



A LEGAL APPRAISAL OF THE REGULATORY REGIME OF STATELESS PERSONS PARTICIPATION AND ELIGIBILITY AT THE OLYMPIC GAMES

By

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Abstract

The legal basis for Olympics participation as prescribed by the Olympic charter is that of recognised nationality. Nevertheless, the Olympic committee varied its regulation to include refugees to accommodate their participation at the Olympics despite their lack of active nationality. The distinction between stateless and refugee persons in international law vis-a-vis participation at the Olympic Games was examined. The Olympic charter was also perused and analysed to discover if special provisions were made for stateless persons in Olympic participation. There was an extensive deliberation of the disability state of stateless persons and how that categorizes them into privileges and rights of disabled persons to sports participation and by extension the Olympics participation. A regime for temporal citizenship was also examined as a platform for stateless persons to temporarily participate and represent the host state. Doctrinal and content analysis was the methodology adopted in this paper. The suggestion of the Olympic citizenship was also posited as an extension of the temporal variant of citizenship where stateless athletes are temporarily ascribed as citizens solely for the purpose of representing the host state at the Olympics. The internationally recognised human right to work was also analysed in consonance with its application to the right of stateless athletes to participate at the Olympics.

Keywords: Olympics, Stateless persons, participation, temporal citizenship, disability

INTRODUCTION

Vulnerability is a word that continues to evolve overtime particularly when it is perceived by organs of municipal and international organs of government. International bodies such as the United Nations have progressively classified vulnerable persons for purposes of their peculiar protection and an example of the classification is the differentiation of refugees from stateless persons despite the act

that majorly the disadvantage or vulnerability experienced by these classes of persons is their jeopardised citizenship amongst other vulnerable items.¹

Therefore, after the United Nations adopted the convention for the protection of refugees in 1951, there was an immediate need to create a legal regime to cater to the vulnerable nature of stateless persons who were not strictly speaking refugees. The convention relating to the status of stateless persons was enacted in 1954 which defined a stateless person as a person who is not considered a national by any state under the operation of its law.²

This suggests that there is a possibility that in the lifetime of a person he or she may not be a citizen of an actual country. This is important because primarily nationality is the bedrock for participation in sporting tournaments, this then suggests that such stateless persons may not be able to legally participate at the Olympics games.

The legal veracity of the compulsory citizenship of an individual as a premise for sports participation locally or internationally (especially in the Olympics tournaments) is being examined in this paper to secure legal gaps for the participation of stateless persons in such tournaments as seen below;

THE STATE OF STATELESSNESS

The state of statelessness has been described as being a mirage by some scholars that posit that it is humanly impossible for a person to be stateless by virtue of national birth that's Every human has a nation of his or her ancestral birth.

This position is logically justified, however the state of statelessness is premised on two major quadrants. The first quadrant as regards statelessness refers to persons who have not obtained their citizenship automatically or through a personal decision under the citizenship acquisition laws of a country and these classes of persons are referred to as *de jure* stateless persons.³ The second set of stateless persons are *de facto* in the sense that they are legally restrained or unable to prove their citizenship, residency or other means of qualifying for the citizenship for the country of domicile.⁴

As mentioned above the statelessness of persons may be artificially or humanly created for instance the consequences of wars can create an economic or forced migration to other countries making them stateless. This was the case of the aftermath of the Second World War where thousands of Jews had to flee their home countries and millions of Germans by ancestral birth fled Eastern Europe. In fact thousands of Ukrainians, Byelorussians, and other populations of the Soviet Union had to flee their countries rendering them into a refugee and stateless status.⁵

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¹ Preamble to the convention relating to the status of a stateless person 1954.

² Article 1 of the convention relating to the status of a stateless person 1954.

³ Prof. Brad K. Blitz, "Statelessness, Protection and Equality" Refugee Study Centre Refugges Stdy Centre Oxford Department of International development Oxford <http://www.mcrq.ac.in/RLS_Migration_2020/Reading_List_2020/Module_D/Statelessness.%20Protection%20and%20Equality.pdf> accessed 25 March 2022

⁴ *ibid*

⁵ Indira Goris, Julia Harrington 'Statelessness: What it is and why it matters' Forced Migration Review 2009 <http://hr.law.vnu.edu.vn/sites/default/files/resources/what_is_statelessness.pdf> accessed 25 March 2022

The other elements of nature can also create a gap in the citizenship of persons and such elements includes the environmental issues such as natural disasters such as earthquakes, typhoons can materially damage the land mass of a country creating a refugee population which will be desirous of exiting the country to adjoining states making them stateless.

