitle the adult citizen to exercise of the franchise, the holding of public office, and other political activities.[150]

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[148] https://it.ojp.gov/documents/Privacy_Civil_Rights_and_Civil_Liberties_Policy_Templates.pdf, page 2

[149] Section 28, Thai Constitution Law 2017

[150] https://www.merriam-webster.com/dictionary/political%20rights

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The type of political rights that could be enjoyed by the nationals would include:

- Right to freedom of association and assembly
- Right to vote
- Right to participate in public affairs and service

For example, under Section 50 of the Thai Constitution 2017, it provides,

> A person shall have the following duties: (7) to freely exercise his or her right to vote in an election or referendum, taking into account the common interest of the country as prime concerns.[151]

2.2.1.3 Economics Rights as enjoyed by Nationals

The rights to decent work and to form and join a trade union; the rights to equal pay for work of equal value and so on.

The type of economic rights that could be enjoyed by the nationals would include:

- Right to decent work and form a trade union
- Right to equal pay for work of equal value
- Right to safe and healthy working conditions

For example, under the Thai Constitution of 2017, it provides,

> The State should promote abilities of the people to engage in work which is appropriate to their potentials and ages, and ensure that they have work to engage in. The State should protect labor to ensure safety and vocational hygiene, and receive income, welfare, social security, and other benefits which are suitable for their living, and should provide for or promote savings for living after their working age.[152]

[151] Section 50, Thai Constitution 2017
[152] Section 74, Thai Constitution 2017

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2.2.1.4 Social Rights as enjoyed by Nationals

For example, under the Section 47 of the Thai Constitutional Law 2017, it provides,

A person shall have the right to receive public health services provided by the State. An indigent person shall have the right to receive public health services provided by the State free of charge as provided by law.[153]

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There are other exclusive rights which are particularly reserved to citizens. This is because these rights either bear the risk of infringing national security[154], harmony of the society and statehood formation. Another right as enjoyed solely by the citizen is the right to enter, remain and exit its home country. Such right is absolute and as put forth by legal scholar Yaffa,

> [W]hile the State of citizenship had discretion whether or not to confer diplomatic protection; it lacked discretion to refuse entry to citizens who had been expelled from other States. The obligation to permit citizens to enter and stay in these circumstances was absolute.[155]

This would mean under the customary law, the State has no right to expel its own citizen nor deny their entry. As reflected further under the fourth Protocol to the European Convention on Human Rights,

> [n]o one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.[156]

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[153] Section 47, Thai Constitution 2017

[154] Zilbershats, *The Human Right to Citizenship*, 38.

[155] Paul Weis*, Nationality and Statelessness in International Law,* (Brill, 1979), 53; see also Yaffa Zilbershats, *The Human Rights to Citizenship*, 43.

[156] Europe Union, (19 September 1963), "Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto"*, Council of Europe,* in article 3 (1).

Such would equally be applicable if the citizen has formerly lost its effective nationality and no other State allows him to enter their territory, the State of the former citizenship should allow him or her to enter and stay.[157]

Also, under the Constitution of the Kingdom of Thailand,

> No person of Thai nationality shall be deported or prohibited from entering the Kingdom' and that 'the revocation of Thai nationality acquired by birth shall not be permitted.[158]

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Based from the above, we could observe that the rights as enjoyed by nationals are considerably derived from the home State and under the Constitutions.

2.2.1.5 Rights of Consular Visit when Nationals Travel Overseas

At the same time, when nationals travel overseas or residing in another host countries, they also enjoy a series of rights. One of the right for instance, would be the right for consular visit in case they were arrested. This is presented under Article 36 of the Vienna Convention on Consular Relations, in which it reads,

> 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
>   (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them, Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
>   (b) if so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any

[157] Zilbershats, *The Human Right to Citizenship*, 38.
[158] *Constitution of the Kingdom of Thailand* April 6 B.E. 2560, section 39.

communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.[159]

2.2.1.6 The Obligations of the Nationals

While the nationals enjoy the rights as guaranteed under the Constitution, they would also need to pledge allegiance and fulfill reciprocate duties to their home State. In the following, we shall observe briefly what it meant by loyalty and the duties of the nationals.

2.2.1.6.1 The Loyalty towards the home State

One of the primary duty of the nationals is to be loyal to the State of which he or she is a citizen.[160] Such is the composition as incorporated within the definition of

[159] *Art. 36 para.1(a)(b)(c), para.2, Vienna Convention on Consular Relations. Entered into Force on 19 March 1967. United Nations, Treaty Series, Vo1. 596, P. 261.*

[160] Zilbershats, *The Human Right to Citizenship*, 34.

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nationality under the Harvard Draft, '…the status of person who is attached to a State by the tie of allegiance[loyalty].'[161]

For instance, under the Thai Constitution, it requests that,

> No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.[162]

Based from the above, we could observe that example, we could see that loyalty is the indispensable part of being a national. It is also substantial for the State.

2.2.1.6.2 The Obligations/Duties towards the home State

In exchange for the protection and assurance of rights from the State, the nationals would need to fulfill certain duties.

For instance, under the Thai Constitutional law, it provides,

> Section 66. Every person shall have a duty to uphold the Nation, religions, the King and the democratic regime of government with the King as Head of the State under this Constitution.
>
> Section 67. Every person shall have a duty to obey the law.

[161] "Harvard Draft, the Law of Nationality ". *Supplement to the American Journal of International Law* 23, no. 1 (1929), 13.

[162] Section 63, "Constitution of the Kingdom of Thailand B.E. 2540 (1997)." National Legislative Bodies / National Authorities, 11 October 1997.

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Section 68. Every person shall have a duty to exercise his or her right to vote at an election. The person who fails to attend an election for voting without notifying the appropriate cause of such failure shall lose his or her right to vote as provided by law. The notification of the cause of failure to attend an election and the provision of facilities for attendance thereat shall be in accordance with the provisions of the law.

Section 69. Every person shall have a duty to defend the country, serve in armed forces, pay taxes and duties, render assistance to the official service, receive education and training, protect and pass on to conserve and the national arts and culture and local knowledge and conserve natural resources and the environment, as provided by law.[163]

Based from the above, we can see that the nationals can not just enjoy a series of rights, but at the same time, they would need to fulfill the respective duties in order to receive the assurance of rights and protections from their State of the nationality.

2.2.2 The Rights of Aliens under the International Law

2.2.2.1 Introduction

Depends on the level of attachment between the aliens and the host country, the level and extent of rights are also varied. In most of the cases, the aliens who dwell in the host country under permanent residency status would be granted more extensive rights.

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[163]Section 66-69, "Constitution of the Kingdom of Thailand B.E. 2540 (1997)." National Legislative Bodies / National Authorities, 11 October 1997.

For instance, in terms of the right to health in Ukraine, the medical assistance is particularly granted to 'Aliens permanently reside in the Ukraine' with the standard as equivalent to the Ukraine citizens.[164] As regard to other aliens of other categories, the Ukraine law also specifically mentioned that such medical assistance will be provided but shall be 'in accordance with the procedure established by the Cabinet of Ministry of the Ukraine.[165]

Similar favors toward the alien with 'permanent residence' status are also extended to other rights. Typical ones would be the right to education[166], in which under Article 14 it differentiated the scope of rights to those who are permanently residing and other aliens. For instance, it provides that,

> Aliens admitted to educational institutions of the Ukraine shall have the rights and duties of pupils and students in according with the legislation of the Ukraine.[167]

In the following, we shall observe what are the rights that could be enjoyed by the aliens and the rights that are restricted.

2.2.2.2 Rights that can be enjoyed by Aliens under the Host Country

In general, the aliens are entitled to the rights as stipulated under the *Universal Declaration of Human Rights* and the Constitution of the host country without differentiation. Some of these rights that could be enjoyed both by citizens and aliens alike are: Right to investment and business activity, right to rest, right to health, right

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[164] Ukraine, "The Law of Ukraine on the Legal Status of Aliens", (1994) in Art. 10.
[165] Ukraine, "The Law of Ukraine on the Legal Status of Aliens", in Art.10.
[166] Ibid, Art. 14.
[167] Ibid.; see also 16 on the Right to participate in Citizens Associations, in which the favor of Aliens permanently residing in Ukraine are also differentiated

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to social security, right to Property, right to enjoy cultural achievement, right to marital and family relations and freedom of movements.[168]

Similar to the citizens of the host country, the aliens also bear several obligations or duties in order to dwell in the host country. These duties are usually immediately following the rights as ascertained to the aliens under the relevant law.

In this case, using the Law of Ukraine as a core sample in terms of the alien's right to dwelling, while the Ukraine government ascertained a right for alien with permanently residence 'may receive a dwelling', simultaneously, they shall 'at the same time they have the duty to care for the dwelling provided to them, observe the rule for exploitation of the dwelling.'[169]

Under general international law, States are not obliged to grant aliens access to or residence in their territory.[170]

2.2.2.3 Rights that are prohibited to Aliens

As comparative with the Nationals, the aliens would be prohibited from certain rights. Typically, such rights would entail political rights, which prohibit the aliens from voting or running public position. For example, under Article 23 of the Law of Ukraine, it directly states,

> Aliens may neither elect or be elected to bodies of state authority arid self-government, nor participate in referendum.[171]

[168] Ukraine, "The Law of Ukraine on the Legal Status of Aliens, "in Art. 7, 9, 10, 11,13, 15, 18, 20.
[169] Ibid, in Art. 12.
[170] Dörr, "Nationality, " para. 50.
[171] Ukraine, "The Law of Ukraine on the Legal Status of Aliens, "in Art. 23.

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This is because aliens do not have the reciprocal allegiance as citizens toward the host country.

Other rights would include the scope and type of work which the aliens can engage in. Take Thailand for instance, the Ministry of Labor Department has enumerated a list of thirty-nine types of field which the foreigners are prohibited from engaging in. In accordance with The Occupations and Professions Prohibited for Foreign Workers: The List Appended to the Royal Decree in B.E.2522, some examples of the prohibited works would include: labor work, wood carving, driving motor vehicles, bricklaying, farm supervision work, street vending, legal service, Cigarette rolling by hand, dressmaking, agency work, etc.[172]

2.2.3 The Rights of Stateless Persons under the International Law

As we could see, both the nationals and the aliens enjoy a certain level of rights under the international law. Therefore, it would be crucial to examine the factors which affect the rights of the stateless persons.

2.2.3.1 The Lack of Rights of Stateless Persons as comparative to Nationals and Aliens

As we turned to the stateless persons, we can find that stateless persons actually don't enjoy any rights in practice.

The situation of the stateless persons are very much different from the Nationals and Aliens. As we could see from the above section, both the nationals and aliens are under the personal jurisdiction of their State of Nationality, therefore, their rights are

[172] Ministry of Labor Thailand, "Occupations and Professions Prohibited for Foreign Workers: The List Appended to the Royal Decree in B.E.2522," http://www.mol.go.th/en/content/page/6347: Ministry of Labor Thailand 2009.

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ascertained under the Constitutions of their home state. Even if they travelled abroad, they could still enjoy the rights as ascertained by the foreign states.

On the contrary, the stateless persons don't have such nationality link with any States. Their rights are not ascertained by the Constitution and their movements are often time limited due to national security reasons. To this end, the rights of the stateless persons are close to minimum under the international law.

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2.3. The Protections of Individuals under International Law

2.3.1 The Protections of Nationals under the International Law

After we have talked about the status and rights of the nationals, aliens and stateless persons, it is now time to turn to the part of protection as provided by States under each of these statuses.

In terms of protection, the nationals can enjoy a more expanded protection as comparative to aliens and stateless persons. Such protection derived from the duty of loyalty and duties as fulfill by the citizens in exchange for the protection. These duty of loyalty could be demonstrated in various ways.[173]

Most importantly, it is of course restricting an individual to engage in activities that may cause the State to not able to function properly or undermine the existence of the State.[174] In that sense, it would break the bond between the state and the citizen.

Therefore, the protections as accorded to the nationals are available as following: internal protections, the availability of the external protection in the form of

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[173] Zilbershats, *The Human Right to Citizenship*, 114.

[174] Ibid, 113.

diplomatic protection, and the protection as available under the bilateral treaties. I will elaborate on each protection accordingly.

2.3.1.1 Internal Protection towards the Nationals

The internal protection of the rights is derived out of the individual's status as a national and the principle of personal jurisdiction. This internal protection is available to citizens who are residing in their home state, in which the state has the duty to protect the lives and properties of its citizens.[175]

Such protection is not directly applicable to everyone but citizens subject to the laws of the states. As formerly mentioned, it also has a reciprocal nature in which the citizen should comply with his duty of allegiance in order to receive the protection.[176] For instance, under the Constitution of the Kingdom of Thailand, it states,

> any person injured from the violation of his or her rights or liberties or from the commission of a criminal offence by another person, shall have the right to remedy or assistance from the State, as prescribed by law.[177]

2.3.1.2 External Protection towards the Nationals

It is important to note that for nationals, residing abroad does not deprive him of the protection of the state of nationality. [178] Therefore, beside internal protection, states also obliged to provide external protections to its citizens.

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[175] Ibid, 3.

[176] Lurra v. The United States, (1913), *U.S.9*, 22, where the U.S. Supreme Court held that: Citizenship is a membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the others.' See also Tang, 81

[177] Section 25, *Constitution of the Kingdom of Thailand* April 6 B.E. 2560..

[178] James Crawford, *Brownlie's Principles of Public International Law* 8ed. (Oxford: Oxford University Press, 2012), 611.

Such protection comes in the form of diplomatic protection, whereby states take on the responsibility to protect its nationals abroad from unfair treatments.[179] However, exercising of such diplomatic protection is at the discretion of the States and not the right of the national. [180]

The International Law Commission ('ILC') Draft Articles on Diplomatic Protection has provided a definition and scope of exercising diplomatic protection. Under Article 1, it provides,

> [D]iplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is national of the former State with a view to the implementation of such responsibility. [181]

Based from the above, it is important to note that the first and foremost important thing that the individual being injured must have is a nationality and he or she must be the national of the State of nationality. As clarified later under Article 4, such individual's nationality is acquired,

> with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law. [182]

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[179] John Dugard, "Diplomatic Protection," Podcast audio. Diplomatic Protection 47:58, 2016. http://legal.un.org/avl/ls/Dugard_DP_video_1.html.; See also Jumphot Saisoonthorn, International Law, (Bangkok: Faculty of Law, Thammasat University, 2016), 137.

[180] Para.13, Dugard, John. *Diplomatic Protection.* Podcast audio. Diplomatic Protection 47:58. Accessed 25 August 2016, 2016. http://legal.un.org/avl/ls/Dugard_DP_video_1.html.

[181] Art.1, ILC. "Draft Articles on Diplomatic Protection with Commentaries." edited by United Nations. www.un.org/law/ilc, 2006.

[182] Art.4, International Law Commission. "Draft Articles on Diplomatic Protection with Commentaries." edited by United Nations. www.un.org/law/ilc, 2006.

Other circumstances of plausible claim for diplomatic protections would be when the citizen-suffers injuries as in expropriation of property without adequate compensation, breach of a concession or denial of justice[183] which the host has the discretion of initiating the diplomatic protection when the injuries occurred to its own citizen outside the home country.[184]

Even though it is presently much reliant upon the discretion of the state[185], but the recent trend of debate has pushed the States to use diplomatic protection as an alternative way for human rights protection of its citizens.[186]

In sum, the important criterion of initiating diplomatic protection is not directly based on the rights of the citizen but it is up to the State to take action. These points back to the traditional international law principle wherein individuals are not a direct subject of the international law like the states are.[187]

In addition, this would be dependable upon whether the injured national has exhausted all local remedies already and that such person must be a national of a specific country.[188] From the stance of the host state, that would mean that their target of protection is strictly restricted to nationals and it would be based on their own initiative.

[183] Ivan Shearer and Brian Opeskin, "Nationality and Statelessness," Foundations of international migration law, Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross, eds., (Cambridge University Press, 2012), 94.

[184] Zilbershats, *The Human Right to Citizenship*, 3.

[185] Jumphot Saisoonthorn, International Law, (Bangkok: Faculty of Law Thammasat University, 2016), 137.

[186] John Dugard, “Diplomatic Protection,” Podcast audio. Diplomatic Protection 47:58, (2016). http://legal.un.org/avl/ls/Dugard_DP_video_1.html.

[187] Thomas, 116.

[188] John Dugard, “Diplomatic Protection,” 149.

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It is important to note that State may exercise diplomatic protection in respect of its nationals alone, as ‘it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection’[189]

2.3.2 The Protections of Aliens under the International Law

Under the general international law, it has requested the Contracting States to treat the aliens in a certain way. As stated by Loretta,

> States fulfill this duty if they protect aliens in the same way as they do their nationals, along with providing the right to consular notification and access in the case of deprivation of liberty.[190]

Similar to the nationals, the aliens enjoy the protection from their State of Nationality. That would mean that if such an alien conducted some wrong in the host country, the Alien may request for Diplomatic Protection from their home State.

However, such right of diplomatic protection doesn’t belong to the alien but to the home State. Usually, it comes with two pre-conditions: first, the alien must have exhausted all local remedies at the host country already and second, such alien must have the nationality of his or her state of nationality in order to make such request.

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2.3.3 The Protections of Stateless Persons under the International Law

Flowing from above, as the stateless persons are in lacking of a proper relationship and connection with the host state, the scope of protections as applicable to them are very limited.

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[189] Ibid, para. 19.

[190] Loretta Ortiz, "Aliens", Oxford Bibliographies, 2013 https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0047.xml.

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In accordance with the Strategy Note of the UNHCR, it detects that the Stateless population often face a broad range of protection risks in the following areas: lack of documentation, refusal or failure to determine and grant status and rights as a stateless persons, detention, particularly in the migration context and where the country of origin refuses to allow return; discrimination, heightened risk of trafficking and sexual and gender-based violence; Lack of access to the labor market, limits on property ownership, difficulties to enter into contracts, obtain business licenses or open bank accounts.[191]

In accordance with Mark Manly and Santhosh Persaud, the Associate Protection Officer of the United Nations High Commissioners for Refugees (UNHCR), they state that,

> Until they are able to acquire an effective nationality, stateless persons need the dignity, stability and protection that come with recognition of their status and enjoyment of their human rights.[192]

Furthermore, Mark Manly also stress that 'interventions by UNHCR relating to the protection of stateless persons have tended to focus on broad questions of law and policy…'[193] This implies that when it comes to the micro aspect of the daily life of stateless persons, it would very much relied on the local legal aid or coordination with the local NGOs.[194]

Tracing back, although prior to the advent of the 1954 Stateless Convention the international community has tried to address the issue of protection toward stateless

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[191] UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, (March 2010). https://www.refworld.org/docid/4b9e0c3d2.html.

[192] Persaud and Manly, "Unhcr and Responses to Statelessness, " 9.

[193] Ibid.

[194] Ibid.

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persons through various conventions, yet most of them are still focusing the issue of nationality. Further more, when ascertaining the rights and protection of stateless persons, such rights and protections were rendered on a minimal standard and again, it was up t the domestic law to decide the scope.

Take the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 1930,[195] it provided the first attempt to address statelessness resulting from a loss of nationality or the inability of acquiring same, although the convention mainly touched on nationality concerns.[196]

As aptly described by Hannah Arendt in *The Origins of Totalitarianism,*

> [T]he moment human beings lacked their own government and had to fall back on their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.[What was] supposedly inalienable, proved to be unenforceable. [197]

As formerly mentioned, being stateless affects a person's identity immensely. On a psychological level, it creates a sense of rejection and a sense of worthlessness. Such mindset could be seen from the narration of Stefan Zweig, an author who was born in Austria and was made stateless in 1938, he mentioned,

> Since the day when I had to depend upon identity papers or passports that were indeed alien, I ceased to feel as if I quite

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[195] United Nations, "Convention on Certain Questions Relating to the Conflict of Nationality Law", League of Nations, *Treaty Series*, vol. 179, No. 4137, (13 April 1930), 89.

[196] Kateryna Ustymenko, "Defining Statelessness: The Conception of the Definition and Why It Matters Today," (Thesis dissertation, 2013), 11.

[197] Hannah Arendt,. *The Origin of Totalitarianism*. Penguin Books Ltd., 1951; See also Abe Kohki, "Overview of Statelessness: International and Japanese Context."(Japan, 2010): 13.

> belonged myself. A part of the natural identify of my original and essential ego was destroyed forever.[198]

Besides psychological impacts, being stateless also makes them unable to enjoy what the normal persons ought to enjoy. A thorough overview of such devastating experience could observe through the situation of the Kurds. As described by the *Human Rights Watch,* it is mentioned that 'they are not permitted to own land, housing or business, a fact which the government does not dispute.' Furthermore, they are also 'not eligible for food subsidies or admission to public hospitals.', 'cannot practice as doctors or engineers' and 'not issued passports or other travel documents, and thus may not legal leave or return to Syria as a matter of right.'[199]
One common and significant problem which also commonly encountered by stateless persons would be indefinite and arbitrary detention. AS they are typically regarded as the non-nationals everywhere, they often do not have the right to remain in any state.

It would be rather challenging for the stateless individual to invoke diplomatic protections as it is not just based on the discretion of the state parties, but also that the person requesting should have this nationality connection.[200] As noted by Lillich,

> a notable consequence of the traditional doctrine of diplomatic protection is that it leaves stateless persons entirely unprotected as far as the pursuit of a diplomatic claim is concerned.[201]

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[198] Stefan Zweig, *The World of Yesterday,* (Pushkin Press, January 2009).
[199] Virginia N. Sherry, *Syria: The Silenced Kurds.* (Middle East, 1996); see also Maureen Lynch and Perveen Ali, *Buried Alive-Stateless Kurds in Syria, (*Syrian Arab Republic: Refugees International, 2006).
[200] Lillich, 64.

Furthermore, as previously mentioned, nationality is one of the key factors in invoking a connection for the state to take action under the international law, it would be particularly challenging for the stateless persons who are injured. Due to their ambiguous status, it would not be possible for them to request any other states to advocate for them nor would the host state.

Another aspect of the diplomatic protection which poses a particular challenge for stateless persons is that they would have to exhaust all local remedies prior to resorting to the International plan. This is particularly challenging for stateless persons as many of them don't have the status or the legal capacity to even submit their case to the court.–Furthermore, a large portion of them have entered the host country illegally and without any documents. Sometimes, the documents are not genuine–if the stateless persons are in poor condition, this further deter them from seeking justice.

In conclusion, the diplomatic protection is not available for stateless persons nor is there any state who would exercise the rights on their behalf. Protections are available in general however, for stateless persons, particular rights and protections are necessary and as the state is the core initiator in asserting the right, the degree of their protection towards stateless persons would be at minimal.

In order to provide a more vivid illustration of the differences between the three types of individuals, I would like to present the following comparative table.

[201] E. Bouchard, The Diplomatic Protection of Citizens Abroad, 35(1915).

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TABLE No. 1: Comparison Chart: Status, Rights and Protections between Nationals, Aliens and Stateless Persons

	Status	**Rights**	**Protections**
Nationals	National Status as acquired through the bond of Nationality and Nationality Law.	Full Rights: Civil, Political, Economic, Social and Cultural Rights. If outside the home States: -Entitled to seek help from the embassy or Consulate.	-Bilateral Treaties (BITs) Diplomatic Protection (at the discretion of the States)
Alien	Alien Status in the host Country and National Status in their home country.	Restrictive in the part of admission And certain types of work. As there are outside their home States: -Entitled to seek help from the embassy or Consulate.	Diplomatic Protection (at the discretion of the States)
Stateless Persons	Neither National nor Alien; Lack of Status.	Ambiguous scope of rights.	Lack of Protection

From the above, we could see that the status, rights and protections as enjoyed by the nationals and aliens are in slight differences. As mentioned, this was because nationals are under the personal jurisdiction of their own government and when they travelled abroad, their role is switched to aliens. However, for stateless persons, that is not the case. Regardless of where the stateless persons travel, they would be identified as not having a nationality and thereby, not enjoying any rights or protections as they ought to have.

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2.4 Conclusion

Based from the above, we could conclude that stateless persons are in disadvantage in terms of status, rights and protections. Due to their lack of link with any States, their rights and protections are very much dependent upon the host countries.

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Chapter Three The Status, Rights and Protections of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons

After reviewing the differences between the status, rights and protections of the Stateless Persons as comparative with that of nationals and aliens, we found that stateless persons, as comparative with the nationals and the aliens, are in severe disadvantage in terms of status, rights and protection as compared to the nationals and aliens.

Therefore, it would be appropriate to examine the legal instruments as directly addressing to the stateless persons: the 1954 Convention relating to the Status of the Stateless Persons. Under this convention, the status of the stateless persons is guaranteed and so are the rights and protections toward stateless persons are guaranteed at various degree.

In this Chapter, I hold that the Contracting states of the 1954 Convention relating to the Status of the Stateless Persons has attempted to guarantee a quasi-national and quasi-alien status within the rights as guaranteed to stateless persons. I find that these

rights could be divided under the following categories: the civil rights, the social rights and the economic rights.

3.1 Purpose and Background of the 1954 Convention in relating to the Status of Stateless Persons

In the following, I will have an overview of the purpose and background of the 1954 Convention in relating to the Status of the Stateless Persons. This will be beneficial in enhancing our understanding of why such convention is drafted and the type of rights and protections are guaranteed within.

3.1.1 Purpose of 1954 Convention relating to Stateless Persons

The 1954 Stateless Convention was adopted by the Conference of Plenipotentiaries in New York in the 1954 and entered into force in 1960.[202] The significance of the 1954 Stateless Convention lies in the fact that it has pioneered in setting forth a new international status of 'stateless persons' and upholding a list of human rights to them.[203]

The *1954 Stateless Convention* lucidly encapsulates the core principles of Statelessness in the application of its general provisions to Stateless persons. Under *Article 2* of the said Convention, it obligates *'every Stateless person'* to *'conform to its laws and regulations as well as take measures for the maintenance of public order.'*[204] This therefore means that Stateless persons need not just conform to the laws and regulations but also *'respect'* what might potentially be done to them in

[202] Paul Weis, The Convention Relating to the Status of the Stateless Persons*, The International and Comparative Law Quarterly*, vol.10, no.2 (Cambridge: Cambridge University Press, April 1961), 255.
[203] Ivan Shearer and Brian Opeskin, *Foundations of International Migration La*w, 108.
[204] United Nations High Commissioner for Refugees, "Convention relating to the status of stateless persons", *United Nations High Commissioner for Refugees,* (1954), article 2.

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order to maintain the public order. In addition, the said Convention advances the principle of non-discrimination which adjures States to *"apply the provisions of this Convention to Stateless persons without discrimination as to race, religion or country of origin."*[205]

3.1.2 Background of 1954 Convention relating to the Status of Stateless Convention

The advent of the 1954 Stateless Convention didn't come by accident. This was because after the World War II, the international society found it extremely challenging to establish a concrete legal protection for millions of people who were displaced due to war and the redrawing of the boundaries in Europe. Ever since 1947, the International Law Commission had recognized this issue and expressed the wish that,

> early consideration be given by the United Nations to the Legal status of persons who do not enjoy the protection of any government, in particular those pending the acquisition of nationality, as regards then their legal and social protection and their documentation.[206]

In addressing to this concern, a more comprehensive study, *A Study of Statelessness* had been conducted which was later evolved to the present day 1954 Stateless Convention.[207] It is in this Study of Statelessness that symbolized the 'first real step

[205] United Nations High Commissioner for Refugees, "Convention relating to the status of stateless persons", article 3.
[206] Paul Weis, The Convention Relating to the Status of the Stateless Persons, *The International and Comparative Law Quarterly*, vol.10, no.2 (Cambridge: Cambridge University Press, April 1961), 255.; see also Ivan Shearer and Brian Opeskin, *Foundations of International Migration Law*, ed. Brian Opeskin, Richard Perruchoud, Jillyanne Redpath-Cross, (Cambridge: Cambridge University Press, 2012), 108.
[207] UN Economic and Social Council, *A Study of Statelessness, United Nations, August 1949, Lake Success-New York* (New York: UN Ad Hoc Committee on Refugees and Stateless Persons, 1949).

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towards the creation of an international regime for protecting the 'unprotected.'[208] The Study also usurped that 'improvement of the position of stateless persons require their integration in the framework of international law'[209], which necessitates the 'adoption of a general convention as a lasting international structure.'[210]

The legal status of Stateless persons in this context refers to the rights and obligations of Stateless persons under the international law.[211] Notably, if the host country is a party to the *1954 Stateless Conventions* or any other human rights treaty, the status and treatments to be enjoyed by the Stateless persons must pass the international legal muster and reflect the minimum standard of treatment of Stateless persons. The aforementioned status and minimum standard of treatment as spelt out in the 1954 Stateless Conventions is examined hereunder.

3.1.2.1 Rationales for the drafting of 1954 Convention relating to the Status of Stateless Persons

It is important to know that much reference will be drawn from it's 'modeled' convention-the 1951 Convention relating to the Status of Refugees-as the issues of the refugees and the stateless persons were initially intended to be addressed together.

However, the *Ad Hoc* Committee later on decided that the refugee issues were more urgent and therefore, decided to resolve the problem of the refugees first.[212] Although the *Ad Hoc* Committee also intended to address the problem of elimination of

[208] Laura van Waas, "The UN Statelessness Conventions," Chap. 3 In *Nationality and Statelessness under International Law* edited by Laura van Waas Alice Edwards, (United Kingdom: Cambridge University Press, 2014), 1989.
[209] UN Economic and Social Council, *A Study of Statelessness, United Nations, August 1949, Lake Success-New York* , 1989.
[210] Waas, "The Un Statelessness Conventions," 1989.
[211] GLN3, Para.1
[212] Para.15, Economic and Social Council, Report of the Ad Hoc Committee on Statelessness and Related Problems E/1618, E/AC.32/5, Lake Success, New York, 16 January to 16 February 1950.

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statelessness in the same conference, nevertheless, it was equally put off. As stated by the *Ad Hoc* Committee,

> [T]he Committee turned to the problem of the elimination of statelessness. After careful examination, it reached the decision that it was not practicable at this stage for it to examine this complex problem in great detail or to draft a convention on the subject.[213]

The reasons for focusing on the refugee issues was not purely due to its urgency. The *Ad Hoc* Committee provided two reasons for not addressing statelessness: first of all, they had already completed a draft Convention Relating to the Status of Refugees and also a Protocol relating to the Status of Stateless Persons. Therefore, these by and large had already exhausted the time at the disposal of the committee; furthermore, due to the complexity of the stateless issues, it was not possible to approach all the necessary details.[214]

The 1954 Convention relating to the Status of the Stateless Persons is the main authoritative Convention as directly ascertaining the status, rights and protections of the stateless persons.

Prior to the advent of the 1954 Convention relating to the status of the stateless persons and after the Second World War, there were massive population displacement and political re-order.[215]

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[213] Para. 18, Draft Resolution for the Economic and Social Council concerning the Elimination of Statelessness, Economic and Social Council, Report of the Ad Hoc Committee on Statelessness and Related Problems E/1618, E/AC.32/5, Lake Success, New York, 16 January to 16 February 1950.

[214] Para. 25(a)and (b), Economic and Social Council, Report of the Ad Hoc Committee on Statelessness and Related Problems E/1618, E/AC.32/5, Lake Success, New York, 16 January to 16 February 1950.

[215] Guy S. Goodwin-Gill, "Convention Relating to the Status of Stateless Persons: Introductory Notes, " United Nations: 2010, www.un.org/law/avl.

In fact, the idea of stateless persons and resolving statelessness were accidentally introduced in the early instrument. At the Article 32, which was the precursor of the Universal Declaration of Human Rights, it had not just ascertained the right to nationality, but also declared,

> It is the duty of the United Nations and Member States to prevent statelessness as being inconsistent with human rights and the interests of the human community[216].

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In the following, I will examine the status, rights and protections as addressed under the 1954 Convention relating to the Status of Stateless Persons.

3.2 The Status as ascertained under the 1954 Convention relating to Status of Stateless Persons

3.2.1 The personal status under the 1954 Stateless Convention

The provision in addressing to the personal status of the Stateless Persons is governed under Article 12 of the 1954 Convention relating to the Status of the Stateless Persons. Under Article 12, it provides,

> The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.[217]

Under this provision, we could see that Article 12 paragraph 1 did not address to the level of status that the stateless persons should have, instead, it points to the domestic law to have the governance over their status. This clause reproduces the exact same

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[216] Report of the Drafting Committee, E/CN.4/21, 1 July 1947, page 21
[217] Art. 12 para. 1, 1954 Convention relating to the Status of Stateless Persons

wordings as the Article 12 of the 1951 Refugee Convention, therefore, I will take reference from the 1951 Refugee Convention in interpreting it's intention.[218]

3.2.1.1 The Context of the 'Personal Status' under Article 12

The contents of the term 'personal status' is specified by Nehemiah Robinson in the Commentary of the 1954 Convention relating to the Status of the Stateless Persons. Based on Nehemiah, he provided a enumerated list of examples which is in connection with such personal status:

> i.e. their legal capacity(age of majority, the rights of persons under age, capacity to marry, capacity of married women, the instances when a person may lose his legal capacity), their family rights(marriage, divorce, recognition and adoption of children, the powers of parents over their children or of husband over his wife and their mutual rights to support), the matrimonial regime(the mutual rights of spouses to property), and succession and inheritance (who succeeds whom, what are the consequences of a will, who is considered to have survived in case of unknown date of death, etc.)[219]

3.2.2 The Ascertaining of quasi-national & quasi-alien status to stateless persons

Under the 1954 Convention relating to the Status of Stateless Persons, it has pioneered in ascertaining the status of the stateless persons. Under Article 1 para.1, it

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[218] Nehemiah Robinson,"Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs, "(1997), para. 1 of the Article 12 on 'Personal Status'.

[219] Nehemiah Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs," para. 2 of the Article 12 on 'Personal Status'.

has defined the stateless persons as 'a person who is not considered as a national by any State under the operations of its law.'[220]

By this definition, it clarify specified that stateless persons is someone who is not recognized as national under the Nationality Act of the host country, nor in their home country.

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But besides acknowledging such status, I find that the 1954 Convention relating to the Status of Stateless Persons have attempted to ascertain quasi-national and quasi-alien status throughout the rights as guaranteed under the 1954 Stateless Convention. For instance, under Article 13 on Movable and Immovable Property, the provision reads that,

The Contracting State shall accord to a stateless person treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstance...[221]

As we could observe, the provision coined the phrase 'accorded to aliens', in which it connotes that the stateless persons may enjoy such right in the status as aliens. Another example would be the right to access to courts, in which the provision provides that stateless persons 'shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *caution judicatum solvi*.'[222] Again, we can see that the Contracting State has attempted to guarantee a

[220] Art. 1 para.1, 1954 Convention relating to the Status of Stateless Persons
[221] Art. 13, 1954 Convention relating to the Status of Stateless Persons
[222] Art. 16 para. 2, 1954 Convention relating to the Status of the Stateless Persons

even higher status, the 'national status' to the stateless persons, when it comes to judiciary matters.

In the following, I layout the quasi-national and quasi-alien status as guaranteed to stateless persons under the 1954 Convention relation to the Status of the Stateless Persons.

TABLE 2: Ascertaining Quasi-National and Quasi-Alien Status to Specific Rights of Stateless Persons

(in accordance with the 1954 Convention relating to the Status of the Stateless Persons)

	Quasi-Alien Status	**Quasi-National Status**	
	Treatment at least as favorable as **Aliens** generally	**National** Treatment	**Absolute Rights**
General Principles			Non-discrimination (Art.3)
Civil Rights	Moveable and immoveable property (Art.13) Freedom of Movement (Art. 26)	Social & Economic Right: Education (Art.22)	Naturalization (Art. 32)
Social Rights	Housing (Art.21)		Identity Papers (Art.27) Transfer of Assets (Art.30)
Economic Rights	Economic Rights: Self-Employment (Art.18) Liberal Profession (Art. 19) Wage-earning employment (Art. 17)		Expulsion (Art.31)
Others		Public Relief (Art. 23)	Administrative Assistance (Art.25)

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3.3 General Principles under the 1954 Convention relating to the Status of Stateless Persons

Under the 1954 Convention relating to the Status of Stateless Persons, it has affirmed various principles and rights so that stateless persons may enjoy the rights and protections without unnecessary hindrance. In the following, I will examine the core principle of non-discrimination as ascertained under Article 3 of the 1954 Convention in relating to Status of Stateless Persons.

3.3.1 The General Principle of Non-discrimination

The non-discrimination principle is referred as 'the cornerstones of international human right protections'.[223]This principle was affirmed by the earliest instrument-namely, the UN Charter, which provides that the main function of the United Nations as,

> Promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.[224]

Such distinction was usually based on an unchangeable character of a person's identity. Therefore, discrimination is referring as a treatment that does not involve 'equal footing with others' and resulting in 'unjustified debasement of individuals on the grounds of identity-related characteristics and embodies several approaches and categories of prohibitions to discriminate'.[225]

There are two types of discriminations-direct and indirect. The Direct discrimination is often time related to one or more of the prohibited grounds of distinction without adequate objective justification. This can be reflected through the unequal or

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[223] Jörg Künzli, Walter Kälin, *The Law of International Human Rights Protection*, (Oxford: Oxford University Press, 2009), 344.

[224] Künzli and Kälin, *The Law of International Human Rights Protection,* 344; see also UN Charter 1945, Art. 1 para.2.

[225] Ibid, 345.

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unfavorable treatment that has the aim of distinction, limitations, exclusion or preferences.[226]

Indirect discrimination, on the other hand, was result from the distinctions that are not relevant to the prohibited grounds. However, the effects are detrimental and often time 'disproportionately affect people with such characteristics'.[227]For instance, it is the rule in Switzerland that the graves in the cemeteries are assigned in the order of burial. However, the Muslims would wish to 'be buried facing in the direction of Mecca.'[228] Under such circumstance, there is a plausible issue of whether such indirect discrimination has existed.

3.3.1.1 The Relevance of Non-discrimination and Stateless Persons

Discrimination has a strong nexus with the stateless persons. Regardless whether it is direct or indirect discrimination, they both affects the lives of stateless persons negatively. Discrimination serves as the causes of statelessness and this is often manifested throughout the administrative process of recognizing an individual as citizen.

This happen mostly when the officials have a wide range of discretion in decision making. Take the example of the Roma statelessness in Albania, in which they are severely marginalized due to discrimination in the process of acquiring civil documentations but also they are less likely to be put in priority.[229]

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[226] Ibid 351.
[227] Ibid, 355.
[228] Ibid.
[229] European Network on Statelessness, "Statelessness, Discrimination and Marginalization of Roma in Albania," Albania European Network on Statelessness 2018, 11.

3.3.1.2 The Principle of Non-discrimination under the 1954 Convention relating to the Status of Stateless Persons

The principle of non-discrimination is housed under the Article 3 of the 1954 Convention relating to the Status of Stateless Persons. Under this provision, it provides,

> The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.[230]

Under this provision, we could observe that the applicable scope of non-discrimination would be that of 'race, religion or country of origin.'[231]This provision is in exact same wordings and scope as depicted under the 1951 Convention relating to Status of Refugees.[232]Due to it's similarity, I would examine this provision in light of 1951 Convention relating to the Status of Refugees.

One of the core issue as examined under this provision is that the basis of the non-discrimination seems rather parochial and does not touch upon the non-discrimination in its full scale. [233] Only three basis were listed and as pointed out by the Egypt and Yugoslavia representatives in the meeting, it would not be available to cover every part of the life of stateless persons.[234]This is in comparative to the full-scale non-discrimination clause as brought up under the Convention (IV) relative to the

[230] Assembly, UN General. "Convention Relating to the Status of Stateless Persons, 28 September 1954 ". United Nations Treaty Series, vol. 360: UN General Assembly 1954, Art. 3

[231] Assembly, UN General. "Convention Relating to the Status of Stateless Persons, 28 September 1954 ". United Nations Treaty Series, vol. 360: UN General Assembly 1954, Art. 3

[232] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs," para. 1 under Art. 3 on 'Non-discrimination'.

[233] Ibid.

[234] Ibid.

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Protection of Civilian Persons in Time of War, which consisted of 'race, color, religion or faith, sex, birth or wealth, or any other similar criteria'.[235]

However, the listing of only three basis did not entirely diminish the intention of the 1954 Convention relating to Stateless Persons to extend this provision to Stateless Persons. During the drafting process, the President of the drafting committee had readily pinpointed that, 'prohibition of one type of action does not imply that another type was permitted'.[236]

The drafts had intended to restrict these three basis, which is in contrary to the original intention and purpose of the Convention, which was 'to create a uniform basis for the treatment of all refugees except when specifically provided for in the Convention.'[237]As similar to the 1951 Convention to the Status of Refugees, the drafters of the 1954 Convention Relating to the Status of Stateless Persons The Convention has left the rest of the non-discrimination basis to the discretion of the host country.[238]

However, this provision on non-discrimination has benefited to the wide extent of stateless persons has it does not set boundaries as to what type of stateless persons could invoke this principle. While most of the provisions under the 1954 Convention relating to the Status of the Stateless Persons have set restrictions such as 'shall be accorded in the country in which he has his habitual residence'[239]or 'shall accord to

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[235] "Convention (Iv) Relative to the Protection of Civilian Persons in Time of War." edited by Diplomatic Conference of Geneva, (Geneva, 1949), Art. 3 para.1.

[236] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs," para. 1 under Art. 3 on 'Non-discrimination'.

[237] Ibid, para. 3 under Art. 3 on 'Non-discrimination'.

[238] Ibid.

[239] UN General Assembly, "Convention Relating to the Status of Stateless Persons," 28 September 1954 ". United Nations Treaty Series, vol. 360: UN General Assembly 1954, Art. 14.

stateless persons lawfully staying in their territory'[240], this non-discrimination provision seems to be applicable to stateless persons in general. To this end, I find this as beneficial in furthering the rights and protection of the stateless persons.

3.4 The Rights as ascertained under the 1954 Convention relating to the Status of Stateless Persons

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3.4.1 Civil Rights

3.4.1.1 The right to movable and immovable property under 1954 Convention relating to Status of Stateless Persons

3.4.1.1.1 The Concept of the right to movable and immovable property

3.4.1.1.2 The Relevance of the right to movable and immovable property and stateless persons

Due to the lack of identity, the stateless persons are unable to secure ownership of the property. As depicted under the Report,

> stateless persons face difficulties in renting, buying, inheriting or retaining property.[241]

The stateless persons' chance of owning the land or repossess the property would be very unlikely due to their lack of documents to confirm their ownership.[242]
Similar situation is also faced by the stateless Syrian Kurds, in which they cannot 'obtain property deeds or register cars or business' and that they cannot 'pass on ownership of property to their children'. As described by Ibrahim Amr, a stateless

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[240] UN General Assembly, "Convention Relating to the Status of Stateless Persons, 28 September 1954 "United Nations Treaty Series, vol. 360: UN General Assembly 1954, Art. 15.
[241] Lynch, "Lives on Hold: The Human Cost of Statelessness, " 23.
[242] "Rights Displaced: Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo ". Human Rights Watch 2010.

Kurds who lost his nationality due to the Nationality Act of 1962, that not only were they stripped of the property and land that they had owned, but also their descendants would be facing difficulties in acquiring the any other land for the next fifty years.[243] What's even worse was that the Syrian government continued to request them to pay the land tax of the unclaimed land.[244]

Furthermore, they would need to rely upon 'the good faith of such persons'[245], in which they seek assistance from a third party by putting the property under their title. As vividly describe by a stateless Kenyan Nubian,

> Above all, Nubians live in temporary structures throughout Kenya and often on contested lands. Most Nubians' settlements do not have title deeds and are only occupied on a Temporary Occupational License (TOL), leaving the presence generation of Nubians as mere squatters.[246]

Other issues as commonly faced by the Stateless persons would be expropriations of the stateless persons' property. A typical case as such happened to a stateless Rohinghya Jhora Shama, in which his family's farm was ransacked and their live stocks were confiscated prior to his flee to Bangladesh.[247]

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[243] Amnesty International Report, *Stateless Kurds seek better life and future*, May 2009, The National, 2 October 2009 [United Arab Emirates]. Danish Immigration Service, *Report on fact-finding mission to Syria and Lebanon*. Conditions for Kurds and stateless Palestinians in Syria etc, 17-27 September 2001.

[244] Refugees International 'Buried Alive: Stateless Kurds in Syria' January 2006, available at: http://www.yasa- online.org/reports/buried_alive.pdf

[245] Ali, Maureen Lynch and Parveen. "Buried Alive, Stateless Kurds in Syria " In *Refugees International* 6-7, 2006.

[246] Adam Hussein, "Kenyan Nubians: Standing up to Statelessness, "*Forced Migration Review* no. 32 (2009): 19.

[247] Kristy Crabtree, "We Have No Soil under Our Feet," *Forced Migration Review*, no. 32 (2009): 14.

3.4.1.1.3 The Right to Movable and Immovable Property under the 1954 Convention relating to Status of the Stateless Persons

The Right to Movable and Immovable Property is housed under Article 13 of the 1954 Convention relating to the Status of Stateless Persons. It provides,

> The Contracting States shall accord to a stateless person treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.[248]

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This article is in reproduction of same wordings under the 1951 Refugee Convention. Therefore, I will draw reference upon the interpretation of the 1951 Refugee Conventions.

Under Article 13, it has ascertained to stateless persons the right to acquire 'movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property'.[249] To this end, the scope of rights as ascertained under Article 13 has incorporated the right to property in entirety, in which the right to immovable property would include: the right to sale, exchange, mortgaging, pawning, administration, income, etc.[250]

Furthermore, the 'rights pertaining to property' is used in a broad sense. Therefore, it is not only addressing to the tangible property but also to the 'property rights' such as the securities, money and bank accounts.[251] There were reference during the drafting

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[248] Art.13, *1954 Convention Relating to the Status of Stateless Persons*
[249] Ibid.
[250] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," para. 5 under explanation of Article 13.
[251] Ibid.

process to enable the refugees to purchase securities(stocks) and land[252], as well as to acquire a home[253] or to rent a land.

The term as prescribed under Article 13 is not just the acquisition of movable and immovable property, but also 'other rights pertaining thereto'.[254] As accorded to Robinson, he suggested that such related activities as 'sale, exchange, mortgaging, pawning, administration, [and] income.'[255]

3.4.1.2 The Freedom of Movements under 1954 Convention relating to Stateless Persons

The Freedom of movements would affect the stateless persons in various aspects. In the following, we shall have a brief overview of the concept of freedom of movement and move on to the examine how it is ascertained under the 1954 Stateless Conventions.

3.4.1.2.1 The Concept of the Freedom of Movements

The freedom of movement is an indispensable condition for the free development of a person.[256] It is a generic terms that addresses the locomotion of an individual[257] Previously, we mentioned about the sovereignty and the freedom of movement is in direct conflict.

The concept of freedom of movement could be read in conjunction with that of sovereignty. In accordance with legal scholar Richard Perruchoud, the concept of

[252] Statement of Sir Leslie Brass of the United Kingdom, UN Doc. E/AC/32/SR.36, August 15, 1950 at 13.
[253] Ibid, 11.
[254] Art. 13, Convention Relating to the Status of Stateless Persons.
[255] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," 105-106.
[256] United Nations Human Rights Committee, *General Comment 27: Freedom of Movement*, vol. A/55/40, (Geneva: 2000), para. 1.
[257] Eckart Klein, "Movement, Freedom of, International Protection", in *Encyclopedia of Public International Law*, (May 2007), para. 1.

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sovereignty are composed of the following criteria: the external aspect of sovereignty, the internal aspect and finally the territorial aspect of sovereignty.[258] I will briefly explain about each.

First, is the external aspect of the sovereignty. This is addressing to the state's capacity determine its relationship with other states, 'without the restraint or control of another State.' In another word, their capacity to maintain independent.[259]

On the other hand, the internal aspect of sovereignty is the right of the State to determine its own institution, what laws to enact and also to ensure that the internal system is in order. This is internal aspect of sovereignty. The significance of this is that it provides its own citizen with security in exchange for their allegiance.[260]

Finally, we arrive at territorial aspect of the sovereignty, which is addressing to the authority of the State as exercise over everything within its realm or territory, over the properties, their own nationals, and that would include those citizens who has travelled abroad.[261]

Now, the importance of these three aspects of sovereignty is that it contributes heavily to the maintenance of the host country's statehood: to maintain a defined territory, an independent government, the protection over its own citizens so there won't be unnecessary loss of population and also exercising their capacity to coordinate with other states so they won't interfere with the 'territorial integrity of the State.'[262]

With that context, we can now turn to the concept of freedom of movement.

[258] Richard Perruchoud, "State Sovereignty and freedom of movement", in *Foundations of International Migration Law*, edited by Brian Opeskin, Richard Perruchoud, Jillyanne Redpath-Cross, (United Kingdom: Cambridge University Press, 2012), 123.
[259] Ibid.
[260] Ibid.
[261] Ibid.
[262] United Nations, *Charter of the United Nations and Statute of the International Court of Justice*, (San Francisco, 1945), article2(4).

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Freedom of movement has the potential to work as a counter-current to the State's competence in maintaining the order and safety of its inhabitants. Prior to the advent of human rights laws, the state has the absolute discretion and sovereignty to prohibit entrance, exit, or the movements of the people.

However, the post-human right regime has made the state not as omnipotent. Thereby, at both internal and external level, states are constantly confronting with non-nationals who attempt enter and leave the state utilizing legal or illegal ways.

Therefore, the term 'freedom of movement', in the sense of the host country, semi-negates the traditional 'exclusive domestic jurisdiction 'of the states to admit or exclude an individual, but that it not just carries the definition of mobility of individuals, but also connotes the transcendence of borders. In the international sense, such transcendence further signifies a 'transfer[rance] of responsibility to protect its borders to a third State' and 'in so doing, the third State becomes the guard of another State's border.'[263] This, observed from my point of view, is a re-allocation or even dispatchment of the formerly sovereign power which the states are so meticulously protecting.

As depicted by Richard Perruchoud,

> 'It is no longer accurate to assert that States have absolute discretion over admission and expulsion. While they still have a wide margin of discretion, limits are imposed by international legal obligations derived from customary and treaty law, as well as from universally accepted human rights and fundamental freedoms.'[264]

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[263] Alison Kesby, "The Shifting and Multiple Border and International Law", in *Oxford Journal of Legal Studies,* vol. 27, issue 1 (Spring 2007), 101.

[264] Richard Perruchoud, "State Sovereignty and freedom of movement", in *Foundations of International Migration Law*, edited by Brian Opeskin, Richard Perruchoud, Jillyanne Redpath-Cross,

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Therefore, we could observe that what seems to be a limitation in the eyes of the State has provided a glimpse of light to group of aspiring non-nationals, whether it's refugees, migrant workers or stateless persons. From their stance, the significance of freedom of movements is that it is a leeway to access another right or opportunity on top of the known label as a fundamental right[265] described as 'the right to vote with one's feet' and that ultimately means that a person may use it to 'express his or her personal liberty.'[266]

3.4.1.2.2 The Relevance of the Freedom of Movements to Stateless Persons

As stateless persons are often considered as 'hostile' and an anomaly, the host state would impose even more stringent restriction towards their movement. Because ultimately, it is still up to the state's discretion in terms of the conditions for an alien to remain in a country.[267] One common example would be that of the Rohingyas, in which it is reported that they are,

> confined to their respective villages, unable to access medical and educational services, due, inter alia, to the fact that, should they wish to travel

(United Kingdom: Cambridge University Press, 2012), 123.; such point is further supported by Sohn and Buergenthal, 'A State has the competence to control and regulate the movement of persons across its borders. This competence is not absolute. It is limited by the right of individuals to move across borders and by the obligations of the State that arise from generally accepted principles of international law and applicable international agreements. See Louis Sohn and Thomas Buergenthal, *"The Movement of Persons Across Borders"*, in *Studies in Transnational Legal Policy,* no. 23, (Washington, D. C., October 1992), 1.