The foregoing therefore proves that statelessness is usually artificially created since everyone has a nation of ancestral birth but for situations of wars, riots, earthquakes, economic migration, marital migration, it will be difficult for citizenship gap of stateless to be created.

The corollary effect of migration to other countries therefore creates a near unrealistic burden on the states where migration has been made which is to ensure the non-discrimination or breach of their rights of the stateless persons while they are stateless or seeking legal process or opportunities to be absorbed as citizens in those host countries.

These items of rights includes the right to public and governmental services or even the right to employment which the state may not be able to guarantee because of the competing rights to employment of its own citizens.⁶

The convention for the protection for instance directly protects the right of stateless persons to the practice of their religion⁷, access to courts⁸ and also guarantees the right for the stateless persons to associate with non-political and non-profit making associations and in those associations should not be treated in a less favourable manner than the citizens of the state.⁹ The convention thereafter indicates the right of the stateless persons to wage earning employment and self-employment.

The reference to paid employment and self-employment will suggest that the state must be sympathetic to the plight of the stateless persons and ensure that they are not treated unfairly in terms of employment recruitment or labour relations.¹⁰

More importantly, the convention mandates states where stateless persons are domicile to respect and not on a discriminatory basis prevent stateless persons from engaging in commercial activities such as Agriculture, industries ownerships and other commercial activities.¹¹

Scholars have posited that the right to self-employment is the basis for which stateless persons should be permitted to engage in sporting activities at the Olympic Games because of the commercial benefits to the stateless person. It is also argued that in their state of domicile there should not be any impediment or discriminatory activities that prevents such participation since it can be perceived from a commercial perspective.

This suggestion is made because the convention on the protection of the rights of stateless persons does not expressly guarantee the right of the stateless persons to

⁶ Ibid

⁷ Article 4 of the convention relating to the status of a stateless person 1954

⁸ Ibid, Article 16

⁹ Ibid, Article 15

¹⁰ Ibid, Article 17

¹¹ Ibid, Article 18

participate in sporting activities either within the state or at international tournaments. There is a need for the laws to be clear as to the status of an athlete who intends to keep engaging in sporting activities either nationally or internationally for his or her commercial benefit without any impediment from the state of domicile and on what basis the stateless athlete can do same at the Olympics for instance.

THE RIGHT TO RECREATIONAL AND SPORTING ACTIVITIES

The right to participate in sporting activities is not perceived in international law as an adult right. The emphasis of international law with respect to access of adults to participating tournaments is on persons with disabilities. International law encourages national governments to enable disabled persons to participate on an even basis with others in recreation, leisure and sporting activities and that state parties shall adopt measures to encourage and promote participation of persons with disabilities.¹²The law also encourages the access of disabled persons to have access to services from those involved in the organizational of recreational, tourism, leisure and sporting activities.¹³

International law also recognises the right of children under international law to participate in sports and recreational activities. There is a mandate that children that are 18 years and below have a right under international law to leisure and to partake in recreational and sporting activities appropriate to the age of the child.¹⁴

The reference to international right to participation in sports or recreational activities is that recreational or sporting right is not a right enshrined or protected under the convention of stateless persons except for other conventions that solely protect the sporting or recreational right of children and disabled persons. This means that stateless persons in their country of domicile will be by right be unable to participate in sporting competitions that were able to participate when they were functioning nationals of a country. These competitions include the international Olympics, Winter Olympics, FIFA world cup etc.¹⁵

Therefore the stateless person becomes disadvantaged in his or access to sporting facilities to train for international competitions or ingress or egress out of the place of domicile to participate at the international competition or the ability to subscribe to participate at international competitions because of the state of statelessness.