[265] Laura Van Waas, "Nationality Matters. Statelessness under International Law", in *Refugee Survey Quarterly*, Volume 28, Issue 4, (2009), 240.

[266]Gwoffrey Gilbert, "The Right to Leave and Return in International Law and Practice, by Hurst Hannum, [Dordrecht: Martinus Nijhoff. 1987xii 189 Pp. Dfl.125/ $57.50/£44.50]," in *International and Comparative Law Quarterly 37*, no. 3 (1988), 4.

[267] Eckart Klein, "Movement, Freedom of, International Protection", in *Encyclopedia of Public International Law*, (May 2007), para. 1.

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> outside their respective villages, they would require official authorization and must pay a fee which in many cases they cannot afford.[268]

Under this circumstance, stateless persons, as comparative to the nationals who has the absolute right of entering and exit their own state[269], faced the jeopardy of restrictive freedom of movements. A concrete example would be the restrictions as placed for stateless ethnic Nepalese in Bhutan, in which such it challenges their right to appeal their census status or otherwise 'claim their citizenship in Bhutan's capital.'[270]

Furthermore, stateless persons often faced restrictions on movements as they are usually not considered as 'lawfully within the territory' [271]and therefore do not enjoy such liberty of movement. As we could record the case of the Rohingyas, they are virtually confined to their village and would need to apply for travel pass to visit the neighbors.

Thus, due to their lack of mobility within the territory, they cannot access to markets, pursue education and employment opportunities. What's worse is that if they have overstayed, then their names will be deleted from their family list and they were prevented from returning to their village.[272]

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[268] Doudou Diene, Report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum-summary of cases transmitted to Governments and replies received, A/HRC/4/19/Add. 1, 5 June 2007, para 126.

[269] There's an exception in terms of the Nationals of British Overseas Territories. Under the domestic law, they were not entitled to enter the territory of the UK unconditionally until 2002, despite the fact that they are British Nationals. See Eckart Klein, "Movement, Freedom of, International Protection", in *Encyclopedia of Public International Law*, (May 2007), para. 4.

[270] Human Rights Watch, "*We don't want to be refugees again"*, in *HRW Briefing Paper for the 14th Ministerial Joint Committee of Bhutan and Nepal*, (19 May 2003), 8.

[271] Para.1, Art.12, ICCPR

[272]Lewa, "North Arakan: An Open Prison for the Rohingya in Burma,"11.

3.4.1.2.3 The Freedom of Movements under the 1954 Convention relating to Status of Stateless Persons

The Freedom of Movement is housed under Article 26 of the 1954 Stateless Convention. It provides that,

> Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances. [273]

This article raises a few concerns during the drafting period. The Dutch representative, has pointed out the wish to reserve this right for purposes of public ordre; the same representative also usurp the notion of 'assign certain places of residence to stateless persons', while the Turkish representative would also prefer posting restrictions on the stateless person's right to 'choose their own residence.'[274]

3.4.2 Social Rights

We will now turn to the right to housing under the 1954 Convention relating to the Status of the Stateless Persons. Under the Social right, I have included the right to housing as a core right for examination.

3.4.2.1 The right to housing under the 1954 Convention relating to Status of Stateless Persons

3.4.2.1.1 The Concept of the right to housing

The right to housing cannot be viewed as a property right alone. Under this provision, it is categorized under the 1954 Convention relating to the Status of Stateless Persons

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[273] Art. 26, *1954 Convention Relating to the Status of Stateless Persons*

[274] Robinson,"Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," paragraph 1 under the explanation of Article 26.

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as a type of 'Welfare', in which it would include all the hosing matters such as the housing policy, the accessing to housing right, and to address the issues of housing shortage among the stateless persons.

With that in mind, we shall examine deeper as how the right to housing is in relevance with the stateless persons.

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3.4.2.1.2 The Relevance of right to housing to stateless persons

The Roma faced several challenges in regards to accessing to housing. Issues of forced eviction from their suburban home is common[275], and the housing conditions are dire. As depicted in a report as done by the European Roma Rights Center,

> The Roma housing situation in the country is characterised by very poor conditions: 15% of Roma live in shacks, tents or other non-brick housing units; 60% do not have running water within their premises; and 12% lack toilet facilities. The majority of Roma live in areas that have unpaved roads (52.2%) or roads which are in a very bad condition (22.5%).[276]

3.4.2.1.3 The Right to Housing under the 1954 Convention relating to the Status of Stateless Persons

As formerly mentioned, the right to housing is categorized under the topic 'Welfare' under the 1954 Convention relating to the Status of Stateless Persons. Under Article 21, it provides,

> As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as

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[275] European Network on Statelessness,. "Statelessness, Discrimination and Marginalization of Roma in Albania," *Albania European Network on Statelessness* (2018), 14.

[276] European Roma Rights Center, " ERRC Submission to the European Commission on the Enlargement Component of the Eu Roma Framework," (2017): 6.

> favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.[277]

The contents of Article 21 on Housing are in exact wording as the context of the 1951 Convention relating to the Status of Refugees. Therefore, I would examine the connotations of this article in light of the 1951 Refugee Convention.

This provision was not initially intended to be incorporated as a separate clause in addressing to refugees, let along stateless persons.[278] This was because under the 1954 Convention relating to Stateless Persons, the right to acquire housing seem to be readily guaranteed under Article 13 on movable and immovable property and the drafting committee was concern whether this addition would be helpful in ascertaining the right to stateless persons.[279]

However, as triggered under the factual observations in which Sudan 'denies the refugees of the right to buy a home and Russian's refusal to allow refugees freely to rent apartments or other accommodation', [280] the Secretariats of the drafting committee find this clause as necessary. At the end, the decision to include Article 21 was made by a vote of 23 to none, with 2 abstentions.[281]

When it comes to the level of treatment, Article 21 has ascertained the right to housing as 'subject to the control of public authorities' and 'shall accord to stateless persons …as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstance'.[282]

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[277] Art. 21, *1954 Convention relating to Status of Stateless Persons*
[278] Hathaway, *The Rights of Refugees under International Law,* 820.
[279] *Statement of the Chairman, Mr. Chance of Canada, Un Doc. E/Ac.32/Sr.15.* January 27 1950, 11.
[280] Hathaway, *The Rights of Refugees under International Law*, 821.
[281] Robinson,"Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs, "para.1 under Article 21 on Housing.
[282] Art. *21, 1954 Convention relating to the Status of Stateless Persons*

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Similarly, this provision is not addressing to all stateless persons. As in accordance with this article, it shall 'accord to stateless persons lawfully staying in their territory'.[283]

The scope of the housing would include those as modeled under the provisions of the Migration for employment Convention as adopted by the International Labor Conference on July 1, 1949.[284]Which would mainly deal with the rent control, the assignment of apartments and premises.[285]

3.4.3 Economic Rights

3.4.3.1 The Right to education under the 1954 Convention relating to Status of Stateless Persons

3.4.3.1.1 The Concept of the right to education

The right to education has often been considered as one of the most essential, universal, yet complicated rights under the international human rights law.[286] It is said to 'epitomize the indivisibility and interdependence of all human rights'.[287]

In considering the right to education, it is important to reflect on its basic delineation before determining its relevance to modern day statelessness. In line with the decision in *Campbell and Cosans v. United Kingdom,* the term 'education' in a wider context, was referred to,

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[283] Art. *21, 1954 Convention relating to the Status of Stateless Persons*

[284] International Labor Conference, *Conventions and Recommendations*, 1919-1949, 863.

[285] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs, "para 2 of Article 21 on Housing.

[286] Manfred Nowak, *The Right to Education' in Rosas(ed) Economic, Social and Cultural Rights* (Dordrecht: Martinus Nijhoff Publishers, 1995), 188-189.

[287] Manfred Nowak, *The Right to Education' in Rosas(ed) Economic, Social and Cultural Rights* (Dordrecht: Martinus Nijhoff Publishers, 1995), 202.; See also UN Economic and Social Council, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, (UN Committee on Economic, Social and Cultural Rights (CESCR), May 1999), para 2.

> the whole process whereby, in any society, the adults endeavor to transmit their beliefs, culture and other values to the younger population, while teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.[288]

As previously mentioned, the right to education is said to be one of the most complicated human right concerns.[289] Its significance lies in its essence of offering individuals access to not just the right to work, freedom of opinion, but also the choice of education to the freedom of choice in culture and religious education.[290] It is substantial not just in the sense of personal self-fulfillment, but also in developing the society.[291]

The importance of this right cannot be undermined by whatever policy of Government due to its fundamental relevance to the development and advancement of nations. This is because the right to education bears the non-derogable civil liberties type of element.

Therefore, we could observe that the right to education is capable of resolving numerous other concerns of importance.[292]

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[288] European Court of Human Rights Cour Européenne des droits de L´Homme, *Case of Campbell and Cosans v. The United Kingdom* (Strasbourg, February 1982), para 33.
[289] Laura Van Waas, “Nationality Matters. Statelessness under International Law”, in *Refugee Survey Quarterly*, Volume 28, Issue 4, (2009), 340.
[290] Laura Van Waas, “Nationality Matters. Statelessness under International Law”, in *Refugee Survey Quarterly*, Volume 28, Issue 4, (2009), 340.; Manfred Nowak, *The Right to Education' in Rosas(ed) Economic, Social and Cultural Rights* (Dordrecht: Martinus Nijhoff Publishers, 1995), 188-189.; Advisory Board on Human Security, *Denial of Citizenship: A Challenge to Human Security*, (February 2005), 22.; See also Kalin, 404.
[291] Fons Coomans, "Education and Work." Chap. 13 In *International Human Rights Law* edited by Sangeeta Shah Daniel Moeckli, & Sandesh Sivakumaran. Oxford: Oxford University Press, 2010, 281.
[292] UNHCR, *Missing Out: Refugee education in crisis*, (2016). http://www.unhcr.org/missing-out-state-of -education-for-the-worlds-refugees.html.

3.4.3.1.2 The Relevance of the Right to Education to Stateless Persons

The right to education is considered as vital in providing long-term, dependable and safe environments for the marginalized people such as the stateless population.[293] Such right is particularly related to stateless children.

Typical example would be the Rohingya children, in which the Equal Right Trust reported that,

> [R]ohingya children who lack birth registration and /or citizenship continue to have difficulties accessing education.[294]

The rationale behind is because the local schools have the discretion to determine its own admission policies. Most often time, these policies are apparently fair in requesting for proof of documents for all applicants yet proved to be extremely challenging for stateless children to obtain. [295]

Due to the above restrictions, the stateless children also face other challenges in term of lacking in access to quality education. As they are not qualified for admission under the normal procedure, they would often resort to education as arranged by the NGO's or classes as arranged by other refugees. Despite the good wills of the NGOs, yet these educations are mostly of poor quality and are not able to connect with the standardized education system.

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[293] UNHCR, *Education and Protection, Education: Issue Brief 1*, (2015), htt://www.unhcr.org/560be0dd6.html.

[294] Equal Rights Trust, *The Human Rights of Stateless Rohingya in Thailand*, (Thailand: Equal Rights Trust, February 2014), https://www.refworld.org/docid/52f4952f4.html.

[295] Ibid.

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Typical problem would be incapacity in accessing the education.[296] It is also the case where the government could easily adopt a differentiating treatment with their nationals, wherein government could prevent certain groups from equally participating in the political, social, economic or cultural life in their countries; one of the most efficient methods is to deny them equal access to education.[297]

Therefore, preventing access to education could be used as an effective instrument for government to prohibit the advancement and empowerment of specific group of stateless people. The challenges which ultimately contribute to their lack of education or access to it are traceable to the root cause of statelessness, which by itself symbolizes 'disempowerment and marginalization',[298] and such perpetual nature has hindered the stateless persons for a prolonged period of time. It is substantial at this point to examine, with the development of the right to education, the increasing need of education to enhance the rights of Stateless persons.

I would like to bring forth the awareness that stateless children faced problems throughout their education life, this could be divided into the time which they access the education, enter the education and after they graduate (*if* they were granted a diploma).

First of all, it would be challenging for stateless children to access proper

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[296] UNHCR, "Statelessness and Citizenship," in *The State of the World's Refugees-A Humanitarian Agenda*, (Oxford; Oxford University Press, 1997), 241; See also Maureen Lynch, *Lives on Hold: The human cost of statelessness*, (Washington: 2005), 3, 21.
[297] Manfred Nowak, *The Right to Education' in Rosas(ed) Economic, Social and Cultural Rights* (Dordrecht: Martinus Nijhoff Publishers, 1995), 202.
[298] Advisory Board on Human Security (prepared by Constantine Sokoloff), *Denial of Citizenship: A Challenge to Human Security*, (February 2005), 22.

education.[299]In accordance with Maureen Lynch's report on stateless children, she reflected that access to education is a very critical issue for stateless children, in which many stateless families told their child that going to school is only available after the citizen's children has registered. [300] Furthermore, some would need to provide extra documents to enroll. For instance, there was a time in which the stateless children would need to apply for the Regulation on Evidence of a Child's Birth for school admission;[301] however, not every stateless child could manage to obtain one.
Another problem would be the cost of entering the public school. For stateless persons, some schools would charge higher than the normal standard,[302]as a way to deter their enrollment to their school.

Secondly, challenges continue to incur after their enrollment. Even if they manage to enter the education, the stateless children are continued to be challenged in turns of their daily study life. Many stateless persons faced being bullied yet they didn't dare to report to the teachers. This happened most often among the Stateless Bihari children, in which they either go to school and face discrimination every day or not attend the school at all. [303]

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[299] UNHCR, Statelessness and Citizenship in *The State of the World's Refugees-A humanitarian Agenda,* Oxford University Press, Oxford: 1997, page 241; Maureen Lynch, *Lives on hold: The human cost of Statelessness,* Washington: 2005, pages 3 and 21; Youth Advocate Program International, *Stateless Children- Youth Who are Without Citizenship*, Washington: 2003, page 6-7.
[300] Lynch, Maureen. " Futures Denied: Statelessness among Infants, Children, and Youth." https://www.refworld.org/docid/48fef8632.html Refugees International 2008: 10

[301] Lynch, " Futures Denied: Statelessness among Infants, Children, and Youth,"11.

[302] Ibid, 10.

[303] Lynch, Maureen, " Futures Denied: Statelessness among Infants, Children, and Youth," 10

At the same time, it is also very common that stateless children would not be given a Diploma or certificate upon completion of their education.[304] Many would need to either file a request or face directly denial from the Education department. In the Dominican Republic, for instance, the stateless children would need to provide a copy of their birth certificate in order to take the national exam at the end of the eighth year from the primary school; [305]

Another example would be a case from the Maktoumeen children, who was reported to have a highest mark in high school. But at the verge of graduation, he was not provided with a diploma and therefore unable to apply for college. He ended up selling tea in front of the University of Damascus.[306]

3.4.3.1.3 The Right to Education under the 1954 Convention relating to the Status of Stateless Persons

The Right to education is housed under the Article 22 of the 1954 Convention Relating to the Status of Stateless Persons. Under Article 22, it provides,

1. The Contracting States shall accord to Stateless persons the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to stateless persons treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education, and, in particular, as regards access to studies, the

[304] Ibid, 11

[305] International, Amnesty. "
Dominican Republic: 'Without Paper, I Am No One': Stateless People in the Dominican Republic." https://www.refworld.org/docid/564eef214.html: Amnesty International 2019: page 43.

[306] Lynch, " Futures Denied: Statelessness among Infants, Children, and Youth," 11

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> recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarship.[307]

In regards to the drafting of the right to education under the 1954 Stateless Convention in relating to the Status of the Stateless Persons, there were not many debate over it. In fact, the Yugoslav representative even proposed to apply the national treatment in all matters related to education but unfortunately, he didn't receive any support. This provision was approved by the vote of 22 to none.[308]

The scope of right as stipulated under Article 22 paragraph 1 used the word 'elementary education'. This can be understood to include both public and private elementary school education. However, the heading of the Article 22 seems to restrict the application of the right to education to solely 'public education', which would more or less exclude the stateless persons from entering private schools. However, this is in line with the drafter's intention, as in accordance with the Ad Hoc Committee, it support that this provision should be applicable to,

> education provided by public authorities from public funds and to any education subsidized in whole or in part by public funds or to scholarships derived from them.[309]

Therefore, we could observe that the international law has left the definition of 'elementary education' to the discretion of the Contracting States.

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[307] Art. 22, 1954 Stateless Convention relating to the Status of Stateless Persons

[308] Nehemiah Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," Institute of Jewish Affairs 1955, under paragraph 2(1) of the commentary for Article 22.

[309] Council, UN Economic and Social. "Ad Hoc Committee on Refugees and Stateless Persons, Second Session: Summary Record of the Thirty-fifth Meeting Held at the Palais Des Nations, Geneva, on Wednesday, 16 August 1950, at 3.00 P.M. E/Ac.32/Sr.35." https://www.refworld.org/docid/3ae68c1a0.html: UN Ad Hoc Committee on Refugees and Stateless Persons, 26 September 1950.

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3.4.3.2 The Right to work under the 1954 Convention relating to Status of Stateless Persons

3.4.3.2.1 The Concept of the Right to Work

The right to work should not be understood as an absolute right to obtain work form the States.[310] In brief, it is consisted of two parts: the right to have access to employment and Second, the Right not to be deprived of employment unfairly.

It is an important aspect of maintaining not just the physical and mental health, but also personal dignity.[311] It is through work in which a person may get connected and integrate with the local society and got accepted. Overall, it is a precondition to a good life and an indispensable tool to achieve self-realization.[312]

Finally, the significance of the right to work is affirmed under the General Comment, which states,

> The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him or her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his or her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.[313]

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[310] Services, Division of International Protection. *Self-Study Module 5: Human Rights Nad Refugee Protection*. Vol. II, https://www.refworld.org/docid/4669434c2.html UN High Commissioner for Refugees(UNHCR), 2006: 139.
[311] Mantouvalou, Virginia, ed. *The Right to Non-Exploitative Work* The Right to Work: Legal and Philosophical Perspectives. Portland: Hart Publishing Ltd, 2015: 39.
[312] Mantouvalou, Virginia, ed. *The Right to Non-Exploitative Work* The Right to Work: Legal and Philosophical Perspectives. Portland: Hart Publishing Ltd, 2015: 39.
[313] "The Right to Work: General Comment No. 18 Adopted on 24 November 2005." edited by Social and Cultural Rights Committee on Economic. Geneva: United Nations 2005.

Furthermore, The International Labor Organization (ILO) has supported the same regarding the significance of the right to work. In the *preamble* of the ILO Convention No 168, it states,

> the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them.[314]

3.4.3.2.2 The Relevance of the Right to Work with Stateless Persons

The right to work is strongly in relevance with stateless persons. This can be reflected in the ultimate aim of the right to work, which is: to integrate with the society and to maintain their dignity. However, stateless persons are detached from the society. As vividly described by a Kenya Nubian,

> [T]he lack of a link to the state, lack of integration and lack of social acceptance have been part of our existence.[315]

The stateless persons were referred as 'Nowhere people'[316]and I find that it is because of their lack of identity as compiled by discrimination which makes them hard to find a decent work. In order to survive, many of them, especially the Rohingyas, would need to 'rely on unsafe illegal migration channels' and eventually 'fall prey to unscrupulous smugglers and traffickers.'[317]

[314] See *Preamble* to ILO Convention No 168 concerning Employment Promotion and Protection against Unemployment 1988

[315] Adam Hussein. "Kenyan Nubians: Standing up to Statelessness ". *Forced Migration Review* no. 32 (2009): 20.

[316] Greg Constantine, "Nowhere People, "*Forced Migration Review*, no. 32 (2009):40-41.

[317] Lewa, Chris. "North Arakan: An Open Prison for the Rohingya in Burma." *Forced Migration Review* no. 32 (2009): 13.

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in the case of as stateless persons, as they are in lacking a legal status, it is not just difficult for them to secure a decent high paying job but also, whether they are able to actually access to employment itself is a question of concern.

This is because accession to the employment is not a stand along components, but also requires the surrounding facilities such as education and vocational training to be readily available prior to talking about accessing the right to work.

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Furthermore, it is an undeniable truth that the availability of the work force is rather limited to the stateless persons, as the State mostly put their effort in enabling their own nationals.

Nevertheless, securing a decent and proper job is often challenging and which indirectly infringe other basic rights. In this case, their lack of right to access the work field incurs not just mental frustration, but also pushes them into poverty; they are unable to further secure other basic necessities such as food and shelter, nor obtaining the adequate standard of living.

This further pushes them to move irregularly in either seeking for a decent job or coerced them to work in hectic environment, which contributes further to the disability of the host state. Therefore, it is a vicious circle if this right is denied from the stateless persons.

Finally, such right is often denied to stateless persons in the actual practice of the states. From the onset, it seems like the right to work bears the universal element as any other human right; however, as depicted by legal scholar Virginia Mantouvalou, it

is actually 'conditional on citizenship or immigration status in national legal orders.'[318]

She further puts that the right to work is 'an aspiration, not a description of social reality.'[319] Most of the time they were succumbed to the immigration law rather than the human right obligations and thereby, 'they have no legal rights.'[320] As of now, numerous stateless persons continue to dwell in the tug of war between the human rights law and immigration law, which is an anomaly as the standard in applying such right has shifted from human dignity to the restrictions as set forth by the immigration law. Unlike the ultimate intention to protect as set forth by the international human rights law, the immigration law aims on national security and control.[321]

3.4.3.2.3 The Right to work under the 1954 Convention Relating to the Status of Stateless Persons

The 1954 Convention relating to status of stateless persons have dedicated three full provisions touching on the right to work. In the following, I would like to examine the following sub-provisions of the right to work respectively: the right to wage-earning employment (section 3.4.3.2.3.1), right to self-employment (section 3.4.3.2.3.2) and right to liberal professions (section 3.4.3.2.3.3).

3.4.3.2.3.1 The Right to Wage-earning Employment under the 1954 Convention relating to the Status of Stateless Persons

The right to wage-earning Employment of Stateless Persons is housed under Article 17 of the 1954 Convention Relating to the Status of Stateless Persons. It states,

[318] Virginia Mantouvalou, ed. *The Right to Non-Exploitative Work* The Right to Work: Legal and Philosophical Perspectives. Portland: Hart Publishing Ltd, 2015: 40, 42.
[319] Ibid, 42.
[320] Ibid, 40.
[321] Ibid, 43.

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1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.
2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programs of labor recruitment or under immigration schemes.[322]

I find that scope of rights as housed under the Article 17 as rather unclear. First of all, the 1954 Convention relating to the Status of Stateless Persons did not define 'wage-earning employment'. However, they should be interpreted in its broadest sense.[323]

Under this provision, we could observe that the wage-earning employment is not guaranteed to all stateless persons, but reserved for those who are 'lawfully staying in their territory'.[324]

Furthermore, the level of treatment would be 'that accorded to aliens generally in the same circumstances'.[325]

As comparative with the 1951 Convention relating to the Status of Refugees, the Article 17 para.1 of the 1954 Convention relating to the Status of Stateless Persons has accorded a much narrower scope of rights and treatment. This is in stark contrast

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[322] Art. 17, *1954 Convention relating to Status of Stateless Persons*

[323] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson, Institute of Jewish Affairs, " para. 3 under Article 17(2).

[324] Art. 18 para.1, *1954 Convention relating to Status of Stateless Persons*

[325] Art. 17 para.1, *1954 Convention relating to Status of Stateless Persons*

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with the 1951 Convention relating to the Status of Refugees, in which it provides 'the most favorable treatment accorded to nationals of a foreign country in the same circumstances'.[326]

Additionally, the 1951 Refugee Conventions further added that 'restrictive measures imposed on aliens or the employment of aliens for the protection of the national labor markets shall not be applied', and that the refugees was 'already exempt from them' if they have fulfilled one of the following conditions:

a. He has completed three years' residence in the country;
b. He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;
c. He has one or more children possessing the nationality of the country of residence.[327]

Disappointedly, these additional clauses as stipulated under the 1951 Refugee Conventions are not provided under the 1954 Convention relating to the Status of Stateless Persons. The Ad Hoc Committee has suggested just to apply to stateless persons only the first paragraph of the 1951 refugee Convention and opposed to the application of 'most favorable treatment' to stateless persons.[328]Such opposition was taken place because the opponents did not want to accept that stateless persons could receive same treatment as their nationals.

[326] Art. 17 para. 1, *1951 Convention relating to the Status of Refugees*
[327] Art. 17 para.2, *1951 Convention relating to the Status of Refugees*
[328] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," para. 1 under Article 17(2).

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Furthermore, when the President of the drafting committee stated that this provision would be equally applicable to stateless persons, the Belgian representative responded that the status of the refugees were thoroughly studied before being granted such status; further objections came from the regions like the Scandinavian, Benelux and Latin America, who expressed that they would need to enter into reservation shall this provision be applicable to stateless persons too.[329]

As regard to the to the three conditions as stipulated under the 1951 Convention relating to the Status of Refugees, these were supported by a few representatives during the drafting process to be incorporated under the 1954 Convention relating to the Status of Stateless Persons. The German representative was supportive of the including these conditions, except extend the residential period from three years to five years.[330]

However, other representatives consider five years as too long and as amended under paragraph 1, the stateless persons would enjoy the same treatment as foreigners in general.[331]

3.4.3.2.3.2 Right to Self-employment under Article 18 of the 1954 Convention relating to the Status of Stateless Persons

The Right to self-employment is housed under Article 18 as immediately following the right to wage-earning employment. This article comes without debate, and its wordings are in complimentary with that of the 1951 Refugee Convention.[332]

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[329] Ibid, para. 2 under Article 15.
[330] Ibid, para. 1 under Article 17(2).
[331] Ibid.
[332] Ibid, paragraph 1 as explanation under Article 18.