NATIONALITY REQUIREMENT

Participation at international competitions by individuals is majorly contingent on the basis of being the national of a country. FIFA eligibility rules for instance provides that the basis for participation at any FIFA sanctioned event by any individual is that such person must a permanent nationality that is contingent on the residence.¹⁶ The nationality requirement for international competition also extends to the Olympics regulated by the International Olympic committee. The Olympic charter states that any person who intends to compete at the Olympic Games must

¹² Article 30(5) a of the convention on the Rights of Persons with Disabilities

¹³ Ibid, Article 30(5) e

¹⁴ Ibid, Article 19

¹⁵ Ibid

¹⁶ Article 15(I) of the FIFA Eligibility Rules, 2020

be a citizen of a country that is affiliated with the National Olympic committee which is entering such competitor.¹⁷

The Olympic charter further provides that a competitor who is a citizen of two countries has the capacity to elect to represent one of the countries and after representing one at the Olympic games, such athlete is barred from representing his other nationalities in the future at the Olympic games.¹⁸ The foregoing therefore proves that in the regulatory frame work of the Olympic Games, the basis for participation of every individual at the games is contingent on being a national of a country affiliated with the Olympic Committee.

Therefore it may be necessary to examine the legal predicament of athletes who have become stateless but still wish to participate at the Olympics for socio-economic reasons and how the Olympic Charter can accommodate such athletes to compete in spite of their lack of a state or nationality.

There are indications that the International Olympic committee has catered to need for the participation of stateless persons by its recognition or advancement of the athlete needs by the creation of the Refugee Olympics team that will then compete alongside other athletes representing countries with the hope of catering to the inclusion of millions of refugees that are willing to compete at the Olympic games.¹⁹

It is believed that since the International Olympic committee has circumvented its nationality requirement for participation in the Olympic games to accommodate Refugees who are stateless as a sympathetic effort of compensating refugees because of their stateless status then there is no justification for a regulatory regime to accommodate the participation of stateless persons since they have been catered for by the programme for participation of refugees.

However, this paper posits that there is a distinction between refugees and stateless persons. The fact is there are refugees that are stateless and there are stateless persons that are refugees. In other words a stateless person can be a refugee when such person has an evidential fear of being persecuted by reasons of race, religion, political preferences, nationality, membership of a social group or political opinion group, and are unwilling and incapacitated in seeking of availing themselves adequate protection in their country of habitual residence.²⁰

The distinction between stateless persons and refugee is that refugees are *de facto* unprotected and stateless persons are *de jure* unprotected .In other words refugees are already by practise, custom conventions recognised as persons capable of being protected while stateless persons are persons not protected by law. Therefore the protection of stateless persons are only perceived from the lens of legality or the rule of law in the place of domicile.²¹

¹⁷ Rule 40 of the Olympic Charter 2020

¹⁸ Ibid, Rule 41

¹⁹ International Olympic Committee, 'IOC Refugee Olympic Team' <<https://olympics.com/ioc/refugee-olympic-team>> accessed 1 April 2022

²⁰ Peter Van Krieken, 'The High Commissioner for Refugees and Stateless Persons' *Netherlands International law Review* (2009) 26 (1)

²¹ Jarganjosh, 'What is the difference between de facto and de jure' <<https://www.jarganjosh.com/general-knowledge/difference-between-de-facto-and-de-jure-1625229241-1>> accessed 4 April 2021

The distinction between the status and that of a stateless person is necessary to prove that the International Olympics committee that caters for the participation of refugees is not tantamount to right of the participation of stateless persons at the Olympics games since both statuses are legally distinguished in law. Nevertheless, it is possible for a stateless person to be a refugee which would mean that in that case, the programme for participation for refugees would apply to the person.

LEGAL REGIME FOR THE PARTICIPATION OF STATELESS PERSONS

The fundamental principles of Olympism are consistent with basic tenets of democracy in that participation in sports is perceived as a human right and that every person irrespective of their current predicament or circumstance must have the possibility of participating in sports without discrimination of any kind or type.²² This principle further reiterates that the platform for discrimination shall not be on the basis of discriminatory platforms such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth and other status.²³

In fact, the Olympic charter further provides that the charter shall not tolerate any form of discrimination by promoting and supporting the development for all.²⁴ This will be further reinforced by the protection of athletes from commercial and political abuse.²⁵ The foregoing principle of olympism recognised in the Olympic Charter of the International Olympic committee is in direct contradiction with another provision of the Olympic charter which provides that any competitor in the Olympic games must be a national of the country of the NOC which is entering such competitor and all matters in the determination of the national of an athlete shall be resolved by the international Olympic committee executive board.²⁶

The foregoing provision is described as being discriminatory in light of the olympism principles because competing at the Olympic Games is contingent on being a national of a country which then discriminates against persons that experientially are not citizens of state at the time which makes it impossible for stateless persons to legally participate at the Olympics.