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Under this provision, it provides,

> The Contracting States shall accord to a stateless person lawfully in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.[333]

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Under this provision, we could observe that the treatment as accorded to stateless persons to enjoy this right is as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.

As to the scope of rights, the right to self-employment is reserved to those stateless persons who are 'lawfully in their territory'.[334] Based from the above condition, Article 18 has specifically list the scope of rights. In accordance with the provision, such scope of right include 'agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.'[335] This would mean that certain licensing requirements as generally available to aliens would be equally applicable to stateless persons in order for them to be under the Contractual state's protection.[336]

3.4.3.2.3.3 Right to Liberal Profession under Article 19 of the 1954 Convention relating to the Status of Stateless Persons

Finally, the right to liberal professions is listed under Article 19. It provides,

> Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of

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[333] Art. 18, *1954 Stateless Conventions in relating to Status of Stateless Persons*
[334] Ibid.
[335] Ibid.
[336] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," paragraph 3 as explanation under Article 18.

> that State, and who are desirous of practicing a liberal profession, treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.[337]

As comparative to that of the 1951 Refugee Conventions, which consists of two articles, the Ad Hoc Committee has suggested to apply only the first paragraph to the stateless persons.[338] If we referred to the second paragraph of the Article 19 of 1951 Refugee Convention, we could observe that it ascertain that the Contracting States,

> Shall use their best endeavors consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.[339]

The Ad hoc Committee has decided not to include this as the provision for stateless persons because it has imposes upon the Contractual States to moral obligation to secure employment for them under their existing legislation. Therefore, this paragraph is not even proposed by any of the representatives.[340]

Under the 1954 Convention Relating to the Status of Stateless Persons, such scope of liberal profession would include,

> Physicians, dentists, veterinarians, pharmacists, lawyers, teachers, self-employed engineers, architects, artists.[341]

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[337] Art. 19, 1954 *Convention relating to the Status of Stateless Persons*
[338] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," paragraph 1 as explanation under Article 19.
[339] Art. 19, 1951 Convention Relating to the Status of Refugees.
[340] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson," paragraph 1 as explanation under Article 19.
[341] Ibid, paragraph 3 as explanation under Article 19.

3.5 The Protection under the 1954 Convention relating to the Status of Stateless Persons

3.5.1 Concept of International Protection

Under the international human rights law, the contracting states have the duties of respect, to protect and to fulfill their human right obligations. Under the duty to protect, it is addressing that the state would need to provide legal remedies to punish interference of the third parties.[342]

In accordance with the above definition, I find very minimal protection provisions under the 1954 Convention relating to the Status of the Stateless Persons that explicitly addressing to the protection of stateless persons. However, the 1954 Stateless Convention does consist of some facilitation provisions that would enhance such protection. In the following, I would like to examine some of the protection measures as addressed under the 1954 Stateless Convention.

3.5.2 The Relevant Protections under the 1954 Convention relating to the Status of Stateless Persons

3.5.2.1 Protection through Administrative Assistance

The protection through administrative assistance is highly important in effectuate the rights of the stateless persons; it is particularly significance for stateless persons during the status determination process, in which various barriers such as language or misunderstanding of the culture or bias behavior could drag the process endlessly. Furthermore, such status determination process could be stagnated at the pitfall of the

[342] Künzli, Walter Kälin and Jörg. *The Law of International Human Rights Protection* Oxford Oxford University Press 2009, 393.

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officials and stateless persons couldn't possibly involve in all steps of the administrative process.

This is also in accordance with the drafters of the 1951 Convention relating to the Status of the Refugees, in which was modeled after by the 1954 Convention relating to the Status of the Stateless Persons, by stating,

> [E]ven if the Government of the country of asylum grants the refugee a status which ensure him treatment equivalent to or better than that enjoyed by foreigners, it does not follow that on that account alone he will be allowed to enjoy the rights granted to him. If the refugee is actually to enjoy these rights, he must obtain the assistance of an authority which will perform for him the services performed by national authorities in the case of persons with a nationality. In the absence of an international authority, the High Contracting Parties must appoint a national authority which will furnish its assistance to refugees and deliver the documents they require.[343]

Similarly, the United Nations High Commissioners for Refugees (UNHCR) does not have a clear power to enforce the refugees or the stateless persons' rights. In fact, their involvement is non-political and could only coordinate the protection of refugees (and stateless persons). This is reflected under the Statute of the Office of the United Nations High Commissioners for Refugees, in which it provides the competence of the UNHCR solely to 'promote the admission of refugees, not excluding those in the most destitute categories, to the territories of States,'[344] that UNHCR could 'obtain from Government information concerning the number and conditions of refugees in

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[343] Secretary-General, "Memorandum," at 43-44; see also Hathaway, James C. *The Rights of Refugees under International Law* United States of America Cambridge University Press 2005, 628.

[344] *Art. 8(d), Statute of the Office of the United Nations High Commissioner for Refugees, a/Res/428(V)*. UN General Assembly 14 December 1950.

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their territories and the law'[345] and to 'keep close touch with the Government'.[346]To this end, we could observe that the UNHCR administrative assistance towards their people of concern, namely, the stateless persons, would equally fell under this limitation.

The question may raise: when would such administrative assistance require and who will exercise such administrative assistance? The response to the question would be the host country in which they would be the direct person in providing administrative assistance. In terms of stateless persons, such administrative assistance would occur when the host government expressively deny the access of the stateless persons to their legal system.[347]

3.5.2.2 Protection through issuing Identity Paper for Stateless Persons

This can be reflected from the subsequent two articles as immediately following the Article 26 on liberty of movements, and to better guarantee the protection of the freedom of movements of stateless persons at the status or level generally applicable to aliens.

First of all, the 1954 Convention relating to Status of the Stateless Persons obligates the Contracting States to issue identity papers to stateless persons. As provided under Article 27,

> The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.[348]

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[345] Art.8(f), *Statute of the Office of the United Nations High Commissioner for Refugees, a/Res/428(V)*. UN General Assembly 14 December 1950.

[346] Art.8(g), *Statute of the Office of the United Nations High Commissioner for Refugees, a/Res/428(V)*. UN General Assembly 14 December 1950.

[347] Hathaway, James C. *The Rights of Refugees under International Law* United States of America Cambridge University Press 2005, 629.

[348] Art. 27, *1954 Convention Relating to the Status of Stateless Persons*

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In contrast to the ICESCR, such safeguard was not provided to specifically address the practical concerns of the stateless persons for lacking a valid identity paper. Although, some of the drafting states felt that such identity papers should not be issued to every stateless person but only to those who are having a residence in the country; while a few other representatives deemed it more appropriate to distinguish the identity paper to be issued to those who continuously staying in the country while the actual residents can have the travel paper.[349]

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Under Article 27, we could observe that such protection is extendable to 'any stateless person' in which the only requirement would be 'in their territory'.[350]This further solidify the right of freedom of movement and offset with the previous limitation of 'lawfully in its territory'[351] under Article 26. Instead, Article 27 tackles with 'any stateless person in their territory' and there is no requirement of residence or lawful presence, as long as the stateless person is physically presented in the territory of the given state.[352]

It is also important to note that such issuing of the identity paper is not an absolute requirement. That would mean that Article 27 still have to cater to the interest of the stateless persons, in which it would not impose that stateless persons must possess one as the purpose of the identity paper is to guarantee the interests of the stateless persons and not to put them into a challenging state.[353]

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[349] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson", paragraph 1 under the explanation of Article 27.

[350] Art. 27*, 1954 Convention Relating to the Status of Stateless Persons*

[351] Art. 26, *1954 Convention Relating to the Status of Stateless Persons*

[352] Robinson, "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson,", paragraph 2.1 under the explanation of Article 27.

[353] Robinson, Nehemiah. "Convention Relating to the Status of Stateless Persons: Its History and Interpretation: A Commentary by Nehemiah Robinson." Institute of Jewish Affairs 1955, paragraph 2.3 under the explanation of Article 27.

3.5.2.3 Protection through Issuing Travel Documents for Stateless Persons

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Besides the identity paper for internal use of the stateless persons, the 1954 Convention on Status of the Stateless Persons also enhance the protection and scope of rights in term of freedom of movements through Article 28 on Travel documents. Under Article 28, it provides that,

> Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose o travel outside their territory, unless compelling reasons of national security or public order otherwise required and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence. [354]

The above provision connotes that stateless persons are able to travel abroad and that the State Parties should facilitate such travel without restrictions. There are certain level of restrictions in terms of 'national security or public order', but this provision is applicable to stateless persons in enhancing their normal way of life.

This provision offers a strong protection in terms that it authorizes the state to not just govern over any stateless persons within their jurisdiction, but extend such obligation to those who are unable to obtain documents from their country of origin yet found within their territory. In my view, the 1954 Stateless Convention is practically aiming

[354] *Art. 28, 1954 Convention Relating to the Status of Stateless Persons*

to offer the protection of freedom of movements to cover all types of stateless persons regardless of their situation.

However, the protection of the freedom of movements under the 1954 Convention Relating to the Stateless Persons is not without restrictions. Besides the limitations as imposed under the public order or national security concerns, the 1954 Convention Relating to the Stateless Persons also set forth the conditions for renewal or extension of the travel document. Under paragraph 6 of the Article 28, it provides that,

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> The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority.

Based from the above, we could observe that the 1954 Convention Relating to the Status of Stateless Persons have requested that the holder of the travel documents do not readily hold a lawful residence in another country as a pre-condition for issuing the travel document. This is to prevent the conflicts in jurisdiction and to ensure that stateless persons have a protecting state. Therefore, this provision has put forth the rights and interests of the stateless persons to it's foremost concern.

I find that the 1954 Convention Relating to the Status of Stateless Persons intends to ensure that such renewal or extension is not in conflict with another authority but to ensure that stateless persons is, at all time, holding such travel document to safeguard themselves.

To further ensure the stateless persons could travel more smoothly, the 1954 Convention Relating to the Status of Stateless Persons have further categorized sixteen paragraph under the title 'Schedule to Article 28' to the specification of such

travel document. These paragraphs are placed right after the Article 28 on Travel documents, in which it provides the specifications of such travel documents and what the contracting states and relevant authorities should do. For instance, under Paragraph 9, it provides that,

> The Contracting States undertake to issue transit visa to stateless persons who have obtained visas for a territory of final destination.[355]

Furthermore, the Schedule of Paragraphs have addressed to series of concerns as commonly occurred on stateless persons, namely: the challenge of issue, renewal and extension of the travel documents and the high payment.

First of all, in regards to issuing, renewal and extension of the travel documents, the paragraph under Article 28 have provided specifications in ensuring that stateless persons would have a smooth process in this regards. Under Paragraph 13 for instance, it provides that such travel document,

> Entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity…except when the country to which the stateless person proposes to travel does not insist on the travel document according the right of re-entry.[356]

In order to further protect the stateless persons from being challenged under unreasonable payment which would challenge their travel, Paragraph 10 also provides,

> The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passport.[357]

Finally, the Schedule of Paragraph has indicated which authority should be the one to offer protection and issuance or extension of such travel documents to stateless

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[355] Paragraph 9(1), Article 28, *1954 Convention Relating to the Status of Stateless Persons*
[356] Paragraph 13(1), Article 28, *1954 Convention Relating to the Status of Stateless Persons*
[357] Paragraph 10, Article 28, 1954 *Convention Relating to the Status of Stateless Persons*

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persons. In regards to those stateless persons who has ‘lawfully taken up residence in the territory of another Contracting State’, the Paragraph provides that the responsibility for issue of a new documents shall be ‘that of the competent authority of that territory, to which the stateless person shall be entitled to apply’.[358]

To this end, we could observe that the protection towards the freedom of movements of stateless persons are in good status as the scope of rights are more specified as comparative to the previous human right instruments. It also addresses to the specific conditions as commonly occurred to stateless persons which are the dilemma of high official travel expenses and that challenges of extending or renewing the travel documents.

3.5.2.4 Public Relief and Assistance

The assistance through the clause of Public Relief is also ascertained under the 1954 Convention relating to the Status of Stateless Persons. Under Article 23, it provides that,

> The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.[359]

The wordings under Article 23 modeled the exact same wordings as the 1951 Convention relating to Status of Refugees. Under this article, we could observe that such protection is accorded to stateless persons who are ‘lawfully staying in their territory’, but at the highest level of protection ‘as accorded to their nationals.’[360]

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[358] Paragraph 11, Article 28, *1954 Convention Relating to the Status of Stateless Persons*

[359] Art.23, *1954 Convention Relating to the Status of Stateless Persons*

[360] Art.23, *1954 Convention Relating to the Status of Stateless Persons*

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In regards to the term 'public relief and assistance', there was no further enumeration as what would be the scope of such relief and assistance. There was no objection that such public relief would be paid to persons,

> Suffering from physical or mental disease and incapable because of their condition or age of earning a livelihood for themselves and their families, and also to children without support.[361]

Therefore, I would hold that the scope of rights would be quite broad. As Paul Weis depicted, 'what is meant by public relief and assistance depends on national law, but the concept should be interpreted widely.'[362]Also, the drafters of this provision also intentionally not to define the beneficiaries, as 'such an enumeration was of necessity incomplete.'[363]

From the appearance, the condition of 'lawfully staying in their territory' seems to be a restraint for rendering protection. However, if we could trace back to the earlier instruments prior to the 1951 Convention relating to Status of Refugees in which the 1954 Stateless Convention was modeled upon, we would discover that there was a significant enhancement.[364]This was because under the earlier refugee instruments such as the Convention relating to the International Status of Refugees and the Convention concerning the Status of Refugees coming from Germany, both of them were limited specifically to refugees who weren't able to earn their own living. For

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[361] *Secretary-General, "Memorandum"*, 39.
[362] Weis, Paul. *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis.* Cambridge University Press posthumously published 1995, 174.
[363] *Statement of Mr. Metall of the International Labor Organization, Un Doc. E/Ac.32/Sr.15*. January 27 1950.
[364] Hathaway, James. *The Rights of Refugees under International Law* New York Cambridge University Press 2005, 806.

example, under the 1933 Refugee Convention, it specifically mentioned that such public relief and assistance was entitled by those,

> Unemployed persons, persons suffering from physical or mental disease, aged persons or infirm persons incapable of earning a livelihood, children for whose upkeep no adequate provision is made either by their families or by third parties, pregnant women, women in childbed or nursing mothers.[365]

Luckily, the drafters of the 1951 Convention relating to the Status of Refugees chose to abolish this limitation. Therefore, for refugees, in terms of the right to receive public relief[366] and as equivalently extended to the stateless persons under the 1954 Convention relating to the stateless persons, would be able to invoke this clause as guaranteed; this is in respect of the duty to assimilate stateless persons to nationals for the purpose of public relief.[367]

However, there is one restriction in applying the right to public relief to stateless persons under the 1954 Convention relating to the Status of Stateless Persons. That is, even though the level of protection under Article 23 is guaranteed 'as accorded to their nationals'[368], that would mean that the States would not be required to offer such public relief unless the Contracting State equally offer the same relief and assistance to their own citizens. Therefore, this would plausibly provide an excuse for the less developed States that lack such social assistance program for their own nationals.[369]

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[365] *1933* Convention Relating to the International Status of Refugees*,* 159 Lnts 3663, Entered into Force June 13, 1935, Art. 9.

[366] Hathaway, James. *The Rights of Refugees under International Law* New York Cambridge University Press 2005, 806.

[367] Ibid, 807.

[368] Art.23, *1954 Convention Relating to the Status of Stateless Persons*.

[369] Hathaway, James. *The Rights of Refugees under International Law* New York Cambridge University Press 2005, 809.

In conclusion, the stateless persons would be eligible to access to all public social assistance programs of the Contracting States under Article 23 of the 1954 Convention relating to the Status of Stateless Persons. As we could observe, the inclusion of the public relief for stateless persons represented the good will of the contracting states in assimilating the stateless persons to nationals.

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3.6 The Challenges of the 1954 Convention relating to the Status of Stateless Persons in enhancing the maximum rights and protections to Stateless Persons

3.6.1 The Challenges as faced under the 1954 Convention Relating to Stateless Persons

While allocating the suitable rights to Stateless persons, I further diagnoses that the perimeter for measuring the extent of right entitling Stateless persons is still governed by some genuine traces or levels of attachment to the host country.

This development is conveniently unaccommodating as the rights addressing Stateless persons who are either '*lawfully staying in their territory*[370]' or '*in which he has his habitual residence*'[371] is abetted by law. This state of affairs posed the challenge of inadequacy in the protection and application of the rights under the *1954 Stateless Convention*.

Although the 1954 Convention relating to the status of Stateless Persons is created to ascertain set of rights to stateless persons in the manner of *'assuring the widest*

[370] United Nations High Commissioner for Refugees, "Convention relating to the status of stateless persons", *United Nations High Commissioner for Refugees,* (1954), article 15, 17, 18, 19, 21, 23, 24, 26 and 28.
[371] United Nations High Commissioner for Refugees, "Convention relating to the status of stateless persons", *United Nations High Commissioner for Refugees,* (1954), article 14 and 16.

possible exercise by Stateless persons,'[372] it nonetheless has three challenges which seem to affect the level of protection and rights extended to them.

First, as described by the preamble to the *1954 Stateless Convention*, it aims to *'assure Stateless persons the widest possible exercise of their fundamental rights and freedoms.'*[373] In my view, even though the promptings in the preamble has the good intention of covering the *'widest possible exercise'* of the rights, these rights as listed under the *1954 Convention* is still limited to *'fundamental rights.'*[374]

In essence, since the substantive rights are limited to the fundamentals, the non-inclusion of the wide arrays of rights in the 1954 Stateless Convention is therefore not surprising.

Second, the *1954 Stateless Conventions* contain conditions which might plausibly exclude the Stateless persons from invoking these rights. These drawbacks are: the variations of the scales in treatment according to the status of Stateless persons, the potential exclusion of the *de facto* Stateless persons and the discretion of the domestic tribunal in determining Statelessness.
To this end, we could observe that although the 1954 Stateless Convention attempts to address the status, rights and protection of stateless persons, however, it still carry an

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[372] United Nations High Commissioner for Refugees, "Convention relating to the status of stateless persons", *United Nations High Commissioner for Refugees,* (1954), 5.
[373] Ibid.
[374] Ibid.

intrinsic limitations in which the provisions either not comprehensively addressing to the issues as faced by stateless persons or not covered.[375]

On top of that, the acceding rate to the 1954 Stateless Conventions are extremely low. As of the year 2019, it has a total of 91 signatory parties[376] as comparative to the 146 signatory parties to the *1951 Convention relating to the Status of Refugees*,[377] 181 signatory parties to the *International Convention on the Elimination of all Forms of Racial Discriminations* (ICERD)[378] and 196 signatory parties to the Convention on the Rights of the Child (CRC).[379]

These drawbacks provided a ground for human rights campaigners to intervene and enhance to a greater extent the status and rights of Stateless persons. I will further elaborate on the impacts of these two concerns toward Stateless persons.

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[375] United Nations High Commissioner for Refugees, *Self-Study Module on Statelessness* (UN High Commissioner for Refugees, 1 October 2012), https://www.refworld.org/docid/50b899602.html%20[accessed%2028%20May%202019.

[376] Ibid..; see also United Nations Treaty Collection, *Treaty Series,* vol. 360, 117.

[377] Ibid.

[378] Ibid, 195.

[379] Ibid, 3.

Chapter Four The Development of the Human Rights of Stateless Persons

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After examining the status, rights and protections under the 1954 Convention relating to the Status of Stateless Persons, we understood that although the 1954 Convention relating to the Status of Stateless Persons have the intention of ascertaining the rights to stateless persons at the level of either quasi-national or quasi-alien, however, there are still various parts of rights and protection which would be inadequate to achieve the fuller rights and protections for them.

Therefore, it would be substantial to turn to the relevant human rights instruments and examine what do they entail. This lead to the objectives of this chapter, which is to find out:

1) How has specific human rights clarify, affirm or maximize the rights and protections of the 1954 Convention relating to Status of Stateless Persons?
2) What additional rights are there to strengthen the rights and protections of stateless persons?

Base on this objective, I will examine relevant human right instruments and some selected rights as fall under each instrument. I will briefly reiterate on the rights and protections as discussed under the previous chapter, which touches on the status, rights and protections as ascertained under the 1954 Convention relating to the Status of Stateless Persons; at the same time, I will examine how has the subsequent human right instruments that come after 1954 Stateless Convention related in ways of either enhancing, supplementing or affirming the 1954 Stateless Convention.

In this Chapter, I have selected the International Covenant on Civil and Political rights 1966, the International Covenant on Economic, Social and Political Rights; I've further selected two specific instruments-The Convention on the Elimination of All Forms of Discrimination against Women(CEDAW) and the United Nations Convention on the Rights of the Child(CRC) as a point of examination as how they have contributed to developing the selective rights and protections of stateless persons. This is because these instruments spurred in subsequent to the 1954 Convention relating to the Status of Stateless Persons and they have been widely recognized by numerous States.

4.1 International Covenant on Civil and Political Rights (ICCPR) in addressing the Civil Rights of the Stateless Persons

4.1.1 The Background of ICCPR

The *ICCPR* was often considered as the fundamental rights that served as prototype in the drafting of the constitution of many a country, like Russia, Spain etc. The Russian Constitution states that,

> the universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system, that if an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.[380]

In accordance with the principles proclaimed in the *UN* Charter, the recognition of the inherent dignity, equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Recognizing that in

[380] Article 15 (4), Russian Constitution

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accordance with the *Universal Declaration of Human Rights*, the ideal of free human beings enjoying civil and political freedom and the freedom from fear and want achievable when conditions are created for everyone to so enjoy their civil and political rights as well as their economic, social and cultural rights summarizes the intent of the International Covenant on Civil and Political Rights.

The said Covenant considers the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of human rights and freedoms of Stateless persons. That States realizes that the individual, having duties to other individuals and the community at large where he belongs is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.

The provisions in the ICCPR are laudable to the extent to which the rights therein arise out of the inherent dignity of the human person. However, such can only be achieved if the channel or conditions to access these rights are created.[381]

4.1.2 The General Principles and the Human Rights in addressing the Stateless Persons under the ICCPR

4.1.2.1 The General Principles of the ICCPR

There are various principles governing the ICCPR and many of them is equally found under the 1954 Convention relating to the Status of Stateless Persons. These Principles are: Equality and Non-discrimination.

In the following, I will examine firstly examine the background and concept of the principle of equality under the ICCPR and followed by how these principles have

[381]Preamble to the ICCPR

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expanded and supplemented the principles as provided under the 1954 Convention relating to the Status of Stateless Persons.

4.1.2.1.1 The Principle of Equality under ICCPR

4.1.2.1.1.1 Background of the Principle of Equality under ICCPR

The principle of equality was originally rooted under the UN Charter, in which it distinctively declare that one of the purpose of the United Nations is 'in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.'[382]Such principle is later incorporated into the Universal Declaration of Human Rights, in which it emphasis in the very beginning of the Declaration that 'All human beings are born free and equal in dignity and rights'.[383]

The principle of equality is not covered under the 1954 Convention relating to the Status of the Stateless Persons. Therefore, the principle of equality as addressed under the ICCPR would be a good supplement to the 1954 Convention. Under the 1954 Stateless Convention, the closest principle would be the non-discrimination principle, which is covered under Article 3.

However, in numerous human right instruments, equality and non-discrimination principle are often addressed together. For instance, under the American Convention on Human Rights (ACHR), it provides that,

> All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.[384]

[382] Art.1 para. 3, UN Charter
[383] Art. 1, Universal Declaration of Human rights
[384] Art. 24, American Convention on Human Rights 1969

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Also, under the African Charter on Human and People's Rights,

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognized…without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.[385]

To this end, we could observe that equality and non-discrimination are often addressed together. In the following, we shall turn to examine the content of the principle of equality under ICCPR and how is it helpful in enhancing the principle of non-discrimination under the 1954 Convention relating to the Status of Stateless Persons.

4.1.2.1.1.2 The Content of the Principle of Equality under ICCPR as comparative with the 1954 Convention relating to the Status of Stateless Persons

The principle of equality is housed under Article 2, 3 and 26 of the ICCPR. Firstly, under Article 2, it provides that 'each State Party to the present Covenant undertakes to respect and to ensure to all individual within its territory and subject to its jurisdiction the rights recognized'; this provision is further supplemented under Article 26, in which such equality is further pushed to the part of protection. Under the ICCPR, it urges that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.'[386]

Under this principle, the terms 'all persons' and 'ensure to all individual within its territory' refer that under the ICCPR, this principle of equality is applicable to all

[385] Art.2, African Charter on Human and Peoples' rights 1981

[386] Art.26, ICCPR

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people within the host country's territory, including stateless persons. These provisions also symbolize the acknowledgement of the personal jurisdiction in which the State Parties could exercise its sovereignty over the people within their jurisdiction.

However, the equality principle under the ICCPR doesn't stop there. Instead, it further provides that such equality also extends to the part of remedy in case such equality doesn't not met by the Contracting States. This can be seen under Article 2 paragraph 3, in which it emphasizes that the State Parties should 'ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy'[387]. The term 'any' in this case, is addressing to every individual within the territory and therefore, include stateless persons.

The principle of equality can also be found under Article 3. It provides that,

> The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.[388]

This provision is again a further extension of the non-discrimination clause under the 1954 Convention relating to Stateless Persons. This is because under the 1954 Convention relating to the Status of Stateless Persons, the equality between sex is not mentioned and the non-discrimination clause as housed under only based on three grounds: race, religion or country of origin. [389]

At the same time, the provisions under the 1954 Convention relating to the Status of Stateless Persons are implicitly not really in supportive of equality. As we could

[387] Art. 2 para.3(a), ICCPR
[388] Art.3, ICCPR
[389] Art. 3, 1954 Convention relating to the Status of Stateless Persons

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observe, the scope of rights and the conditions as set forth under the 1954 Stateless Convention are conditional upon whether the individual is lawfully within the territory and the treatments were differentiated in accordance with specific status. For instance. in regards to religion, the 1954 Stateless Convention has provided with 'treatment at least as favorable as that accorded to their national,'[390]instead of saying that 'all are equal in terms of religion'.; further example would be that of the right to association, in which the treatment is accorded 'as favorably as possible, and in any event, not less favorable than that accorded to aliens'.[391]

Based on the above, we could see that as comparative with the ICCPR, there aren't any absolutely equal rights under the 1954 Convention relating to the Status of the Stateless Persons. Therefore, the principle of equality as housed under the ICCPR has expanded the scope of equality and supplemented the non-discrimination clause under the 1954 Convention relating to the Status of the Stateless Persons.

To this end, we shall now turn to the next relevant principle: the non-discrimination under the ICCPR.

4.1.2.1.2 Non-discriminations under the ICCPR

4.1.2.1.2.1 The Background of non-discrimination under the ICCPR

The Non-discrimination principle as usurped under the ICCPR was originally derived from the Article 2 and 7 of the Universal Declaration of Human Rights (UDHR). Under Article 2, it states,

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion,

[390] Art. 4, 1954 Convention relating to the Status of Stateless Persons

[391] Art. 15, 1954 Convention relating to the Status of Stateless Persons

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> political or other opinion, national or social origin, property, birth or other status.[392]

And also, in paragraph 2 it further states,

> [N]o distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self-governing or under any other limitation of sovereignty.[393]

Also, under Article 7, the UDHR provides,

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.[394]

Based from the above, we could see that this clause is based on the belief that there shouldn't be any differentiation in the treatment of individuals.[395] This article it self constitutes as a protection against the discrimination and such clause has not appeared at the international level until 1945, in which the UN Charter was adopted.[396]

It would be interesting to know that these grounds were originally undergone some debate before the ICCPR could adopt the same. For instance, the Indian expert members would like to include 'color' as part of the ground as he believed that the

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[392] Art. 2 para.1, Universal Declaration of Human Rights
[393] Art. 2 para.2, Universal Declaration of Human Rights
[394] Art. 7, Universal Declaration of Human Rights
[395] Skogly, Sigrun. "Article 2." Chap. 2 In *The Universal Declaration of Human Rights: A Common Standard of Achievement* edited by Gudmundur Alfredsson and Asbjørn Eide. The Netherlands Martinus Nijhoff Publishers 1999, 75.
[396] Skogly, Sigrun. "Article 2." Chap. 2 In *The Universal Declaration of Human Rights: A Common Standard of Achievement* edited by Gudmundur Alfredsson and Asbjørn Eide. The Netherlands Martinus Nijhoff Publishers 1999, 76.

discrimination between the race and color are not the same;[397] It was not until later that 'color' is included on equal ground.

At the same, the inclusion of the 'political opinion' was also an issue as it was believed that such political opinions would 'tolerate not only the advocacy of racial or national hatred, but also action arising therefrom.'[398] Some other grounds such as 'birth', status' and 'property' were also an issue of concern among the delegates.

However, we could observe that ICCPR was non-exhaustive in nature based on the wordings of the provision itself. The phrase 'without distinction of any kind' symbolizes that the ICCPR intends to incorporate as much discrimination grounds as possible so that the aim of protection to all people could be achieved.

With that being set, we shall now turn to see how has the ICCPR affirmed or supplemented the 1954 Convention relating to the Status of stateless persons.

4.1.2.1.2.2 The Non-discrimination under the ICCPR as comparative with the 1954 Convention relating to the Status of the Stateless Persons

In terms of non-discrimination, the ICCPR has broaden the scope of non-discrimination protection as comparative to the three basis as provided under Article 3 of the 1954 Convention relating to the Status of Stateless Persons. Namely, the race, religion or country of origin.[399]

Under Article 2 paragraph 1, the ICCPR provides,

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights

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[397] UN Doc. E/CN.4/Sub.2/SR.4, 25.
[398] UN Doc. E/CN.4/Sub.2/SR.4, 25.
[399] Art. 3, 1954 Convention relating to the Status of Stateless Persons

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> recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[400]

Based from the above, we could observe that the non-discrimination principle as provided under the ICCPR has supplemented the 1954 Convention relating to the Status of Stateless Persons. Besides the extensive enumeration of the basis for non-discrimination, the ICCPR also coined the term 'other status' to encompass the basis of non-discrimination to it's max.[401] The broadening of the basis would be substantial for either protecting and elimination of prospective statelessness. This is because discrimination and non-equality has often been the direct cause or effect which leads to statelessness.

To this end, I hold that the non-discrimination principles under the ICCPR has supplemented the 1954 Convention relating to the Status of Stateless Persons.

4.1.2.2 The Civil Rights under the ICCPR and Stateless Persons

In this section, I will touch on the civil rights as guaranteed under the ICCPR. As the right to property is not touched upon under the ICCPR, I will go directly in addressing the rights and protections of another relevant civil right-the freedom of movements. This right has been previously mentioned under the 1954 Convention relating to the Status of Stateless Persons.

Therefore, we shall examine how or in what aspect has the rights and protections as mentioned under ICCPR be instrumental in enhancing, supplementing or affirming the rights and protections of the same right under the 1954 Stateless Convention.

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[400] Art. 2 para.1, ICCPR.

[401] Art. 2 para.1, ICCPR

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4.1.2.2.1 The ICCPR in addressing the Freedom of Movements of Stateless Persons as comparative to the 1954 Convention relating to the Status of Stateless Persons

The Right to the freedom of Movements is housed under Article 12 and 13 of the ICCPR. Under Article 12, it provides,

> Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.[402]

Basically, these clauses address the freedom of movements from the following two aspects: the internal and external movements.[403] The internal freedom of movement deals with the right to move freely within the territorial boundaries of a state while the later addresses the cross boundaries movement.[404]

4.1.2.2.1.1 Recap about the 1954 Stateless Conventions on the Freedom of Movements of Stateless Persons

As we briefly record the provision touching on the freedom of movements under the 1954 Convention relating to the Status of the Stateless Persons, we notice that this provision is available to those stateless persons who are 'lawfully in its territory',[405] with the scope of rights guaranteed under three aspects: First, within the host state's territory, in which under the 1954 Convention related to Status of Stateless Persons provided that stateless persons have 'the right to choose their place of residence' and to 'move freely within its territory';[406]

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[402] Art. 12(1), ICCPR

[403] Eckart Klein, "Movement, Freedom of, International Protection", in *Encyclopedia of Public International Law*, (May 2007), para. 1.

[404] Laura Van Waas, "Nationality Matters. Statelessness under International Law", in *Refugee Survey Quarterly*, Volume 28, Issue 4, (2009), 241.

[405] Art. 26(1), *1954 Convention relating to the status of Stateless Persons*

[406] Art. 26(1), *1954 Convention relating to the status of Stateless Persons*

Second, the right to leave their host country including their own and Third, the right to re-enter their own host country. I will examine each of the following aspect in a comparative manner between the 1954 Convention relating to the Status of the Stateless Persons and the International Covenant on Civil and Political Rights (ICCPR).

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4.1.2.2.1.2 The Freedom of Movement under ICCPR in enhancing the 1954 Convention relating to Stateless Persons

4.1.2.2.1.2.1 Within the Host Country: The Freedom of movement under the 1954 Convention relating to the Status of Stateless Persons and ICCPR

As we observe under Art.12 para.1 of the ICCPR, it affirms the same by stating 'within that territory [They] have the right to liberty of movement' and the 'freedom to choose his residence'. There was a slight difference between the wordings such as 'move freely within its territory' that of 'liberty of movement', however, they meant the same.

Therefore, in terms of the freedom of movements within the host country, the ICCPR has reflected and affirmed the same contents of rights as that of the 1954 Convention relating to the Status of Stateless Persons.

4.1.2.2.1.2.2 Exit the host Country: The Freedom of Movement under the 1954 Convention relating to the Status of Stateless Persons and ICCPR

Both the 1954 Convention relating to the Status of Stateless Persons and the ICCPR have ascertained the right to exit their host country. Under the 1954 Stateless

Convention, the right to leave its own country is not housed within the same provision of Article 26 but rather, is mentioned under Article 28 of the 1954 Stateless Convention, in which it states that,

> The Contracting States shall issue to Stateless Persons lawfully staying in them temporary travel documents for the purpose of travel outside their territory.[407]

When we move to the ICCPR, we observe the same under the Art.12 para 2, in which it provides,

> Everyone shall be free to leave any country, including his own.[408]

Under such circumstance, I find that even though ICCPR has affirmed the same to that of Article 28 of the 1954 Stateless Convention, it offers no further facilitations as the 1954 Stateless Convention in providing a travel documents for the stateless persons to ensure the stateless persons may travel back to their own country; furthermore, the term 'their own country' is not specified under the ICCPR as whether that would include the scope of habitual residence, since the stateless persons normally don't have a passport or Identification Card to register their household.

On top of that, both the 1954 Convention relating to the Status of Stateless Persons and the ICCPR mention about the exception to such right of leaving. As we can recall, under the 1954 Convention relating to the Status of Stateless Persons, it added under Article 28 that 'unless compelling reasons of national security or public order otherwise require…'[409]

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[407] Art. 28, *1954 Convention relating to the Status of Stateless Persons*

[408] Art. 12 para.2, ICCPR

[409] Art.28, 1954 Convention relating to the Status of the Stateless Persons

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The ICCPR provides the same under the Article. 12 paragraph 3. Under this article, it states,

> The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.[410]

On this part, I find that the ICCPR has affirmed the rights of exiting its own country but it does not provide a leeway to those stateless persons who are utterly incapable of acquiring such travel documents. As contrast to the ICCPR, the 1954 Convention relating to the Status of Stateless Persons have further pushed the Contracting State to 'give sympathetic consideration to the issue of such a travel document to stateless persons in their territory'.[411]Therefore, I consider that the 1954 Convention relating to Status of Stateless Persons has been more specified than the ICCPR.

To this end, in terms of the freedom to leave any country, I hold that the ICCPR has affirmed the rights and protections under the 1954 Convention relating to the Status of Stateless Persons. However, it did not specifically expand upon how it would facilitate the leave for stateless persons.

In the following, we shall move into the last part of the freedom of movement, which is the right to re-enter one's own country.

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[410] Art. 12 para.3, ICCPR.

[411] Art. 28, 1954 Convention relating to the Status of Stateless Persons.

4.1.2.2.1.2.3 Re-entry into ones own country: The freedom of Movement under the 1954 Convention relating to the Status of Stateless Persons and ICCPR

Both the 1954 Convention relating to the Status of the Stateless Persons and the ICCPR have touched on the re-entry into ones own country. Under Paragraph 13(1) of the 'Schedule to Article 28' of the 1954 Convention relating to the Status of Stateless Persons, it provides,

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> A travel document issued in accordance with article 28 of this Convention shall, unless it contains a statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months, except when the country to which the stateless person proposes to travel does not insist on the travel document according the right o re-entry.[412]

Similarly, under the Article 12 paragraph 4 of the ICCPR, it provides that,

> No on shall be arbitrarily deprived of the right to enter his own country.[413]

I find that the ICCPR has affirmed the stateless person's right to re-enter the host country under the 1954 Convention relating to the Status of Stateless Persons. In this case, the 1954 Convention relating to the Status of Stateless Persons has further provided a specification that the 'period during which the holder may return to the country issuing the document shall not be less than three months', however, it does not post the obligation to those host state which doesn't have such policy of issuing travel documents to comply.

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[412] Paragraph 13(1), Article 28, 1954 Convention relating to the Status of Stateless Persons
[413] Art. 12 para.4, ICCPR

The ICCPR has supplemented the right of re-entry under the 1954 Convention relating to Status of Stateless Persons in one aspect, that it: the ICCPR has obligated the Contracting State not to arbitrarily deprive such right of re-entry to his own country. This is substantial to the Stateless Persons as often time, there is a high plausibility that they would be deny entry due to their lack of documents and nationality.

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To this extent, such right is helpful for stateless persons as to ensue their life as usual in their home country (or habitual residence) and prevent from forced separation with the family.

The ICCPR is in accordance with the 1954 Convention relating to Status of Stateless Persons in regards to re-entry to host country. It has affirmed the freedom of movements as provided under the 1954 Stateless Convention and also supplement on the part of re-entry to the host country of the stateless persons.

Based from the overall examination of the freedom of movements under the ICCPR, I hold that the freedom of movement clauses under the ICCPR are applicable to stateless persons and have affirmed the same under the 1954 Convention relating to the Status of Stateless Persons.

To this end, we could turn and examine what other rights are available that could plausibly enhance the freedom of movements further. In this case, I find the right to family reunion as highly relevant to stateless persons

4.1.2.3 Protection under ICCPR in enhancing the 1954 Convention relating to the Status of Stateless Persons

I find the rights as layout under the ICCPR as more specified in scope. For example, under the right not to be held in slavery, it enumerated specifically as what would and would not constitute as a 'forced or compulsory labor'. [414] Therefore, such specification is helpful in defining the scope of protection under the ICCPR.

In terms of protections under the ICCPR, I find the protection terms are still coined under the umbrella of the general principles and provisions. For instance, it would mention that 'All persons shall be equal before the courts and tribunals'[415] or state directly that 'everyone has the right to the protection of the law against such interference or attacks.'[416] These clauses are helpful in provide a direct guarantee that such protection is there however, I find it not adequately specified in order for the actual protective action to be carried out by States.

Nevertheless, it is uncontestable that the ICCPR has contributed in mildly provide more implicit protections by providing a more specific standard as how certain right should be like and what would be constituted as a violation. For instance, under the Article 2 paragraph 3 which touches on the necessary steps to give effect to the ICCPR, it obligate each States to ensure that there shall be an 'effective remedy',[417] that the 'competent authorities shall enforce such remedies when granted' and to develop 'possibilities of judicial remedy'.[418] While these provisions may be helpful in

[414] Art. 8 para. 3(c), ICCPR
[415] Art. 14 para.1, ICCPR
[416] Art. 17 para. 2, ICCPR
[417] Art. 2 para.3(a), ICCPR
[418] Art. 2 para 2(b), ICCPR

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strengthening the rights of the stateless persons, however, it is not amount to a protection but more of ways to fulfillment and assurance.

To this end, I conclude that the ICCPR has affirmed the 1954 Convention relating to the Status of the Stateless Persons.

4.2 ICESCR in addressing the Social and Economic Rights of Stateless Persons

4.2.1 The Background o ICESCR

The International Covenant on Economic, Social and Cultural Rights ('ICESCR') is one of the most widely applicable human right instruments. The rights as extended under the ICESCR are extensive and that as of May 2018, 168 United Nations Member States have ratified this Covenant.

There are fifteen (15) substantive rights under the *ICESCR*. These rights consist of the following: The first five (5) provisions deal with the general principles as adopted under the *ICESCR*, which include: the Right to Self-Determination,[419] the Principle of Progressive Realization[420], Gender Equality[421], permissible Limitations[422] and no Justification of Destruction of Rights[423].

Apart from the principles, the *ICESCR* further set out the Economic, Social and Cultural Right. The following makes up Economic Rights; Right to Work[424], The

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[419] United Nations Human Rights, *International Covenant on Economic, Social and Cultural Rights,* (UN Human Rights, December 1966) Art.1.
[420] Ibid, Art. 2.
[421] Ibid, Art. 3.
[422] Ibid, Art. 4.
[423] Ibid, Art. 5.
[424] Ibid, Art. 6.

Right to Just and Favorable Conditions of Work[425] and the Right to Form Trade Unions[426].

The Social Rights are stipulated under *Articles 9-12* of the Covenant. *Article 9* set out the Right to Social Security, followed by the Right to Protection of the Family and Children as provided under *Article 10*. *Article 11* provides for the Right to Adequate Standard of Living and the Right to Highest Attainable Standard of Health is as provided in *Article 12*.

Finally, the *ICESCR* set out the Cultural Rights as enjoyed by all people under *Article 13-15*. *Article 13* set out the Rights to Education, the Right to Free and Compulsory Primary Education is as provided in *Article 14*. *Article 15* provides for the Right to take part in Cultural Life.

Furthermore, I want to emphasize that all these rights bear the principles of human right, in which they are indivisible, interdependent and universal. There is also no hierarchy in the realization of these rights and they take equal stand as that of the *ICCPR*. Arising therefrom, I would like to scrutinize some of the relevant rights under each category and examine its relevance and application with Stateless persons.

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[425] United Nations Human Rights, *International Covenant on Economic, Social and Cultural Rights,* (UN Human Rights, December 1966) Art. 7.

[426] United Nations Human Rights, *International Covenant on Economic, Social and Cultural Rights,* (UN Human Rights, December 1966) Art. 8.

4.2.2 The Social and Economic Rights under ICESCR in enhancing the 1954 Convention relating to the Status of Stateless Persons

4.2.2.1 The ICESCR in addressing the Social Right of Stateless Persons

4.2.2.1.1 The ICESCR in addressing the social right to Housing of Stateless Persons

4.2.2.1.1.1 Introduction

The Right to housing is an essential individual right.[427] Under the right to housing, it obligates the State to provide a habitual space that are affordable, accessible and has all the main facilities such as the running water, drainage system and electricity.[428] This right is in relevance with the stateless persons because it is applicable to everyone.[429]

4.2.2.1.1.2 The Right to Housing under the ICESCR in enhancing the 1954 Convention relating to the Status of Stateless Persons

The right to housing is housed under Article 11 of the ICESCR, categorized as an essential part of the right to adequate standards of living. Under Article 11 para.1, it states,

> The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the

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[427] Majinge, Charles. "Housing, Right to, International Protection." Max Planck Encyclopedia of Public International Law [MPEPIL]: Oxford University Press June 2010, para.1.

[428] Ibid.

[429] "CESCR General Comment No. 4: The Right to Adequate Housing(Art. 11 (1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights Doc. E/1992/23." 13 December 1991, para.6.

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> realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.[430]

As we can compare with the right to housing under the 1954 Convention relating to the Status of Stateless Persons, we could find that Article 11 paragraph 1 of ICESCR has enhanced and supplemented the 1954 Stateless Convention in a cumulative way. This is because under the 1954 Stateless Convention, the right to housing is a stand alone concept and there are no surrounding supplements that are there to support such right.

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On the contrary, the right to housing under Article 11 paragraph 1 has identified the target for enjoying such right, which the clause indicated that it is 'for himself and his family.'[431] Furthermore, it also provide other elements along with the housing, which include 'food, clothing …and the continuous improvement of living conditions.'[432] These essence complements each other in formation of a complete standard of living rather than simply focusing on housing.

To this end, I hold that the right to housing under the ICESCR has further enhanced Article 21 under the 1954 Stateless Convention.

Furthermore, under the 1954 Convention relating to the Status of the Stateless Persons, there's no specification as what entails the scope and contents of such housing.[433]The focus of Article 21 under the 1954 Stateless Convention is focusing on the status as ascertaining to the stateless persons in terms of the right to housing, in

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[430] Art. 11 para.1, ICESCR
[431] Art.11 para.1, ICESCR
[432] Art. 11 para.1, ICESCR
[433] Art. 21, 1954 Convention relating to the Status of Stateless Persons

which it provides that it shall 'accord to stateless persons lawfully staying in their territory treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.'[434]However, as we resort to the General Comments on the Right to Housing, it has provided a more concrete details of the requirements for such housing to take place, which would include: legal security of tenure, availability of services, materials, facilities, and infrastructure, the affordability, habitability, accessibility, location and Cultural adequacy.[435]

Take the Legal security of tenure for instance, the General Comments No. 4 under ICESCR has provided,

> (a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.[436]

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[434] Art. 21, 1954 Convention relating to the Status of Stateless Persons.
[435] "CESCR General Comment No. 4: The Right to Adequate Housing(Art. 11 (1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights Doc. E/1992/23." 13 December 1991, para. 8.
[436] Ibid.

To this end, I hold that the Article 11 paragraph 1 has supplemented and provide further specification in terms of the right to housing to 1954 Convention relating to the Status of Stateless Persons.

4.2.2.1.2 Additional rights in enhancing the social right of stateless persons

4.2.2.1.2.1 The Additional Right: Right to Health under the ICESCR in addressing to Stateless Persons

4.2.2.1.2.1.1 Background of the Right to Health under ICESCR

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When it comes to the right to health, one would most definitely link such right as right to stay healthy or to attain a complete healthy status.[437] Such misconception do not just lead to the complications in clarity of the scope of rights inclusive of the 'right to health' but also create disunity in various domestic laws in its usage of the terms[438] thereby affecting the population who could enjoy such right. For instance, some would refer the right to health as protecting the 'healthcare'[439] while another would emphasize on the 'right to health protection.'[440]

The right to health is not a new idea in the international human rights frame-work. It is an important right that could be traced back to the Industrial Revolution, where sanitation issues, hygiene and poverty were a pervasive problem. Such an unhealthy working living conditions kick-started the severe health problems among workers and

[437] Brigit Thebes, Pg. 170
[438] Brigit Thebes, Pg.174
[439] Which is referring to access to health care services- See R. Former, 'The Right to Health Care: Gains and Gaps', American Journal of Public Health, Vol. 78, No. 3(1993), p. 241-247; H.D. C. Roscam Abbing, International Organizations in Europe and the Right to Health Care, 1979.
[440] Article 11, European Social Charter (ESC)

thus came about the Public Health Act. It was not until after the World War II wherein President Franklin Roosevelt called for 'the freedom from want' which paved the way for the integration of the right to health to be included in the Economic, Social and Cultural Rights.[441]

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In general, the core elements that make up the right to health are of two parts: 1) Healthcare, which include both curative and preventive; and 2) Underlying preconditions for health.[442] Such underlying preconditions would include necessary facilities ensured by the States that would lead to the healthy upbringing of an individual such as: safe drinking water, adequate sanitation, the ability to access health-related information, environmental and occupational health and nutrition.[443] On the later part, this would entail the fulfillment and protection of the aforementioned subsistent rights such as the right to water, food, housing, and adequate standard of living.

At the same time, the right to health should not be confined to the level of mere survival[444] instead; it should reach the ultimate goal of preserving a dignified life[445] which entails the encompassing of relevant subsistent rights such as the right to water, housing, adequate standard of living. Besides that, the States should play an active

[441] President Franklin Roosevelt referred the four freedoms as 'Freedom of speech and expression, freedom to worship God in one's own way, freedom from want, and freedom from fear.' Four Freedoms Speech of Franklin D. Roosevelt, address to Congress, 6 January 1941, in: F. M. Van Asbeck (ed.), *The Universal Declaration of Human Rights and its Predecessors (1679-1948)*, 1949, p. 86.

[442] B.C. A. Thebes, *The Right to Health as a Human Right in International Law*, 1999, p.16.
[443] Brigit, 174
[444] Walter Kalin, 303
[445] Walter Kalin, 303

role in ensuring that these rights effectively supports each other and perform positive actions in ensuring the accessibility, availability and acceptance to all people under its jurisdiction.[446]

4.2.2.1.2.1.2 The Relevance of the Right to Health with Stateless Persons under ICESCR

It is significant the way that it formulates the right to health into an important and indivisible part of the human rights instruments today. It is the right that should be enjoyed by every human being and they are entitled to enjoy in a 'highest attainable' manner that is 'conducive to living a life in dignity.[447]

The challenging part underlying the application of the right to health is the multiplicity of factors affecting the scope of this right and also the presence of many overlaps of other rights in order to enhance the right to health. In regards to the factors, the writer posits that such right is largely affected by various variables such as the culture, geographical factors and social economics of the State. As the State is the core guarantor of this right, the host State often time ignores the medical needs of the Stateless individuals.[448] This is because for Stateless persons, their lack of a legal

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[446] Walter; see also Lindsey N Kingston, Elizabeth F Cohen, and Christopher P Morley, *Debate: Limitations on Universality: The 'Right to Health' and Necessity of Legal Nationality*, BMC International Health Human Rights: 2010, 304. Published Online at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2894754/#!po=80.7692

[447] Para.1, CESCR General Comments No. 14: The Right to the Highest Attainable Standard of Health(Article 12), Adopted at the Twenty-second session of the Committee on Economic, Social and Cultural Rights on August 2000. Contained in Document E.C.12.2000/4

[448] Lindsey N Kingston, Elizabeth F Cohen, and Christopher P Morley, *Debate: Limitations on Universality: The 'Right to Health' and Necessity of Legal Nationality*, BMC International Health Human Rights: 2010, 1. Published Online at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2894754/#!po=80.7692

nationality has created obstacle for them in accessing the protection of the host State. Many Stateless persons have even been denied such medical citizenship.[449]

In this case, the Stateless persons, who are not citizens of any States and lack the genuine connection with the host country, are very likely to be excluded from invoking such right. Furthermore, due to their status as either 'alien' or people of mean status, they often face the situation of marginalization and thereby lack access to relevant health information and are forced to live in harsh residential environment which often lacks the basic elements of a healthy living environment such as safe drinking water and nutrition.[450] As pointed out by a Stateless scholar *Lindsey*, there is a further need to monitor the health access issues by the medical community toward guaranteeing safety for the Stateless persons.[451]

The challenges of the Stateless persons in enjoying the right to health are also reflected in part that Stateless persons would likely be in need of a higher standard of health rights and protections. Common challenges as faced by Stateless persons in terms of the right to health would be their inability to access the affordable healthcare as enjoyed by the nationals; at the same time, their lack of mobility or freedom of movement also decreases their chance to claim their medical rights. As depicted by

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[449] Lindsey N Kingston, Elizabeth F Cohen, and Christopher P Morley, *Debate: Limitations on Universality: The 'Right to Health' and Necessity of Legal Nationality*, BMC International Health Human Rights: 2010, 1. Published Online at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2894754/#!po=80.7692

[450] Until now, there are around 11-12 Million stateless individuals globally who are unable to access basic healthcare. This would include the stateless Roma in Europe and the Palestinians in Israel. See, Lindsey N Kingston, Elizabeth F Cohen, and Christopher P Morley, Debate: Limitations on Universality: The 'Right to Health' and Necessity of Legal Nationality, BMC International Health Human Rights: 2010, p.2 Published Online at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2894754/#!po=80.7692

[451] Ibid.