Nevertheless, it is important to note that in the Olympic charter, some level of concessions was ascribed to refugees despite their possible legal issues with nationality. The charter states that the International Olympic committee is devoted to Olympic solidarity which is to provide athlete development programmes especially those who are in great need for it.²⁷

Therefore, it is on the basis of help or solidarity fronted by the Olympic body that the need for the support for refugees in their development is guaranteed.²⁸ Despite this support for refugees it is posited that the special programme that includes

²² Fundamental Principles of Olympism, 'The Olympic Charter 2020' <<https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>> accessed 14 April 2022

²³ Ibid

²⁴ Article 2(13) of the Olympic Charter 2020

²⁵ Ibid, Article 2(11)

²⁶ Ibid, Article 41(1) (2)

²⁷ Article 5 of the Olympic Charter 2020

²⁸ Bye Law 11 to Article 5 of the Olympic Charter 2020

refuges in competing games is a mere programme that has no legal footing in the Olympic charter because the charter only guarantees support not participation at the Olympic games meaning the participation of refugees at Olympics is subject to discretion and has no legal basis. This is important to further highlight the complete exclusion of stateless persons when the class of stateless persons recognised (refuges) have no real guarantee for their participation at the Olympics.

The requirement of nationhood as a prerequisite for competing at the Olympic Games is also reiterated in the functions of the National Olympic committee by attributing to them the exclusive powers of sending athletes, team officials, and other personnel to the Olympic Games.²⁹The national Olympic committee are also to participate in activities sanctioned by the International Olympic committee especially regional tournaments.³⁰

The idea of nationalistic participation is also reiterated by the provisions of the Olympic charter that allows for invitations to compete at the Olympic games be sent to National Olympic committees which represent nations a year before the opening ceremony at the Olympic games. The charter further provides that only athletes presented by individual countries recognised by the International Olympic committee shall have the right to participate at the Olympics.³¹

This leaves no room for individual participation regardless of nationalistic status at the Olympic Games except in situations where there is no existing sports organisation as regards a particular sport where individual participants may be selected based on their performance by the international Olympic committee.³² Therefore the only instance when the National Olympic committee is not directly responsible for the production of competitors at the games is when it is non-existent leaving room for individual selection by the International executive committee. Nevertheless, the charter is silent as to whether such athletes individually selected must compete for a particular nation since the selection was done directly by the international Olympic committee.

The insistence of the Olympic charter on participation based on nationality is somewhat devoid of clarity because in the same charter there is an assertion that Olympic Games are competitions between individuals or team events and not really between the nations they individually or collectively represent. Therefore, the non-participation of stateless persons in Olympic Games despite this ideology is devoid of understanding.³³

International law provides for the protection of the right of disabled persons to participate in sporting tournaments and activities as established the convention for the protection of rights of disabled persons. Nevertheless, it is argued that this provision can also reasonably include and protects stateless persons being that in the context of participating at the Olympics they can be typified or recognised as disabled persons.

²⁹ Ibid, Article 27(7) 7.2

³⁰ Ibid, Article 27(7) 7.5

³¹ Ibid, Article 44 (1) (2)

³² Ibid

³³ Article 6(1) of the Olympic charter 2020

More importantly, the inclusion or the possible protection for stateless persons via the platform of disabled persons seems robust based on the definition ascribed to disabled persons in international law as regards their protection for instance, international law indicates that a disabled person are a class of persons that became disabled as a result of interaction between individuals with impairments and behavioural and environmental barriers that impede full and effective participation at the Olympic games.³⁴

The reason why the foregoing words accommodate stateless persons as disabled persons for the purposes of sport participation at the Olympics is because they are disabled in terms of nationality which may be occasioned by behavioural barriers or environmental patterns.