Lindsey in terms of the effect of their Statelessness on their right to health, he posits thus:

> Many Stateless people have shorter-than-average life-spans as a result of vulnerabilities associated with lack of legal status; one Stateless man recently described his plight as like being 'buried alive.[452]

This is because the right to health does not simply cover the right to be hospitalized, but in times of medical emergencies in which there were threatening health problems,[453] the Stateless persons might likely be denied or delayed access to medication.

Therefore, I conclude that the right to health infringement which they are likely to encounter is of two parts: discrimination from accessing medical treatments and also receiving quality medical facilities. Such discrimination could occur in both private and public medical service providers and thus, it is the State's responsibility to ensure that such discrimination does not occur.

4.2.2.1.2.1.3 The Content of the Right to Health under ICESCR

In this session, I will examine the normative content of the Right to Health (Article 12) under the ICESCR.

The right to health is also provided for in *Articles 7 and 12 of the ICESCR*, as well as under other specific legal instruments that target particular groups of Stateless persons. *Article 12 of the ICESCR* states thus:

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[452] Lynch M. Picturing Statelessness. 2009. http://www.refugeesinternational.org/blog/picturing-statelessness

[453] Walter Kalin, 303

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> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[454]

Based from the above, we could see that the convention aims to provide the maximum scope of rights by inserting the term ‘enjoyment of the highest attainable standard of physical and mental health.’ It is important to note that this does not mean that it is the State’s responsibility to keep an individual healthy[455], but that such right would include the right of an individual to control one’s health and body, to be free from interference and torture, and also that the individual can have the equality in opportunity to enjoy the highest attainable level of health.[456]

It is important to further take note of the interpretation of the ‘highest attainable standard of physical and mental health.’ In accordance with the General Comments No. 14, the ‘Highest attainable standard of health’ would compose of the ‘individual biological and social economic’ conditions and also State’s available resources. [457]These are the two determinants. The interpretation of this has undergone significant transition and broadens to take account of the armed conflict zone, cancer and the HIV.[458]

Based from the above, I find that the potential challenge for Stateless persons would be the problem of lacking the equivalent opportunity in accessing basic health, let alone the *‘enjoyment of the highest attainable standard of physical and mental health.’* The consequence would lead to that stateless persons would be more prone to

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[454] Art. 12, ICESCR
[455] para. 8, CESCR General Comments No. 14
[456] Ibid.
[457] Ibid, para.9.
[458] Ibid, para. 10.

sickness and reduced life span expectancy. Despite the fact that many countries have integrated such right into their municipal laws or constitution,[459] the social and political obstacles that occurs in a country would largely affect such enjoyment for Stateless persons.

4.2.2.2 The ICESCR in addressing the Economic Rights of Stateless Persons

4.2.2.2.1 The Right to Education of Stateless Persons

It is usurped by the international community that the right to education is the basic right which should be extended to all human being. In accordance with the UN Special Rapporteur, he states that,

> women, men, boys and girls of all ages and backgrounds-whether migrants, refugees, asylum seekers, stateless persons…have the right to education.[460]

Similar term can also be found under the principles of numerous human right instruments[461] as well as the constitutions of many states. Under the Thai Constitutions, for instance, the right to education is even being considered as part of the 'Duties of the Thai People' besides serving in armed forces and paying taxes. Under the Constitution of the Kingdom of Thailand, it states,

> A person shall have the following duties: (4) to enroll in compulsory education.[462]

Furthermore, in an integrated society that aims at globalization, such 'quality

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[459] Backman G, Hunt P, Khosla R, Jaramillo-Strouss C, Fikre BM, Rumble C, Pevalin D, Páez DA, Pineda MA, Frisancho A, Tarco D, Motlagh M, Farcasanu D, Vladescu C. Health systems and the right to health: An Assessment of 194 countries. The Lancet. pp. 2047–2085.
[460] Report of the UN Special Rapporteur on the Right to Education: The Right to Education of Migrants, Refugees and Asylum-seekers 2010. See "Right to Education", last modified 2018, 2018, https://www.right-to-education.org/ .
[461] See Article 2(2) of *ICESCR*, Article 2(1) of *ICCPR*, Article 1(1) of *ICERD*, Article 1 of *CEDAW.*
[462] *Constitution of the Kingdom of Thailand* April 6 B.E. 2560, section 50 paragraph 4.

inclusive education has an important role in making people open-minded and tolerant, and must therefore be prioritized.'[463]

4.2.2.2.1.1 The Right to Education under ICESCR as comparative to the 1954 Convention relating to the Status of Stateless Persons

The question may raise: even though the treatment as accorded to nationals seem to be a rather strong level of protection, however, the standard would very much dependent on the national economics and development as whether they had a good standard or policy toward the Contracting States own national.

To this extent, it would be beneficial to examine in what ways have ICESCR played the role in enhancing or affirming the 1954 Convention relating to Status of Stateless Persons in terms of the right to education.

In the following, I would like to divide the comparison of the right to education in to two groups: First, the elementary education and Second, further educations.

4.2.2.2.1.1.1 The Right to Elementary Education as comparative between the 1954 Convention relating to Stateless Persons and ICESCR

As we have previously observe in Chapter Three, the right to education under the 1954 Convention relating to Status of Stateless Persons has guaranteed the stateless persons with the level of treatment to that of 'national' and with the scope of right

[463] UN Educational, Scientific and Cultural Organisation (UNESCO), *Protecting the right to education for refugees (*2017), 7, https://www.refworld.org/docid/5a5f41fc4.html.; In another word, the right to education bears this inclusive effect which would be substantial for the stateless persons to better integrate into the local society. UN Educational, Scientific and Cultural Organisation (UNESCO), *Protecting the right to education for refugees (*2017), 7, https://www.refworld.org/docid/5a5f41fc4.html.

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focusing on 'elementary education'.[464]Furthermore, Article 22 is classified under the title 'Public education',[465] which means that the such guarantee would be applicable to stateless persons enrolling in public education only.

The question then raise: as the 1954 Convention relating to Stateless Persons have guaranteed the scope of rights at a rather limited level, in what ways would the ICESCR contribute in enhancing the right to education for stateless persons?

I find the Article 13 under the ICESCR in addressing to education has broadened the scope of rights and supplemented the 1954 Convention relating to the Status of Stateless Persons immensely. This is because the ICESCR does not simply provide the scope of right, but spent a heavy proportion on the aim and principles of education. For instance, under Article 13, it states that education shall be 'directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.'[466]Such emphasis has made the right to education capable of expanding beyond academics but for the incorporation of a greater goal of achieving full development of humankind. For stateless persons, such human dignity is often diminished through long years of struggling without a proper status. Therefore, it is a helpful reminder of the broadened purpose of the right to education.

The article further touches on how the right of education should be of empowerment factor for an individual. Under Article 13 para. 1 of the ICESCR, it further mentions that,

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[464] Art.22 para.1, 1954 Convention relating to the Status of Stateless Persons
[465] Art.22, 1954 Convention relating to the Status of Stateless Persons
[466] Art. 13 para.1, ICESCR

> education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.[467]

This foreground intention provides a broader intention of the right to education under the ICESCR and touches on one of the core purpose for the stateless persons to obtain a nationality, which is to be able to 'participate effectively in free society.'[468]

To this end, I find these foreground introductions within the clause has contributed in clarifying the rationales for the provisions on the right to education under the ICESCR. In terms of the elementary education, the ICESCR has expanded the scope of education right on top of the 1954 Convention relating to the Status of Stateless Persons. Under Article 13 paragraph 2, it provides that,

> (a) Primary education shall be compulsory and available free to all.[469]

As comparative with the 1954 Convention relating to the Stateless Persons, the Article 13 paragraph 2 does not post any limitation on the type of education which the stateless persons can access to. Therefore, in this case, I would argue that it include both public and private education.

This clause also bypassed the limitation of treatment as according to 'national' but extend such right to everyone; and that it such primary education shall be 'compulsory and available free to all'. To this extent, I find the scope of the primary education right as supplementing the 1954 Convention in relating to Status of Stateless Persons.

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[467] Art. 13 para.1, ICESCR
[468] Art.13 para.1, ICESCR
[469] Art. 13 para.2(a), ICESCR

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With that in mind, we shall now move on to the part of further education under both 1954 Convention relating to Stateless Persons and ICESCR.

4.2.2.2.1.1.2 The Right to Further Education as comparative between the 1954 Convention relating to the Status of Stateless Persons and ICESCR

As we move on to the scope of the right to further education, it is necessary to re-examine the clause under the Article 22 on the right to education under the 1954 Convention relating to the Status of Stateless Persons. Under Article 22 paragraph 2, the level of treatment as guaranteed under the 1954 Stateless Convention is at the level of 'accorded to aliens generally in the same circumstances';[470] it further delineates that such treatment would extend to other elements that are beyond the elementary education, which is consisted of 'access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.'[471]

The issue then would be: in what ways would the ICESCR be able to enhance and broaden the rights on top of what the 1954 Convention relating to Status of Stateless Persons has offered.

In regards to the right to further education, it would be appropriate to examine the relevant clause under the ICESCR. I find that the ICESCR has not just affirm the scope of rights as offered under the 1954 Convention relating to the Status of Stateless Persons, but also it has a more progressive rights in terms of further education which could not just broaden the scope of right but also, fill the gap in addressing to those

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[470] Art. 22 para.2, 1954 Convention relating to the Status of Stateless Persons
[471] Art. 22 para.2, 1954 Convention relating to the Status of Stateless Persons

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who couldn't even complete primary education. As comparative to the Article 22 of the 1954 Convention relating to the Status of Stateless Persons, these are the elements which the 1954 Stateless Convention hardly address. I would elaborate accordingly:

4.2.2.2.1.1.2.1 Affirming the Scope of right in Further Education under the ICESCR

In examining the part in addressing to the further education, namely, the secondary education, the ICESCR has a more progressive approach in affirming the scope of such right. Under the Article 13 paragraph b, it provides that,

> secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.[472]

Under this provision, I observe that the term 'by every appropriate means' is coined, followed by the term 'progressive introduction of free education.'[473] This indicates the tendency of the ICESCR in expanding and encouraging such scope of rights to everyone. This is in consistency with the overall aim of the ICESCR Convention, in which it aims to 'achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'[474] To this end, the ICESCR, as comparative with 1954 Convention relating to Status of Stateless Persons, have displayed a more focused commitment in proactively find ways to expand the rate of accessing the schools.

[472] Art. 13 para.2(b), ICESCR
[473] Art. 13 para.2(b), ICESCR
[474] Art. 2 para.1, ICESCR

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4.2.2.2.1.1.2.2 Filling the gap of uncompleted primary education

In addressing to those who has not completed the primary education, Article 13 paragraph 2 has provided a way for the individual to ensue and finish the education. Under Article 13 paragraph 2(d), it provides,

> (d) Fundamental education shall be encouraged or intensive as far as possible for those persons who have not received or completed the whole period of their primary education.[475]

Furthermore, the Article 13 has guaranteed that 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means' and it has pushed to expand the higher education 'by the progressive introduction of free education.'[476] In contrast with the provisions under the 1954 Convention relating to the Status of stateless Persons, Article 13 under the ICESCR sets no restrictions such as limiting to 'public or only accorded to those who are lawfully staying in the territory or other requirements, but simply based on the capacity of the individual; simultaneously, it also obligates the Contracting States to enhance the access to higher education 'by every appropriate means'. To this end, article 13 has broadened the scope of rights to education of the 1954 Convention relating to the Status of Stateless Persons.

As comparative to the 1954 Convention relating to the Status of Stateless Persons, the ICESCR has provided a vision in affirming a 'free education' in terms of higher education as well, while the 1954 Convention relating to the Status of Stateless

[475] Art. 13 para.2(d), ICESCR
[476] Art. 13 para 2(c), ICESCR

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Persons has purely listed down the level of treatment and the enjoyment of such treatment comes in various aspects such as access to studies, diplomas and degrees. However, the 1954 Stateless Convention has taken a passive stance in involving the States to assist in realizing this right of further education. Based on my examination, it simply touches on the criteria in which the Contracting States should treat the stateless as non-citizens.

4.2.2.2.2 The ICESCR in addressing to the Right to Work of Stateless Persons under ICESCR

The Right to work is housed under Article 6 and 7 of the ICESCR. Under the Article 6, it provides,

> 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. [477]

Under this article, to ensures that the individual will have the freedom to choose or accept any employment opportunities. I will now conduct a comparison between this article and Article 19 on Liberal Profession of the 1954 Stateless Convention.

4.2.2.2.2.1 The Right to Work of Stateless Persons under the ICESCR in enhancing the 1954 Convention relating to the Status of Stateless Persons

I hold that the right to work under the ICESCR has affirmed and broadened the scope of work as compared to the 1954 Stateless Convention. As we could record, even though the right to work are allocated three provisions under the 1954 Stateless

[477] Art. 6 para.1, ICESCR

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Conventions, which cover the wage-earning employment, self-employment and liberal profession.

However, several wordings as contained under these articles are rather restrictive to engage in the full quality work. Unlike the ICESCR which is applicable to everyone, the three articles as layout under the 1954 Stateless Conventions confined the application to those stateless persons who are 'lawfully in their territory'[478]or 'lawfully staying in their territory'.[479]While under ICESCR, it sets no such conditions.

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Furthermore, the scope of rights as capable of enjoyed by stateless persons are rather limited under the three articles. For instance, under Article 18 on Self-employment, it provides that the scope of right to be 'engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.'[480] This seem to restrict the choices of work in which the stateless persons may involve in.

4.4.2.2.2.2 The Just and Favorable Working Condition in Specifying and Broadening the scope of Right toward the 1954 Stateless Convention

As compared to the ICESCR, The 1954 Stateless Convention is silence on the part of guaranteeing a just and favorable working conditions for stateless persons. Under the ICESCR, it provides that,

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[478] Art. 18, 1954 Convention relating to the Status of the Stateless Persons
[479] Art. 19, 1954 Convention relating to the Status of the Stateless Persons
[480] Art. 18, 1954 Convention relating to the Status of the Stateless Persons

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

a. Remuneration which provides all workers, as a minimum, with:

   i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

   ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;

b. safe and healthy working conditions;

c. equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

d. rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[481]

The above is derived from the ICESCR. As we could observe, Article 7 has provided specification as what 'fair and favorable conditions' would entail and specific parts that should be improved to achieve the level of fair condition. This is extremely crucial for the stateless persons as often time, even if they can access to employment, yet it would usually be of either hazardous, dirty or unhealthy environment.

To this end, I find the right to work as housed under the ICESCR as more specified in its scope of right and also has broadened such right as stipulated under the 1954 Convention relating to the Status of Stateless Persons. In contrast with the right to work under the 1954 Stateless Convention, which focuses on the status of treatment

[481] Art. 7, ICESCR

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that ought to guarantee to the stateless persons, Article 7 is again, applicable to everyone and more specific.

To this end, I hold that the Article 7 under the ICESCR has contributed supplementing, broadening and specifying the scope of right to work.

4.2.3 The Protections available under ICESCR

In general, the protective obligations as stipulated under the ICESCR are more in detailed as comparative with the 1954 Stateless Convention. In the following, I would like to illustrate this point by touching on the protection in addressing to the right to education under ICESCR.

4.2.3.1 The Protection in addressing to the right to education under ICESCR

In terms of the protection toward the right to education, this symbolizes that the state is required to take measures that would prevent the third parties from interfering with the enjoyment of the rights to education.[482] To this extent, it is important to examine scope of protection as housed under the ICESCR.

Under the ICESCR, the scope of protection is implicitly reflected under Article 13(2). Under this article, it layout that 'primary education shall be compulsory and available free to all.'[483] Secondary education in its different forms, including technical and vocational secondary education, shall be made *generally available* and accessible to

[482] UN Educational, Scientific and Cultural Organisation (UNESCO), *Protecting the right to education for refugees (*2017), 7,https://www.refworld.org/docid/5a5f41fc4.html

[483] United Nations Human Rights, *Optional Protocol to the International Covenant on Economic, Social and Culture Rights*, (December 2008), article 13 (2)(a).

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all by every appropriate means, and in particular by the progressive introduction of free education'[484] and that 'higher education shall be made equally accessible to all[485]; Article 13 further layout that 'fundamental education shall be encouraged or intensified as far as possible' and that 'development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.'[486] To this end, it layout the specific actions which the Contracting should take to ensure the quality of education.

However, these protection measures come in a rather mild manner. The usage of the term 'shall be compulsory' and the existence of 'generally available' symbolize that protection is not of absolute connotation and still dependent upon the discretion and development of the States and the resources available; On the positive note, the states have the discretion to execute the protection based on its resources available, while simultaneously ICESCR has requested that such protection of education shall be 'accessible to all by every appropriate means'.[487]

[484] United Nations Human Rights, *Optional Protocol to the International Covenant on Economic, Social and Culture Rights*, (December 2008), Art. 13 (2)(b).
[485] Ibid, Art. 13 (2)(c).
[486] United Nations Human Rights, *Optional Protocol to the International Covenant on Economic, Social and Culture Rights*, (December 2008), Art.13 (2)(e).
[487] Ibid, Art. 13 (2)(b).

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4.3 Convention on the Rights of the Child(CRC) in addressing the Human Rights and Protections of Stateless Persons as comparative to 1954 Convention in relating to the Status of Stateless Persons

4.3.1 The Background of CRC in addressing Stateless Persons

4.3.1.1 Introduction

The rights and protection of the child is mainly governed by the United Nations on the Convention on the Rights of the Child(CRC) of 1989. In order to understand how the CRC is applicable to stateless children and the relevant protection, it is substantial to firstly examine the aims and objectives as layout under the CRC, followed by reading the scope and extent of their rights and protection. I hold that CRC offers a more specific and extended right as comparative to the general human rights.

Similar to numerous human right instruments, the CRC also expresses the core intention of preserving 'inherent dignity' and the 'equal and inalienable rights of all members of the human family.'[488] It further drills down to the emphasis of non-discrimination and that all the rights and freedoms are applicable without distinction by various factors, especially not affected by birth or other status.[489] It also recalls that *'childhood is entitled to special care and assistance'*[490] and affirms that such entitlement is granted to all.

In order to foster such a special care, the Preamble further emphasizes the importance of the family environment and legal protection should be offered to them before and after the birth. In this case, we could observe that there is an expansion of the scope of

[488] Preamble, CRC
[489] Preamble, CRC
[490] Preamble, CRC

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legal protection. From my point of view, these two elements are reciprocated, in which a healthy environment would greatly depend on the degree of the 'atmosphere of happiness, love and understanding' as protected by the Government in terms of family, and hence prepare the child to be 'fully prepared to live an individual life in society.[491]

In accordance with the *Convention on the Rights of the Child*, the target of protection is extended to 'every human being below the age of eighteen years.' This means that regardless of the child's religious background, language, sex or color, as long as the child is below the age of eighteen (18), the child would possess the equivalent right as spelt out under the *CRC*. [492] However, such definition is still reliant on the interpretation of the domestic law, in which it contains the exceptional rule that 'under the law applicable to the child, majority is attained.'[493]

The *CRC* specifically considers the *'evolving capacity of the child'*[494] and aim to offer protection 'before as well as after birth. This protection also extends to the importance of tradition and culture, and recognizes the importance of cooperation for improving the living condition in every child.[495]

Observably, the preamble also takes into consideration the child in special need. Under the preamble, it acknowledges that *'in all countries in the world, there are children living in exceptionally difficult conditions and that such child needs special*

[491] *Preamble*, CRC
[492] Art. 1, CRC and Art.2 (1), CRC
[493] Art. 1, CRC
[494] Art. 5, CRC
[495] *Preamble*, CRC

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consideration'[496] This is the point which I consider as a strong connection exist with the Stateless children.

4.3.1.2 The General Principles under the CRC in enhancing the rights of the Stateless Persons

Besides the overall objectives of the CRC in relation to its relevance to the Stateless children, the principles as spelt out under the CRC also permeates the substantive rights which are tailored toward the full development of the child. As one of the hindrance is distinctive treatment to a particular group of children, *Article 2 of the CRC* prohibits the *'discrimination of any kind, irrespective of their child's or his or her parent's or legal guardian's race, color, sex...or other status'.*[497] In order to prevent any potential discrimination from occurring, the CRC specifically request the State parties to *'take all appropriate measures'* that the child is protected from any type of discrimination.[498]

After such distinction is subsided, the CRC further requests that State parties take *'the best interest of the child as the primary concern.'* [499] In order for this to be successfully implemented, the *CRC* also obligates the State Parties to undertake *'all appropriate legislative and administrative measures'*[500] and at the same time ensure 'institutions, services and facilities responsible for the protection of the children conform with the standards established by competent authorities.'[501] In addressing the

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[496] *Preamble*, CRC
[497] Art. 2 (1), CRC
[498] Art. 2 (2), CRC
[499] Art. 3 (1), CRC
[500] Art. 3 (2), CRC
[501] Art. 3 (3), CRC

special condition of the child, the *CRC* pinpoints that 'safety, health in the number and suitability of their staff' are top area of supervision.

Such *'best interest of the child'* is best represented by the wordings as put forth in each substantive right. The repetition of these wordings is aimed at protecting the child to the maximum. Such as 'the maximum extent of the available resources'[502], 'the maximum extent possible'[503] and 'all appropriate measures'[504] were respectively employed. This represents the radical of the *CRC* in attempting to achieve the maximum protection.

From the above objectives and scope as covered by the *CRC*, we could observe that the specific situations of the children are dealt with under the *CRC* and that the principles as supported under the *CRC* are in alliance with the overall objectives of the *CRC*.

4.3.1.2.1 The Principle of the Best interest of the Child under the CRC and Stateless Children

4.3.1.2.1.1 The Content of the Best Interest of the Child under the CRC in strengthening the Rights of the Stateless Children

Under Article 3 paragraph 1, it states,

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or

[502] Art. 4, CRC
[503] Art. 5 of the CRC
[504] Art. 3 (2) of the CRC

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> legislative bodies, the best interests of the child shall be a primary consideration. [505]

I consider this paragraph as significant for the stateless children in it's literal context, especially on the part of the concept on the 'best interest of the child'. Therefore, I would like to probe it's literal context and how it could be of relevance and application in the case of stateless children. As specifically pointed out under the General Comments, it must be 'determined on a case-by-case basis'.[506] Thereby, it would not be feasible if we apply this clause in an arbitrary manner without an understanding of the what the stateless children would commonly encounter and simultaneously examine the scope of rights and protection under this clause.

First of all, under this clause, the 'in all actions' as enshrouded under this clause is referring not just to decisions, but also 'all acts, conduct, proposals, services, procedures and other measures'.[507]Thereby, any inaction from the government would also be considered as a type of action.[508]

Now, as we turn to the target of these actions, it can be categorized into two: first, those actions that are directly targeting the children or the actions that 'have an effect on an individual child, children as a group or children in general, even if they are not

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[505] "United Nations Convention on the Rights of the Child ". In *Blackstone's International Human Rights Documents* edited by Alison Bisset. Blackstone's Statutes United Kingdom: Oxford University Press 1989, Article 3, paragraph 1.

[506] Child, UN Committee on the Rights of the. "General Comment No. 14(2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration(Article 3, Paragraph 1) ", edited by UN Committee on the Rights of the Child. https://www.refworld.org/docid/51a84b5e4.html UN Committee on the Rights of the Child 2013, paragraph 32.
[507] Para. 17, General Comments No. 14, CRC.
[508] Para. 18, General Comments No. 14, CRC.

the direct targets of the measure.'[509]Regardless of which, the term 'concerning' here should be used in the broadest sense possible.

One important aspect of this interpretation is that even though not all actions have to have a full spread of process set out for the purpose of protecting the best interest of the child, however, it is important to take into deep consideration as to the outcome and impact of such decision and action, whether they would significantly affect the best interest of the child; also, in order to concretely illustrate that best interest of the child is incorporated, such decision concerning the child must be 'motivated, justified and explained'.[510] In this sense, a 'greater level of protection and detailed procedures to consider their best interests is appropriate'.[511]

Also, for the term children, in this sense it is referring to both their individual and collective rights.[512]However, the General Comments No. 14 under the CRC does encourage individual assessment of each child's situation.[513]

I consider these as relevant to stateless children as each of them has it's own independent cause or impact due to their statelessness. As the best interest of the child is pliable to adapt, therefore, when assessing the stateless children it would even be more individualized in considering their personal experiences. Rules or procedures that are suitable for adults wouldn't necessarily be of equal fit for children. Especially if it is a stateless children determination process.

[509] Para. 19, General Comments No. 14, CRC; see also General Comments No. 7.
[510] Para. 97, General Comments No. 14, CRC.
[511] Para. 20, General Comments No. 14, CRC.
[512] Para. 24, General Comments No. 14, CRC.
[513] Para. 24, General Comments No. 14, CRC.