Therefore, it is opined that since stateless persons are state-disabled the status of their compulsory inclusion at international sporting tournaments such as the Olympic Games should be promoted since the international legislations that affirm such right. Nevertheless, if the argument canvassed about the inclusion of stateless persons as jurisdictionally disabled persons for which entitles them to international rights ascribed to disabled persons then the United nation convention permits them to freely choose the freedom of choosing a residence or nationality.³⁵

More so, the protection of stateless persons in terms of their participation at the Olympic games will be further promoted on the platform of disability since the united nation convention clearly states that sporting activities be promoted to achieve the participation of disabled persons on an equal basis.³⁶

The foregoing therefore indicates that if stateless persons are allowed to be clothed with the nomenclature of territorial or state identification disability caused by environmental or man-made causes then it is within their right to have access to sports participation at the Olympics. Nevertheless, it is difficult to establish the organ that will be responsible for the enforcement of this right as regards the stateless persons since the law is addressing state parties with disabled persons being referenced as persons that are citizens of such states and not necessarily stateless persons who are by default residents of such states.

Nevertheless, it is important to expand the frontiers of disability protection in international law to expressly recognise stateless persons as a form of disability hinged on behavioural or environmental or man-made causes entitling such persons to rights of disabled persons as recognised under international law which in this case is the right to participate in sporting international tournaments as encouraged by state parties.

TRANSFER OF TEMPORAL NATIONALITY OPTION

Olympic culture and the consistent practise of the Olympic committee accommodates refugees at the Olympics competition but this does not necessarily

³⁴ Preamble e of the United Nations Rights of Persons with Disabilities Optional Protocol

³⁵ Ibid, Article 18(1)

³⁶ Ibid, Article 30(5)a

cover stateless persons because of the thin legal dichotomy of difference between a stateless person and a refugee.

In order to accommodate stateless persons participating at the Olympics legally without being in breach of the Olympic charter provision that mandates participation based on nationality, a temporal transfer of nationality to the country of residence of the stateless person is suggested to prosecute the participation dreams of that athlete of that stateless person but of course, this will be subject to the stateless athlete having better competence than other athletes in the representation of the country in question.

The temporal citizenship as a norm is sparsely recognised expressly by any jurisdiction but it is identified implicitly by most jurisdictions usually as resident permits or work permits which are legal pathways to acquiring the citizenship of countries but are in practice pseudo temporal citizenship models that allows persons be put on probation while a country observes a foreigner prospecting to be a citizen of the country.

The United States of America already practices this temporal citizenship models for athletes of foreign extraction to participate in sports competitions. These regulations are masqueraded as temporary work visa categories such as the individual with extraordinary ability or achievement visa category or the individual or team athlete category.³⁷

The individual with extraordinary ability or achievement visa category seeks to accommodate foreign individuals to work in the United States who have attained a high level of significance in certain human endeavour such as in the sciences, arts, education, business, athletics that are manifested in consistent national or international acclaimed in their area of expertise. Stateless athletes can also be granted temporal citizenship under the individual or team athlete work visa to allow athletes perform at a specific sporting event.³⁸

The United States policy or framework as regards temporal citizenship termed the extraordinary ability or achievement visa category is to help the United States recruit foreigners that are beneficial to their country including foregoing athletes. This visa is termed the O-1 non-immigrant visa and part of the process in determining persons eligible for this Visa are persons that can prove by documentation that can prove that the petitioner or athlete meets the standard for extraordinary ability or achievement for athlete classification³⁹

The temporary citizenship nature of the O-1 visa is that the United States by contract grants such athletes a three year stay in the country with the privilege of an extension for another year where such athlete is permitted to compete favourably in

³⁷ US Department of State- Bureau of Consular affairs ``Temporary work visas`` Temporary worker Visa Categories <<https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html>> accessed 6 may 2022

³⁸ Ibid

³⁹ United States Immigration service, ``O-1 Visa : Individuals with Extra ordinary ability or achievement`` <https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement#:~:text=The%20O%2D1%20nonimmigrant%20visa,nationally%20or%20internationally%20for%20those> last accessed on 9/5/22

the country with rights attributed to a regular citizen of the country. It is posited that temporal citizenship arrangements such as the O-1 immigration visa of the United States can be a precedent for countries that currently host stateless athletes to grant temporal citizenship based on extraordinary or relative achievement in athletics or in other areas of sports to enable them participate at the Olympics temporarily bearing the citizenship of the host country where the stateless athletes are currently resident.

However, there may be a debate as to who owns the medal at the Olympic Games if a stateless athlete wins a medal for a country he or she temporarily represents. This paper opines that the Olympics should make two medals available for such athlete so that the athlete and country can have a medal for that category. This can be used to compensate countries that are willing to permit stateless athlete use their platform to participate at the Olympics.

The temporal citizenship model is posited to create an avenue where countries that are hosts of athletes that are stateless can grant or permit athletes participate at the Olympics utilizing the platform of such countries without necessarily granting citizenship to those athletes.

Nevertheless, the citizenship of such stateless athlete may be concretized with the country hosting the athlete if in the estimation of the host country the athlete will be beneficial to the country at the Olympics if the athlete is of immense value in the sports front.

In recent times, countries have consciously relaxed their immigration or citizenship acquisition policies such as naturalisation to accommodate persons that are skilled or extremely proficient in specific areas by exempting procedures to acquire citizenship through registration or naturalisation.

These countries fast track the acquisition of citizenship status for skills or competencies that encompasses subjects such as science, arts, and even sports. However, there are indications that some countries have legally bastardized such processes especially towards athletes where the countries are creating money-for-citizenship programmes or coined Olympic citizenship to attract aliens from usually third world countries to acquire their citizenship for the purposes of representing those countries at the Olympics to boost their chances at the Olympics.⁴⁰

More so, marketization of citizenship to athletes especially towards representing countries at the Olympics is permissible because sports regulators such as FIFA and the international Olympic committee are negligent in deciphering the various pathways to citizenship or the switching allegiance of countries which makes economic or Olympic citizenship very lucrative and rampant.⁴¹

The Olympic International committee in its attempts to prevent Olympic citizenship empowered local federations to prevent athletes from representing other countries within a three year period of representing their country of birth or primary

⁴⁰ Joost Jansen, Gijsbert Oonk, 'Nationality Swapping in the Olympic Field: Towards Marketisation of Citizenship' *Citizenship Studies* (2018) (22)5
<<https://www.tandfonline.com/doi/full/10.1080/13621025.2018.1477921>>

⁴¹ Ibid

citizenship.⁴² Nevertheless, this regulation has been described by sports stakeholders as liking bite in preventing Olympic citizenship in that the duration of the previous representation and the adopted representation is too short to achieve meaningful prohibition of economic or Olympic citizenship and that the Olympic committee lacks the capacity and manpower to monitor the default of the regulation.

Notwithstanding the above, the recommendation of an Olympic citizenship to stateless persons does not really offend the moral or economic sensibilities of the stakeholders in the industry because first the athletes proposed the citizenship are stateless which means they do not have any country in the interim to pay any allegiance which may be their position for the rest of their life.

Secondly, for the compliance with the convention of the protection of stateless persons or the eradication of stateless persons be accomplished amongst country-signatories to be sustainable, there must be mutual benefit of either economic or social value flowing from the stateless person to the host country and from the host country to the stateless person and this can be best achieved under the Olympic citizenship model

HUMAN RIGHTS AND THE HUMANE IDEOLOGICAL CONTEXT OF THE OLYMPICS

The Human rights Council advisory committee at its 24th session adopted ideological beliefs and ideals as to medium by which the Olympics should protect human rights by stating that Olympism is a mega event that has been described as an avenue by which social values such as unity, promotion of diversity, tolerance, understanding for all persons by eliminating all forms of discrimination pervasive in the world which includes societal occurrences such as statelessness.⁴³

This humane ideological burden of the Olympic Games is expected to manifest itself by ensuring that olympism satisfies the human need for competition and encourage all persons irrespective of their background to overcome their limitations be it social. Psychological, physical (handicap).⁴⁴

The foregoing proves that Olympics by ideology is supposed to be a weapon to eradicate problematic issues such as statelessness by reflecting diversity of problematic issues in society and also an avenue to surmount societal problems that are socially created such as the state of statelessness. It is therefore instructive that in line with this ideology, participation of stateless athletes in the Olympics be instituted for its correctional measures on society.