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This clause also listed out various institutions, private or public, courts of law, administrative authorities or legislative bodies. In light of the best interest of the child, the General Comments advised that 'it should not be narrowly construe or limited to social institution',[514]that it include all those whose work impacted the 'economic, social, and cultural rights and also those that deal with civil rights and freedoms, such as the one that would impact birth registration, protection against violence, etc.[515]

A special note on the term 'administrative authorities' and 'legislative bodies' in regards to their scope of action and how they are of relevance to stateless children. In 'administrative authorities', their level of decision is very broad and therefore would cover decisions such as 'education, care, health, the environment, living conditions, protection, asylum, immigration, access to nationality'.[516]This is of pertinence to stateless children as these decisions as made by the administrative authorities would equally affect their lives too.

As for 'legislative bodies', that would mean an adoption of any law or regulation as well as collective agreements which affect children, should be governed by the best interests of the child. Such best interest of the child should be explicitly included in all relevant legislations, which further extends to the decisions in regards to the budgeting and development plans.[517]

Clarifying these aspects are of immense importance for stateless children as we could use it to evaluate whether the state parties have adopted laws or legislation that seem

[514] Para. 26, General Comments No. 14, CRC.
[515] Ibid.
[516] Ibid, para. 30.
[517] Ibid, para.31.

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fair for all yet implicitly not fulfilling the human right of child in terms of their best interest. It is also a good campus in adjust the direction and objective of the laws.

As we have touched on the scope of the surrounding agencies that would be responsible for the implementation of the best interest of the child, it is now substantial to drill into the actual concept of the best interest of the child and it's relevance with stateless children.

4.3.1.2.1.2 The best interests of the child and stateless children under the CRC

The core content of the best interests of the child is that it shall be applied to all matters concerning children and that it should be used to identify the best possible solutions for the children.[518] Such best interest of the child is not static, but instead, it evolves along with the development of the child[519] at both physical and mental level, their needs at that time, along with the changes in the surrounding circumstances.

The best interest of the child is often omitted in the government's policies and legislations and it could be easily abused by the parents and the legislative bodies. For instance, the parents may use the term 'for the best interest of the child' in order to get custody or for government to justify their racist policies.[520]

In term of stateless children, such best interest of the child is often missing. Legislative fall into a lengthy process determining who is stateless instead of addressing to the present needs of the stateless children, which may be immediate

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[518] Para. 33, General Comments No. 14, CRC.
[519] Para. 32, General Comments No. 14, CRC.
[520] Para. 34, General Comments No. 14, CRC.

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enrollment in education, health, right to be heard, or to be protected from potential violence. In this case, the best interests of the child could be used in better adjust the direction and contents of any prospective guideline or legislation pertaining to children.

At last, the incorporation of the phrase 'shall be a primary consideration' under this article. As formerly mentioned, while the best interest of the child shall be adopted in all measures, the sequence of such adoption is also substantial.

4.3.2 CRC in addressing the Civil Rights of Stateless Children in enhancing the 1954 Convention relating to the Status of Stateless Persons

4.3.2.1 CRC in addressing the Freedom of movement as comparative to the 1954 Convention relating to the Status of the Stateless Persons

The freedom of movements of the child is not directly mentioned under the CRC. However, it comes in part as an important component to support the right to family reunion. It's content has partially in accordance with the ICCPR on freedom of movements, however, it is more in the context of the right of the child to family reunification rather than a stand alone provision.

In the following, we shall examine the freedom of movement as incorporated under the CRC in the following three aspects: the internal freedom of movements, the external freedom of movements and the right to re-entry.

4.3.2.1.1 The internal freedom of movements under the CRC as comparative to the 1954 Convention relating to the Status of Stateless Persons

Under the 1954 Convention relating to the Status of stateless Persons, it provides the scope of rights as following: First, the right to choose their places of residence;

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Second, the right to move freely within its territory. At the same time, there is a condition that the provision is subject to regulations applicable to aliens generally in the same circumstances.[521]

In contrast with the 1954 Convention relating to the Status of Stateless Persons, the CRC does not explicitly touch on the internal freedom of movements of the child.

4.3.2.1.2 The external freedom of movements under the CRC as comparative to the 1954 Convention relating to the Status of Stateless Persons

The right of the child to enter or leave the country is housed under Article 10 paragraph 1 of the CRC. We shall examine both articles side by side.

Under Article 10 paragraph 1, it provides that,

> [A]pplications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.[522]

Also, under Article 10 paragraph 2, it provides,

> A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 2,

[521] Art. 26, 1954 Convention relating to the Status of Stateless Persons

[522] Art. 10 para.1, CRC

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> States Parties shall respect the right of the child and his or her parents to leave any country, including their own and to enter their own country.[523]

Under this provision, we could observe that the movements of the child would largely dependent on their caretaker or parents. Therefore, the right to leave any country is ascertained to the children as long as it is for the purpose of 'maintain on a regular basis' and that he or she is with the parents;[524] And also, as long as the purpose of movements is for family reunification.[525]

4.3.3 CRC in addressing the Economic Rights of Stateless Children

4.3.3.1 CRC in addressing the Economic Rights of Stateless Children

4.3.3.1.1 The Right to Education under CRC in enhancing the 1954 Convention relating to the Status of Stateless Persons

As we could record, the right to education under the 1954 Convention relating to Status of Stateless Persons is limited to public education; furthermore, the level of treatment is in accordance with the national and it is limited to public education only. Therefore, the stateless children would hardly be protected under other kinds of private institutes and the provision itself has not systematically addressed the right to education of the child in a fuller scale.

I find that the right to education under the CRC provides a broader scope of rights and also, it specified the rights and protection particularly in the context of the stateless children.

[523] Art.10 para.2, CRC
[524] Art. 10 para.2, CRC
[525] Art. 10 para.1. CRC

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The right to education is housed under Article 28 and 29 of the CRC. In general, *Article 28* has provided a standard and protections of the right to education to all children while *Article 29* elaborated on the aims of this right to education.

First of all, I would go over the first few paragraph of Article 28. Under Article 28, it states,

1. State Parties recognize the right of the child to education, and with a view to achieving the right progressively and on the basis of equal opportunity, they shall, in particular:
   (a) Make primary education compulsory and available free to all;
   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of needs.[526]

The above paragraphs have provided a way for stateless children to access primary education. Under this provision, it includes the two important elements of 'compulsory' and 'available free to all.' These wordings are in accordance with the Right to primary education as put forth under Article 13(2) (a) of the ICESCR. To this end, I hold that the primary education should be made free for stateless persons under Article 28 paragraph (a).

[526] Art. 28 para. 1, CRC

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4.3.3.1.1.1 The human right to enter secondary education under Article 28 of the CRC and stateless persons

When it comes to the secondary education, I consider there is an expansion of the scope of rights in addressing to the child. In the original Article 13 paragraph 2(b), it was mentioned that the secondary education 'shall be made generally available and accessible by every appropriate means' [527] while in the CRC, the standard of availability has been boosted to 'make them available and accessible to every child.'[528]I take this as a positive progress of transcending the barrier of nationality or immigration status and a good practice in enabling the stateless children to access the secondary education.

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On top of that, the CRC has also added an additional 'treat' of offering financial assistance in case of need'[529]This is particularly beneficial for the stateless children as even if the education institute claimed to abide with the standard of the right to education, however, there are other educational and non-educational expenses, such as textbook, stationaries, field trips, transportation, etc. which might have hampered the stateless children's right to access or ensue their education. With the financial assistance available on the need bases, this would be helpful in enhancing the right to education of the stateless children.

4.3.3.1.1.2 The Right to enter higher education for Stateless Children under Article 28(c) of the CRC

[527] ICESCR, Article 13(2)(b) states, secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

[528] Article 28 paragraph 1(b), CRC

[529] Article 28 paragraph 1(b), CRC

When it comes to the higher education, the standard as provided under Article 28 (C) is as following:

Make higher education accessible to all on the basis of capacity by every appropriate means.[530]

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This article has affirmed the same as that of Article 13 paragraph 2(c) of the ICESCR. I find the term 'by every appropriate means' as promising for the stateless children as it obligates the state to use its best possible resources in assisting the stateless children to pursue higher education, that their higher education shouldn't be discriminative or based on certain conditional offer. Also, working in conjunction with the standard as provided under Article 13(2) (c) of the ICESCR, such higher education should be 'the progressive introduction of free education' and it's based on the capacity of the individual. To this end, I consider this article as enhancing the right to pursue higher education for stateless children in the positive manner.

4.3.3.1.1.2.1 Encouraging regular attendance under Article 28 paragraph 1(c) and Stateless Children

Another vital clause would be under the Article 28 paragraph 1(c) of the CRC. Under this article, it states,

'[The State Parties] take measures to encourage regular attendance at schools and the reduction of dropout rates.'[531]

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[530] Article 28 paragraph 1(c), CRC
[531] Article 28 paragraph 1(c), CRC

I find this article as greatly enhancing the right to education of stateless children. This is because stateless children, who are often regarded as invisible and uncounted, are often neglected in school and in the society. With this article, it would help track their educational progress, to keep them in school and prevent the violation of other human rights of the child, such as from sexual[532] and economic exploitation[533] as well as from abduction[534] and human trafficking[535]. As stipulated under Article 32 paragraph 1,

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> [S]tate Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education…'[536]It further addresses the protective role of the States Parties to 'take legislative, administrative, social and educational measures to ensure the implementation of the present article.[537]

This clause is not available under the ICESCR and I find it as valuable for stateless children to ensure their education. Furthermore, it obligates state to take measures to encourage such regular attendance.

Furthermore, I find the general aim of the right to education as beneficial to stateless children. Under Article 29, it set forth several subparagraphs which indicate the rationales behind the substantive rights as set forth under article 28.

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[532] Article 38, CRC
[533] Article 32 para. 1, CRC
[534] Article 35, CRC
[535] Article 33, CRC
[536] Article 32 para. 1, CRC
[537] Article 32 para. 2, CRC

First of all, article 29 emphasized that education should be directed toward 'the development of the child's personality, talents, mental and physical ability' to the extent of their 'fullest potential.'[538] It also indicates a larger scope of respect to 'human rights and fundamental freedoms'[539] and all the way down to the influential people such as the child's parents, with respect to the unique 'cultural identity, language and value for civilizations different from his or her own.'[540]

I find this clause as in accordance with the needs of the stateless children as most of the time, their identities were dependable upon the circumstances, the parents and the states. However, under these goals, the CRC has refocused the attention to human right and in respecting the child's identity and growing environment as it is.[541]

Furthermore, the aim is forward-looking in terms of the preparing the character of the stateless children to be better integrated into the society. Under *Article 29 (1) (d)*, it mentions that education should be,

> in preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.[542]

To this end, I conclude that the provisions on the right to education can be invoked for the maximum benefits for stateless children.

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[538] Article 29(1)(a), CRC
[539] Article 29(1)(b), CRC
[540] Article 29(2)(c), CRC
[541] Article 29(2)(e), CRC
[542] Article 29(1)(d), CRC

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4.3.4 Additional Rights in enhancing the Rights of the Stateless Children under the CRC

4.3.4.1 The Right to Respect of Family Life and Stateless Children under the CRC

The right to respect of family life is one of the important civil rights in the receptacle of human rights.

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This right is particularly emphasized under the Preamble of the *CRC* (State Parties verifies that 'convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.' Additionally, State Parties also recognize that 'the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.)'

From the Preamble, we can observe that the term 'family' is regarded as a national and fundamental element of the society and therefore, deserves the 'broadest possible protection by society and States.' [543] However, it is a complicated right comparative to that of the right to privacy as the concept of what constitutes a 'family' is governed by domestic law.

For instance, in *Joplin el al v New Zealand*[544] the court of New Zealand did not recognize lesbian couple as a family under the law. However, the European Court of Human Right is capable of recognizing a more precise term of family with broader

[543] UNICEF, 2012

[544] *Joplin el al v New Zealand*, Communication No. 902/1999/2002)

scope of application to both marital and extra-marital relationship between men and women.[545]

The core principle, however, is that such family should be of 'real existence in practice of close personal ties' between relatives as family life.[546] This would mean that the persons must live together and maintain a close economic and regular relationship with each other.[547]

When it comes to the respect of family life, it could be invoked under the circumstances as most likely to be encountered by stateless children, which would be the forced separation as done by the States. Such forced separation could be due to arrest of the stateless parents or prohibition of the stateless children or parents from returning to the host country or deportation.[548]

As previously stated, even though the *ICCPR* and *ICESCR* both offered certain level of protection in this aspect, I hold that it is the *CRC* which provides a more specific scale of protection toward stateless children. With the inclusion of the best interest of the child as its core principle,[549] and by invoking such principle in conjunction with *Article 16* of the *CRC*, it specifically stipulate that 'no child shall be subjected to

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[545] ECtHR, *Mikulic v Croatia*, Reports 2002-I, para 51: '[T]he notion of 'family life' in Article 8 is not confined solely to marriage-based relationships but may also encompass other de facto 'family ties' where sufficient constancy is present.'; see also Walter, 395.

[546] ECtHR (Grand Chamber), *K and T v Finland*, Application No 25702/94(2001), para 149, and *Marckx v Belgium*, Series A, No 31(1979), para 31. HRCttee, *Balaguer Santayana v Spain*, Communication No 417/1990 (1994), para 10.2.

[547] ECtHR, *Keegan v Ireland*, Series A, No. 290(1993), para 44; and *Gil v Switzerland*, Reports 1996-I, para 32.; see also Walter, 396

[548] HRCttee, *AS v Canada*, Communication No 68/1980), paras 5.1 and 8.2(b).

[549] Article 3, CRC; see also the case of HRCtee, *Bakhtiyari and Family v Australia*, Communication No 1069/2002(2003), para 9.7, and *Madafferi and Family v Australia*, Communication No 1011/2001(2004), para 9.8.

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arbitrary or unlawful interference with his or her privacy, family, home or correspondence.'[550] As such, the child is put as a core concern, the main subject, instead of on a dependable status.

4.3.4.2 Main Challenge to the Right to Respect of Family Life for Stateless Children

In terms of stateless children, as they are mostly being regarded as illegal residents and deemed illegal immigrants due to their lack of status, the State would often invoke the immigration law to justify their action of arrest or prohibition of returning to the home country thereby, directly or indirectly curbing the right to respect of family life of stateless children. The right to respect of family life under *CRC* could be extendable toward the stateless children as stateless 'children', should be protected as human beings and as depicted under the *CRC*, be require 'special protection.'

4.3.4.2.1 The Challenge and Impacts of the Right to Respect of Family Life: in the Context of Detained Stateless Children

In order to fulfill the criteria of best interest of the child under the *CRC*, immigration laws should not be invoked nor justified for the forced separation between the stateless children and their family.[551] Such forced separation could be taken in the form of detention, in which, under the *CRC*, should be deemed as the 'last resort for the shortest period of time in procedures that are criminal in nature.'[552] In the case of the Stateless children, detention should never be an option as it not just affect the

[550] Article 16(1), CRC.
[551] HRCttee*, Winata Li v Australia*, Communication No 930/2000(2001), para 7.3.; see also Walter, 397.
[552] Article 37, CRC.

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child's development both physically, mentally and materialistically,[553] but in terms of law, contradicts the best interest of the child.[554]

Another circumstance which might result in detention would be the failure of stateless children or parents to renew the residence permit. This could happen when the stateless children or parents might have missed out on the renewal process due to work or lack of access to the renewal expiration date. Changes in the administrative staff may also affect the process of renewal which may pose potential administrative challenges for the Stateless family. Under such circumstance, it is important to find out whether such interference is 'justifiable, in accordance with the law, pursuing a legitimate aim and proportionate.'[555] In this case, I consider it as non-justifiable. Under the case of *Boultif v Switzerland*, it was found 'that there had been clear interference with family life when the authorities refused to renew the residence permit of an Algerian married to a Swiss citizen who had been sentenced for robbery, as a result of which he had to leave the country.'[556]

Likewise, the principle could be applied *mutatis mutandis* to the right to respect of family life of stateless children. As the core aim is in pursuing the best interest of the stateless children, non-renewal of residence permit of the stateless family members would position them into illegal status of being arrested and such should be

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[553] UNICEF, p.6; see also Professor Carolyn Hamilton, Kirsten Anderson, Ruth Barnes, Kamena Dorling, Children's Legal Centre, University of Essex and Child Protection Section, UNICEF, 'Administrative detention of children: a global report' New York, 2011, page 90.

[554] Seeking, Alejandra Lopez, Pace University. 'Alternatives to Detention' Unaccompanied Immigrant Children in the U.S. Immigration System. Digital, 2010; see also CRC Committee, Concluding Observations: Netherlands, CRC/C.NLD/CO/3, 27 March 2009, 67-68, http://www2.ohchr.org/english/bodies/CRC/docs/co/CRC-C-NLD/-CO3.pdf

[555] Walter, 398.

[556] ECtHR, Boultif v Switzerland, Application No 54273/00(2001), paras 39 ff.; see also Walter, 398.

considered as an interference with family life as stipulated under *Article 16* of *CRC*. Particularly, where the stateless children and the family has been residing in the host country for an extended period of time and that it would be unreasonable to expect that they could settle elsewhere.

However, the State might claim that by placing the children in detention with their parents would in fact keep the family's unity. I find it as unjustifiable as detaining the children itself is against the best interest of the child.

4.3.4.3 State's Duty in Protecting the Rights to Family Life of Stateless Children

It is the duty of the State to protect the rights to family life of Stateless children under its jurisdiction. Unfortunately, the domestic laws often overlook this international obligation.[557] Based on the nature of the right to family life, States usually carry a negative obligation to abstain from acts and decisions that directly or indirectly infringes this right.[558] Based on the above examination, we discern three (3) types of issues commonly encountered by stateless children. They are; forced separation domestically, across country and lack of renewal of resident's permit.

In terms of forced separation domestically such as detention or arrest, the State should find alternative measure other than detention to avoid being the direct infringer of this right. This could be fulfilled when States provide a permit to allow the family reunites. The State might argue that such protection also has exception and interference could still take place if it is in conflict with the State's interest. Just as it is stipulated under

[557] UNICEF, p.3.
[558] UNICEF, p.1.

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the *ECHR*, exception of interference could occur if 'it is in accordance with the law and necessary in a democratic society, the interests of national security, public safety or to the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'[559]

However, I argue that in accordance with the overall principles as set forth by the *CRC*,[560] the right to life and development,[561] and the right to participation and being heard[562] would not be justifiable when it comes to children. This is because the protection accorded by the CRC particularly points out that the domestic institutions framework should take the right to family life as priority over existing laws or policies. Therefore, in the context of stateless children, all the relevant policies should integrate the right to family life and be prioritized over the standardized domestic law.[563] Similar statement can be found in the words of the *United Nations High Commissioner for Human Rights*, wherein,

> …all authorities and institutions that come into contact with children in the context of migration are required to determine that their actions are primarily concerned with protecting the interests of the individual child. This principle

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[559] Art. 17, ECHR
[560] The core principles of the CRC are: best interest of the Child, Art. 3, CRC, non-discrimination Art. 2, CRC.
[561] Art. 6, CRC
[562] Art. 12, CRC
[563] UNICEF, Amicus Curiae submitted before the Inter-American Court of Human Rights, UNICEF Regional Office for Latin America and the Caribbean (TACRO), 17 February 2012, http: //corteidh.or.cr/Solon.cfm

should override all others; including conflicting provisions of migration policy should this arise.[564]

4.3.4.4 The Protections under the CRC

4.3.4.4.1 The Protection under the CRC in specifying the 1954 Convention relating to the Status of Stateless Persons

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The Protections under the CRC has not just specified but also broaden the scope of protection as provided under the 1954 Convention relating to the Status of the Stateless Persons; Furthermore, such protection is more solid and concrete as the principle of best interest of the child is underpinning is a child-oriented principle which is the best interest of the child. I will go over the details as following.

4.3.4.4.2 Broadening of the scope of Protection under the CRC toward 1954 Stateless Conventions

The Provision under the CRC has broadened the scope of protections. This is in terms of many rights, such as the right to education, right to work and the enjoyment of highest standard of living and health, etc. For instance, under the Article 24, it recognize the right of the child to the enjoyment of the highest attainable standard of health.[565] Immediately following this guarantee, paragraph 2 of the same article provided concrete steps as how such high standard of health should be attained. For instance, in addressing to the combat of disease and malnutrition, it provides that it should consist of ‘application of readily available technology and through the

[564] OHCHR, Study of the Office of the United Nations High Commissioner for Human Rights on Challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration. A/HRC/15/29, 5th July 2010, 24.
[565] Art.24 para.1, CRC

provision of adequate nutritious food and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;'[566] Further example would be on the part pre-natal care, in which it stipulates that 'States Parties shall pursue full implementation of this right'[567] and that 'to ensure appropriate prenatal and post-natal health care for mothers'.[568]

To this end, I find the above articles have broadened the scope of protections as compared to the 1954 Convention relating to the Status of the Stateless Persons.

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4.3.4.4.3 Child-oriented Approach to Protection under the CRC in supplementing the 1954 Stateless Conventions

Furthermore, the precious part about the CRC is that throughout the provisions, it is based on the principle of the best interest of the Child. This itself has maximize the protection as the best interest of the child principle encourage the enjoyment of the 'highest attainable standard'[569]and that States shall 'provide, as they consider appropriate, cooperation in any efforts'[570]and to carry out the duties 'in a manner consistent with the evolving capacities of the child'.[571] These are the stances which are not available under the 1954 Stateless Convention.

Additionally, the CRC doesn't simply guarantee rights and protections to citizen children, but also to various sub-categories of children. Under the CRC, it touches on

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[566] Art. 24 para. 2(c), CRC
[567] Art. 24 para.2, CRC
[568] Art. 24, para. 2 (d), CRC
[569] Art. 24 para,1, CRC
[570] Art. 22 para.2, CRC
[571] Art. 5, CRC

the rights and protections of children that are separated from their family,[572]the adopted children[573], the refugee children[574] and disabled children.[575] These are situations in which the stateless children are very likely to encounter as well.

Hence, I hold that CRC has supplemented the 1954 Stateless Convention immensely on this part of protection.

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4.4 CEDAW

4.4.1 Background of the CEDAW

One of the main focuses of examination is the core principles of non-discrimination against women. In accordance with the Conclusion Statement made by the EXCOM, *'women and girl can be exposed to particular protection problems related to their gender, their culture and social-economic position, and their legal status.'*[576] As women have a particular stance and variant legal status in the society, the protection responses as offered by the international human rights must vary[577] and be treated as priority.[578]

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[572] Art. 9, CRC
[573] Art. 20, CRC
[574] Art. 22, CRC
[575] Art. 23, CRC
[576] Executive Committee (EXCOM) Conclusion No. 105 (LVII) 2006, Women and Girls at Risk, Para 3. Similarly, this type of protection problems would affect those women who are at risk or already are stateless persons because of the gender based discrimination as existed in the nationality law. (Alice, p.1)
[577] UNHCR, Policy on Refugee Women, 1990, 4
[578] UNHCR, Agenda for Protection, 3rd ed., 2003, 23

This is where the CEDAW comes into play. We could say that it explicitly and implicitly apply to women of various situations in life, regardless of their marital or immigration statuses.[579]

Our evaluation in this case is how the CEDAW contributes in enhancing the rights and protection of Stateless women of various statuses beyond the 1954 State less Convention and how the CEDAW provisions could be applicable to Stateless women. I argue that the CEDAW provisions could be applied to Stateless women and addresses their particular status and situation.

This Convention was first adopted on the 18th of December 1979. Prior to that time, none of the international legal instruments had taken particular attention of the rights and status of women. The countries were in a war zone in which refugee issues, displaced persons and other human right issues as relevant to life and death were prioritized over women. Thus, it will be safe to say that during that period, women had no such thing as women's right. Even if they did, their rights were objectified and heavily reliant on the status of the States.

For instance, in countries like Saudi Arabia, women were and are still viewed as a property rather than the object of international law. Violence and sexual abuses appear in a recurring manner in the private sphere which is beyond the control and

[579] See, GA Declaration on the Human Rights of Individuals who are not Nationals of the Countries in Which they Live, GA res. 40/144, 13 Dec. 1985; HRC *General Comment No. 15: The position of aliens under the Covenant* (1986); CERD *General Recommendation No. 11: Non-Citizens* (1993); CERD General Recommendation No. 20: Non-Discriminatory implementation of rights and obligations (1996); CERD *General Recommendation No. 22: Art. 5 and refugees and displaced persons* (1996); CERD General Recommendation No. 30: Discrimination against Non-Citizens (2004); CEDAW *General Recommendation No. 26: Women migrant workers* (2008); CRC *General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin* (2005)

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surveillance of the international law; simultaneously, human right were overtaken by the general patriarchal culture of the State, which makes it more difficult for women to have substantive equality as men.

Thus, when the *Convention on the Elimination of Discrimination against Women (CEDAW)* first emerged, it clearly states in its preamble that it aims at eliminating all forms of sexual and gender-based discrimination against women. [580] It also specifically pinpoints that the rights shall be available to both men and women alike on equal basis, as it is acknowledged by the *CEDAW* that *'despite these various instruments, extensive discrimination against women continues to exist.'*[581]

Notably, equality could be taken in a sense as superficially as of right, yet as a thing of fact equality is what needs actual attention. This is because it directly reveals whether a legal instrument provides adequate scope of rights and protection. In reviewing most of the former international instruments introduced prior to 1948, the legal instruments addresses a specific aspect of the women's right, such as the right to protection of Nationality towards Women, which is aimed to resolve the issue of women who are unable to procure the nationality of their foreign husband.