OLYMPISM AND THE RIGHT TO WORK

International law or framework guarantees the right to economic endeavours to actualise a meaningful living. This right can be derived from the right to work which

⁴² Bye law 2 to Article 41 of the Olympic charter 2020

⁴³ Human Rights Council advisory committee 'Promoting human rights through sport and the Olympic ideal pursuant to the Human rights council resolution' <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Sport/RFYN_Religious_Freedom_Youth_Network%2C_India.pdf> accessed 9 May 2022

⁴⁴ Ibid

affords every individual to gain his living by a source of livelihood which he freely determined which should be protected by international law and other state parties.⁴⁵

The foregoing economic right to work by law is majorly to be enforced by state parties through trainings, work programmes; policies that should help safeguard the full and productive employment and economic freedom of the individuals' resident within the state party.⁴⁶

The foregoing right to work and economic freedom seems to be enforced by nation-states for the benefit of persons residing in their state. This consequently means that the right of stateless persons to participate at the Olympics can be reinforced by the athlete's right to work and work choice should be protected by state parties where they reside and should force the hand of the Olympic committee to admit such athletes to compete at the Olympic Games. However, it is keen to note that the jurisdiction of the international covenant on economic right over the Olympic committee may be debatable.

Nevertheless, the importance of stateless athletes working in the profession of their choosing which is athletics especially at the highest level which is the Olympics crystallizes their right to work because according to myriad of scholars, a job is the centre of a person's life and persons reasonably find meaning and purpose to their life at their work place or chosen profession. In fact others find the true essence of community and civil engagement in their profession and were able to estimate their value and the contribution of that value to the community.⁴⁷

The right to work for stateless athletes is critical to their existence because situations like statelessness in the absence of preferred work can be perceived as a form of mental torture or a continuing perceived inconvenience experienced in their former or non-existent state. Stateless persons just like asylum seekers are wary of unemployment in their country of residence while applying for a citizenship status in their country of residence.⁴⁸

Scholars have severally opined that persons in the class of asylum seeking or stateless persons must be given an opportunity to engage in preferred work in their current state of residence because anything short of this creates forced employment or forced unemployment creating activity-free days coupled with the dehumanising feeling generated from an unemployed stateless person.⁴⁹

The foregoing is the running state of mind of every stateless athlete in terms of their right to participate at the Olympics which is the platform that affords them the highest possible income and prevents them in participating in economically forced employment.

⁴⁵ Article 6 (1) of the International Covenant of Economic and Social Rights

⁴⁶ Ibid, Article 6(2)

⁴⁷ Benjamin Hunnicutt, *Work without end : Abandoning Shorter hours for the Right to Work* (1st Edn, Temple University Press, 1988)

⁴⁸ Lisa Hartley, Caroline Felay, 'Asylum Seekers in the Community without the right to work' Curtin University Centre for human rights education <<https://core.ac.uk/download/pdf/30675229.pdf>> accessed on 19 May 2022

⁴⁹ Ibid

CONCLUSION

The case being made is to ensure that stateless athletes just like the arrangement made for refugees at the Olympics be allowed to participate. The significance of the use of nationality as a platform for international competitions needs to be materially varied to reflect the state of some individuals in the world to ensure that every person has the fair opportunity of participating at the Olympics.

It is also posited that in international law does not in any way recognise the right of stateless persons to recreation, leisure and participation in sporting tournaments. However, this paper argues that despite this lacunae on the right of stateless persons to participate in sporting tournaments, the convention on the protection on the right of disabled persons can be purposively interpreted and expanded to accommodate stateless persons because of their disability in having a functioning nationality and based on this law benefit from the right of disabled persons to participate in sporting tournaments.

RECOMMENDATIONS

1. The right of stateless person to participate at the Olympics should be perceived as a right to work to create a burden of enforcement for the international community
2. Stateless athletes should be afforded the same participatory opportunities as refugees.
3. Nation-states should consider granting Olympic citizenship to stateless athletes where stateless athletes temporarily represent nations where they are resident.
4. The stateless athletes are nationally disadvantaged making them disabled persons to advantages they should possess and thus should enjoy advantages secured by disabled persons with respect to participation in sport
5. There can be temporal variant of citizenships that allows for stateless athletes to represent their resident countries per participation.
6. There is a need for the laws to be clear as to the status of an athlete who intends to keep engaging in sporting activities either nationally or internationally for his or her commercial benefit without any impediment from the state of domicile and on what basis the stateless athlete can do same at the Olympics for instance.