However, the downside is that such instrument revolves around a specific problem, and like a double-edged sword, the same instrument lacks the interpretation from a women's point of view, which pose somehow as an indirect discrimination towards women, categorizing women as 'vulnerable group' whose right needs additional

[580] Dubravka, Convention on the Elimination of all Forms of Discrimination Against Women
[581] Preamble, CEDAW

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protection from the States. This therefore constitutes the reason why women continue to suffer from extensive discrimination.

On signing the Convention, women for the first time after the World War were put in the limelight. The Convention aimed to protect women in all aspects, which include the area of politics, economy, society, culture, civil and family life. It is only through a well-rounded protection and extensive scope of right that the women could have the plausibility of attaining both de jure and de facto human rights as an individual.

This, as indicated by the Convention propelled the State to 'incorporate all appropriate legislative and programmatic measures, which the state should 'embody the principle of equality of men and women in their national constitutions or other appropriate legislation' and 'ensure the practical realization of this principle.'[582] This, in the eyes of the author, expresses the Conventions concern and visualization of a substantive equality between men and women.[583]

Such all rounded goal of achieving absolute eradication of discrimination could be found in *Article 1 of the CEDAW*. Under the said Article, the definition of 'discrimination against women', is not just expanded upon the previous concept of discrimination under the *ICERD*, but also tailor made to make it practically adoptable for women of various statuses, including Stateless women.

[582] Art. 2 (a), CEDAW

[583] Dubravka, Convention on the Elimination of All Forms of Discrimination Against Women

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4.4.2 The Rights as ascertained under CEDAW as comparative to 1954 Convention relating to the Status of Stateless Persons

4.4.2.1 CEDAW in addressing the Civil Rights of Stateless Women

4.4.2.1.1 The Right to Property under the CEDAW in enhancing the 1954 Convention relating to Stateless Persons

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The right to property is crucial in governing the status, right and protections of the stateless women. Due to which, it would be beneficial to have an understanding of how it is in relevance with stateless persons and the challenges they are likely to face. In the following, I will have an overview of the right to property of stateless women.

4.4.2.1.1.1 The relevance and challenges of the Right to Property and Stateless Women

The right to land is a critical issue for women as it is where the 'structural patterns of gender inequality can be revealed.'[584] Also, women would need to rely on land not just to produce food, but to generate family income to support the health care, education and nutrition needs of the family.[585] It puts women in a non-dependable status, especially when they face men's 'migration, divorce, abandonment or death.'[586]Without which, they would be unable to get out of the vicious cycle of poverty.[587] In another word, right to property ensures women equality and empowerment.[588]

However, due to their lack of nationality, in practice the stateless women won't have these equal legal rights to own or use land and would often need to hold it through her

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[584] globalinitiative-escr.org,para. 1.
[585] globalinitiative-escr.org, para. 1.
[586] globalinitiative-escr.org, para.1.
[587] globalinitiative-escr.org, para.2.
[588] globalinitiative-escr.org, para. 2.

husband or another male family member.[589] Under some customary law, widowed women are prohibited from inherit the land from their deceased husband and 'subject to property-grabbing' by in-laws.[590]

For instance, under General Recommendation on older women and protection of their human rights, it's pointed out that 'widows are often left destitute. Some law particularly discriminates against older widows, and some widows are victims of 'property grabbing.'[591] Also, it is pinpointed out that 'under some statutory and customary laws, women do not have the right to inherit and administer marital property on the death of their spouse. Some legal systems justify this by providing widows with other means of economic security, such as support payments from the states. However, in reality, such provisions are seldom enforced, and widows are often left destitute. Some laws particularly discriminate against older widows, and some widows are victims of 'property grabbing.'[592]

4.4.2.1.1.2 The Right to Property under the CEDAW in addressing to Stateless Women

The right to property is housed under Article 15 of the CEDAW. Under Article 15 paragraph 2, it provides,

> States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to

[589] globalinitiative-escr.org, para. 1.
[590] globalinitiative-escr.org, para. 2.
[591] GC No. 27.
[592] GC No. 27

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> administer property and shall treat them equally in all stages of procedure in courts and tribunals.[593]

which specifically mentioned rural women, which obligates the state to also take 'all appropriate measures to eliminate discrimination against women in rural area', to have 'access to agriculture credit and loans, marketing facilities, '[594]emphasize on the equality between men and women before the law[595], and that 'they shall give women equal rights to conclude contracts and to administer property.'[596]

At last, on the basis of equality of men and women, (h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.[597]

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Chapter Five Conclusions and Recommendations

As we have reviewed on the 1954 Convention relating to the Status of the Stateless Persons, we find that it has attempted to ascertain the quasi-national and quasi-alien status in the enjoyment of many rights; I also find that even though there are quite some administrative measures that are being mentioned, however, these facilitating

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[593] Art. 15 para. 2, CEDAW
[594] Art.14,2(g), CEDAW
[595] Article 15, para. 1, CEDAW
[596] Art.15 para. 2, CEDAW.
[597] Art.16(1)(h), CEDAW

measures does not have a systematic and ascertained protective mechanism for the stateless persons to resort to.

Therefore, the question arises: in the context of stateless persons, who can exercise protection over them and whether the stateless persons can access the international protection mechanisms?

To this end, I find it necessary to examine the protection mechanisms under the international law. This would be beneficial in adding an additional route for stateless persons to safeguard their own rights.

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5.1 The Accessibility of the Human Rights Protections Mechanisms for Stateless Persons

In general, there are two types of mechanisms that could plausibly access by the stateless persons: one is treaty-based and another is charter-ed based. The treaty-based is referring to expert body that is in-charge of monitoring the implementation of the treaty as guaranteed by state parties.[598] Under this treaty body, it develop various tools to ensure that the Contracting States have complied to the treaty norms, and some of these tools would be: general comments, individual communication, the complaint procedures, etc.

In the following, I would like to focus firstly on the treaty-based protection mechanism followed by the Chartered-based. Under the Treaty-based protection mechanism, I would further focus on the Complaint procedures and examine the accessibility of the stateless persons.

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[598] Markus Schmidt, "United Nations," in *International Human Rights*, ed. Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran (Oxford, New York: Oxford University Press, 2010), 406.

5.1.1 The Accessibility of the Treaty-based Protection Mechanism for the Stateless Persons

These Complaint Procedure comes in the form of Optional Protocols, which are available under the ICCPR or more specially referred as ICCPR-OP1; as for specific human right instruments, the Committee for the Elimination of Discrimination against Women has also implemented such optional individual complaints procedures, which enables the individuals to directly complain to specific treaty that a certain State has violated his or her rights. We shall examine the accessibility of the stateless persons under each and in the following order: The ICCPR OP1 and the CEDAW.

5.1.1.1 The Accessibility of the ICCPR First Optional Protocol (ICCPR-OP1) for Stateless Persons

In order to know whether the stateless persons would be eligible to access the ICCPR First Optional Protocol, it would be substantial to examine the primary purpose and objective of the ICCPR-OP as layout under this First Optional Protocol to the International Covenant on Civil and Political Rights. In it's preamble, it specify that such protocol is for the purpose of 'implementation of its provisions';[599]It further mentions that it is also for the purpose of 'receive and consider…communications from individuals claiming to be victims of violations of any of the rights set forth in the covenant.'[600]

To this end, we could see that the ICCPR-OP1 doesn't set limitations as to who can access the ICCPR-OP1 protective mechanism. The use of the term 'individual', in this case, would also incorporate the stateless persons. Therefore, as long as the specific stateless persons are residing in the Contracting state of the ICCPR-OP1, then they

[599] *Preamble*, The First Optional Protocol to the International Covenant on Civil and Political Rights (1966) (ICCPR-OP1)

[600]*Preamble,* ICCPR-OP1

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would be considered as eligible to file a petition through ICCPR-OP1. This is affirmed under the Article 1 of the ICCPR-OP1, which specify that the Protocol 'recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claims to be victims of a violation by that State Party…'[601] To this end, the stateless persons who resides within the contracting state jurisdiction would be eligible to submit such communication.

However, the ICCPR-OP1 also set certain restrictions toward who would be eligible to submit written communications. These conditions are set forth under Article 3 and Article 5 of the ICCPR-OP1, in which it provides that such submission should not be 'anonymous'[602]or it would be considered as an abuse of the system; further limitations or conditions are set forth under Article 5, which provides that 'the same matter is not being examined under another procedure of international investigation'[603]and that the individual 'has exhausted all available domestic remedies'.[604]

Based from the above criteria, I hold that the two pre-conditions of 'exhausted all available domestic remedies' and that the individual have experienced regarding their rights being 'violated would not hinder it's accession to the ICCPR-OP1'[605] do not affect the accession of the stateless persons.

First of all, on the part of 'exhausted all available remedies', it is often a concern as whether the stateless persons could even access the local judiciary system to resort for help. Further challenges is that such filing for petition should be within the limited

[601] Art. 1, ICCPR-OP1.
[602] Art. 3, ICCPR-OP1.
[603] Art. 5, para. 2(a), ICCPR-OP1.
[604] Art. 5 para. 2(b), ICCPR-OP1.
[605] Art.1, ICCPR-OP1.

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period following the final judgement of the local tribunal;[606]another limitation would be that the individual could not resort to multiple procedures,[607] this is in resonating with the Article 5 of the ICCPR-OP1, which requested that the individual's petition 'not being examined under another procedure of international investigation or settlement.'[608]

In addressing to the concern of whether the person has exhausted all domestic remedies, the ICCPR-OP1 has provided an exception under Article 5 paragraph 2(b), which states that 'this shall not be the rule where the application of the remedies is unreasonably prolonged'.[609]To this end, I find this beneficial for the stateless persons as due to their lack of status, they are most vulnerable to such prolonged delay.

All in all, these are some of the factors which might affect the stateless persons' petitions from being admitted and their accessibility to the system. However, as the ICCPR-OP1 doesn't set conditions on the status of the individuals as who can access but just limit to those individuals subject to its jurisdiction,[610] I hold that stateless persons would be eligible to have the accessibility to the ICCPR-OP1 mechanism.

As we have examined the ICCPR-OP1, it is now suitable to turn to another procedure, which is the Optional Protocol to the Convention on the Elimination of All forms of Discrimination against Women.

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[606] Dinah Shelton, "Human Rights, Individual Communications/Complaints," In *Max Planck Encyclopedia of Public International Law [MPEPIL] (*Oxford University Press: 2006), para. 3.
[607] Shelton, "Human Rights, Individual Communications/Complaints,"para.3.
[608] Art.5 para 2(a), ICCPR-OP1.
[609] Art.5 para 2(b), ICCPR-OP1.
[610] Art. 1, ICCPR-OP1.

5.1.1.2 The Accessibility of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women for Stateless Persons

Similar to the ICCPR-OP1, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women for Stateless Persons (CEDAW-OP) has equally provided an individual an opportunity to submit their communications to the Committee of the CEDAW. Under the CEDAW-OP, I find it even more accessible for the stateless persons as comparative to the ICCPR-OP1, as it provides a more distinct grounds as to the type of petitions that are admissible, which is working to the advantage of the stateless persons.

In the following, I shall proceed firstly to the overall purpose and aim of the CEDAW-OP followed by examining why it is even more accessible for the stateless persons.

First of all, it would be useful to have an overview of the aims under the CEDAW-OP. We could find the aim is in consistency with overall purpose of the CEDAW, in which it reaffirm that the CEDAW-OP is rooted in 'the dignity and worth of the human person and in the qual rights of men and women'[611], which further reflects the non-discriminative nature that 'such rights and freedoms are entitled without distinction of any kind, including distinction based on sex.'[612]

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women also emphasized that in order to reach this equality

[611] Preamble, CEDAW-OP.

[612] Ibid.

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between men and women, the Contracting States shall take 'all appropriate means and without delay a policy of elimination against women.'[613]

To this end, we could observe that the emphasis is on assuring the full enjoyment of rights and freedoms to all women. As a number of stateless population are also women, such preamble ha signified that the immigration or legality of the status is not a concern under the CEDAW-OP.

Similar to the ICCPR-OP, the CEDAW-OP also mentioned about how the Communication should be conducted and the type of communication that are admissible.[614] I find that as comparative with the ICCPR-OP, the CEDAW-OP has offered a more broadening scale of admissibility and with more distinctive information. This has increased the likelihood of stateless persons to access the CEDAW-OP mechanism. I shall illustrate how the CEDAW-OP would be more beneficial to the stateless persons.

First of all, the CEDAW-OP has broadened the subjects of submitting the Communication. As comparative to the ICCPR-OP1, which mentions solely the individual,[615]the CEDAW-OP broadens the scope by stating that the 'communication may be submitted by or on behalf of individuals or groups of individuals.'[616]It also stipulates the specific requirements for the submission of this communication, in which if it is submitted on behalf of another, a consent is required unless 'the author can justify acting on their behalf without such consent.'[617]

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[613] Ibid.
[614] Art.2, CEDAW-OP.
[615] Art.5, ICCPR-OP1.
[616] Art.2, CEDAW-OP.
[617] Art.2, CEDAW-OP.

The above requirements are in advantage for better and easier access for the stateless person to file a petition. Often times, due to their lack of rights such as freedom of movements or other restrictions, they could hardly address these violations on their own. However, as the CEDAW-OP allows the communication submissions from other individuals, it enables the non-governmental organizations to file a petition on their behalf.

On the other hand, the CEDAW-OP still persist on the similar principle that the communication shall be in writing and that it should not be anonymous;[618]it also incorporated the similar idea as the ICCPR-OP that only Communications from the State Party of the Protocol is admissible.[619]

One of the significant approaches which enhance the accessibility of the stateless person under the CEDAW-OP lies in the stipulation on the part in addressing to exhaustion of local remedies. As comparative to the ICCPR-OP, which merely states that the communication of an individual is admissive after the person has exhausted all available local remedies,[620]then the person may file a complaint/communication through the Optional Protocol mechanism.

However, the CEDAW-OP has expanded the scope by adding an additional exception on top of the previously mentioned of 'unreasonably prolonged.'[621]Under the Article 4 paragraph 1, it further states that 'the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have

[618] Art. 3, CEDAW-OP.
[619] Art.3, CEDAW-OP.
[620] Art.2, ICCPR-OP.
[621] Art.5 para.2(b), ICCPR-OP.

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been exhausted unless the application of such remedies is unreasonably prolonged *or unlikely to bring effective relief.'*[622]

The term 'effective relief' has broaden the admissibility of the communications for stateless persons as even if they could access the local judiciary system, their case would often be delayed or ends in nowhere.

This has posted a jeopardy for the stateless persons as their file would be stuck in this procedure, which incurs them unable to embark on an alternative one. Thereby, unable to fulfill the requirements of 'exhausting all local remedies.'[623]

Besides that, the accessibility of the stateless persons to the CEDAW-OP is further enhanced with the specifications of the additional grounds of communications that are not admissible. These additional grounds are: if it is incompatible with the provisions of the Convention, manifestly ill-founded or not sufficiently substantiated, or if the facts occurred prior to the entry into force of this Protocol for the State Party concerned unless those facts continued after that date.[624]

Based from the above reasons, I hold that CEDAW-OP has provided a more concrete procedure for the stateless persons to file a petition for international protection.

As we have examined both of the Protocols under the ICCPR and CEDAW, we have found out that the Optional Protocols are accessible by stateless persons. This is because the Optional Protocols doesn't divide between national or non-nationals, but simply address to all individuals. Furthermore, it provides a broadened scope of admissibility when it comes to the CEDAW-OP.

[622] Art. 4 para.1, CEDAW-OP.
[623] Art.4 para.1, CEDAW-OP.
[624] Art.4 para.2(b)(c)(d)(e), CEDAW-OP.

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To this end, we shall now turn to examine the chartered-based protection mechanism and observe how stateless persons could access such protective mechanism.

5.1.2 The Accessibility of the Chartered-based Protection Mechanism for the Stateless Persons

When touching on the Charter-based protection mechanism, it would be unavoidable not to mention about the 1503 procedure as created by the ECOSOC in May 1970. [625] This was the oldest human right mechanism which mostly deals with gross violations and in which the present complaint procedure is based.

The issue at stake would be: whether the stateless persons would be admitted if they had approached such complaint procedure.

To address this concern, it would be helpful to have an overview of the Complaint Procedure under the Chartered-based System. In this case, we shall look at the 1503 Procedure.

5.1.2.1 The 1503 Complaint Procedure

Unlike the treaty-based procedure, the present complaints procedure as housed under the Charter-based system followed the principle of the 1905 Procedure. It would need several pre-screening prior to be landed with the Human Rights Council.[626] Such pre-screening is done by the OHCHR Secretariat and along with two Council working groups, namely-the Working Group on Communication and the Working Group on Situation. [627] It is the Working Groups which decide the admissibility of the

[625] Schmidt, "United Nations," 401.
[626] Ibid.
[627] Ibid.

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communications prior to transmit them to the concerned States for further comments.[628]

As to the criteria of admissibility, it is very similar to the treaty-based complaint system. The individual would need to submit the petition within the reasonable time following the exhaustion of the local remedies.[629] At the same time, the individual would need to provide proof that such local remedies are indeed exhausted prior to resort to the Complaint Procedure.

Other admissibility criteria are more formative. For instance, the individual should not include any abusive language in filing the petition. At the same time, despite that the assessment process of the Procedure 1503 is confidential, yet it is open to any individual to send in the petition or request as their correspondence is opened to public.[630]

5.1.2.2 The 1503 Complaint Procedure and Stateless Persons

In review of the process and the admissibility criteria, I find that the stateless persons can equally file a petition under the 1503 Complaint Procedure. Not simply because it is open to anyway, but that the criteria does not involve the requirements of lawful stay nor being a national of a certain state. In fact, it is mentioned that,

> you may submit a complaint against any country without needing to check whether it has ratified a particular treaty or limited its obligations under the instrument.[631]

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[628] Künzli and Kälin, T*he Law of International Human Rights Protection*, 252.
[629]OHCHR, "Complaints Procedures under the Human Rights Treaties, " 1996-2019, accessed August 2 2019 2019. https://www.ohchr.org/EN/HRBodies/Petitions/Pages/1503Procedure.aspx#ccpr
[630] Ibid.
[631] Ibid.

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5.2 Conclusions

In the beginning of the Chapter, I have claimed that the issue of statelessness is still pervasive and their rights are still being denied in practice. I also mentioned the problem that even though some of the early instruments and studies such as the Universal Declaration of Human Rights or the Convention on Certain Questions Relating to the Conflict of Nationality Law 1930, the Harvard Draft or the Study of Statelessness had attempted to address the stateless issues by emphasizing the importance of nationality, yet, many of these early instruments have not tackled the challenges of statelessness in its entirety.

The Harvard Draft, or The Law of Nationality of 1929, for instance, had no binding forces to the Contracting States; as for the Convention on Certain Questions Relating to the Conflict of Nationality Law 1930, it had more or less provided the general principles of recognizing and protecting the nationality of an individual.

All of these had been an important stepping stone that led up to the later development of the 1954 Convention relating to the Status of the Stateless Persons, as it was the earliest attempts to codify and safeguard the right to nationality.

In the mean time, in reviewing the status, rights and protections of the stateless persons have not been so promising either as comparative with the nationals and the aliens. I find that in contrast with the aliens and the nationals, the stateless persons are in disadvantaged because they lack the bonding of nationality, which in terms affected their the rights and protections as incurred under this bond. While the states have personal jurisdiction over their own citizens regardless whether they are in the home state or overseas, the stateless persons are not covered under the protection of any

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state. Even though it is usurped that the stateless persons can equally request for diplomatic protections based on their habitual residence, but nevertheless, such diplomatic protections rely on the discretion of the Contracting States.

As we move on to the 1954 Convention relating to the Status of Stateless Persons, I find that it was not until the advent of this convention in which the status of the stateless persons has been formally acknowledged. While we could say that the early instruments such as the UDHR or the Convention on Certain Questions Relating to the Conflict of Nationality Law are somewhat addressing to the stateless persons and that the UDHR is applicable to everyone, yet if we look at the intent of the Convention, we would find that it was more addressing to the 'issue' of statelessness rather than the 'rights' of the stateless people.

Therefore, for the first time in history, it was the 1954 Convention relating to the Status of the Stateless Persons which has specifically ascertained the status of stateless persons, the rights in addressing to stateless persons and the relevant protections.

On top of that, I find that the rights as provided under the 1954 Stateless Conventions have guaranteed the quasi-national and quasi-alien status to the stateless persons. This has transcended the norm of rendering the treatment as equal to aliens in the general circumstance and broaden the scope of some rights to national status. Some of the example would be the right to education and the right to religion. As the rights are discussed among the Contracting States, this ascertaining of the quasi-national and quasi-aliens status have revealed the intention the international community in maximizing the rights and protections of the stateless persons.

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However, I also find that: despite the efforts in maximizing the rights and protections of the stateless persons, such effort still face some limitations which do not allow the rights and protections under the 1954 Stateless Convention to be carried to the maximum.

I find that nearly each right comes alone with certain level of conditions, which either require the stateless persons to be 'lawfully residing' in the contracting states or have habitual residencies. Judging from the nature of the stateless persons, as they are in lacking a formal status and subsequently, they would not be able to access numerous rights such as the right to freedom of movements or right to work. Yet these rights would affect whether the stateless persons can legally stay in a state. To this end, I find such limitations has deter the development of the rights and also disenable the rights to work to its full function.

I also find that several provisions do not specify the scope and details of the rights. For instance, under the right to public education, it simply mentions that the Contracting States shall accorded to stateless persons the same treatment as is accorded to nationals with respect to elementary education. In this respect, no further elaboration available and it seems to implicitly allow the Contracting State to determine the scope on its own. Such gap would put the stateless persons in dilemmas as no concrete mechanism or rules are guaranteed there.

Finally, through the examination of the 1954 Convention relating to the Status of the Stateless Persons, I find that even though the contracting states have attempted to ascertain the quasi-national and quasi-alien status to stateless persons, however, as this instrument was somehow modeled upon the 1951 Convention relating to the

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Status of Refugees, there were several concerns that seem unfit to apply to stateless persons and were therefore, carried out with a lower level of treatment.

Nevertheless, the subsequent development of the human rights have further the scope, the rights and protections of the stateless persons at various scales. From my observations, the ICCPR and ICESCR are both instrumental in providing a sound interpretation of the specific texts and wordings, but since they are the expansion of the Universal Declaration of Human Rights, many clauses and measures are more of assuring in nature.

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As stateless persons are a special group of people who are in need of not just specific rights, but they also need a broader scope of rights than nationals or aliens. I find that ICCPR and ICESCR have contributed in maximizing and specifying the rights and protections to a certain level, however, I find the specifications as layout under the CRC and CEDAW as worth examining.

Under the CRC and CEDAW, it provides a more explicit scope of rights and protections as addressing particularly to the circumstances as likely to occurred among children and women. While the ICCPR and ICESCR have address the rights to everyone, however, as formerly mentioned, the stateless persons would need a more refined and specific rights to address their concerns at a more concrete way.

I find the CRC has fulfilled such gap. For instance, instead of addressing to generic public, the CRC has formed a more complete system of rights and protections by assimilating the principle of the best interest of the child at all levels of rights as relevant to children. Under the CRC, as it follows the principles of the best interest of the child, a broader status and scope of children could benefited from the CRC, such as the children with refugee status, minor children workers, etc.

There are also specific additional rights that are only available under the CRC. One typical example would be the right to family reunion or in addressing to the situation of separation. These issues are especially tackled under the CRC and I deem it as highly beneficial for stateless persons as many of the stateless children also have to bear with separating from their parents.

To this end, I find the CRC has contributed not just in enhancing the rights as guaranteed under the 1954 Convention relating to the status of the Stateless Persons, but also has provided additional rights to the stateless children.

In terms of protection, the protection as guaranteed under the CRC and CEDAW are more concrete in nature, thereby more capable of turning into exact steps of actions.

I also find that the rights as layout under the CRC and CEDAW are interdependent in nature. Governed by the general principle of non-discrimination and best interest of the child consistently throughout the provisions, together, this compounded to a stronger protection mechanism for the stateless persons, children and women.

Finally, as I touch on the part of protections, I find that both the treaty-based and Chartered-based protection mechanisms are accessible for stateless persons. Under the treaty-based system, I've examined the two mechanisms: the First Optional Protocol of the International Covenant on Civil and Political Rights(ICCPR-OP1) and the CEDAW Optional Protocol.

Under both of these protocols, there are no restrictions in terms of nationality, but the plausible deterrence for the admission would be that the stateless persons need to exhaust all local remedies and have truly suffered from gross violation of human rights; at the same time, they cannot submit their petition simultaneously to two different procedures.

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Under which, it might affect the accessibility of the stateless persons to file a petition. But overall, the Complaint procedures as housed under both the Treaty and Chartered-based system are accessible for stateless persons.

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In conclusion, the stateless persons, similar to any nationals or aliens, have been developed in an evolving manner. Therefore, it would be substantial to address their issue not simply to the minimum, but to ponder upon the future developments in enhancing their status, rights and protections. Therefore, it is my recommendation that the Contracting States shall conduct the following:

First, to examine further on how other relevant and particular human right instruments would be in relevance with the status, rights and protections of the stateless persons. Some of the human rights Instruments which are not touched upon here are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families(ICRMW) and the Convention on the Rights of Persons with Disabilities, these are some of the instruments which addresses to the particular group of status and could likely be examined in terms of the status, rights and protections as guaranteed under those.

Second, it would also be very beneficial if the States can further explore on the general principles-such as the best interest of the child and non-discrimination-and its connection with the stateless persons. These principles often time govern the human right instruments in its entirety and therefore, formed a very focused rights and protection mechanisms for stateless persons.

Finally, as we have examined on the accessibility of the stateless persons to the Protective mechanisms such as the Optional Protocols and the Complaint Procedures

as held under both the Treaty-based and Charter-based mechanism, it would be beneficial to further utilize such mechanism in the protection of the stateless persons. By doing so, the rights and protection of the stateless persons would more likely reach to the level of a full status under the international law.

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