

THE CHILD'S RIGHT TO A NATIONALITY AND CHILDHOOD STATELESSNESS

Texts and Materials



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Foreword

Every child has the right to a nationality – the recognition of a fundamental legal relationship between the child and a state.

This right is stated in Article 7 of the United Nations Convention on the Rights of the Child (UNCRC) – the world’s most ratified human rights treaty, which celebrates its 30th anniversary this year.

Despite this milestone, it is estimated that a third of the millions of stateless people globally are children.

A child without a nationality faces incredible disadvantage, vulnerability and marginalization. This lack of formal recognition by the state results in the denial of health care, education and other basic government services. Statelessness means that children often have no voice in their societies. Stateless children can be invisible to the authorities, as if they never existed.

Children from minority backgrounds are even more affected by the problems of statelessness because of discrimination, often facing racism and hostility from the majority population. Children born in the context of armed conflict are also a particularly vulnerable group who may not have citizenship – or may have their citizenship stripped – placing them at risk of becoming stateless and invisible.

In the twenty-first century, such situations are unacceptable.

The right to a nationality is protected under international law. It is a foundational right of international human rights law recognized in the Universal Declaration of Human Rights. Specifically, the UNCRC requires states to implement children’s right to a nationality, “in particular where the child would otherwise be stateless”.

To help make this right a reality for every child, UNICEF has partnered with the Institute on Statelessness and Inclusion (ISI) to raise understanding of childhood statelessness and what can be done to rectify this violation of children’s rights. ISI is a non-governmental human rights organization dedicated to working on statelessness at the global level, to promote inclusive societies by realizing and protecting the right to a nationality.

Our partnership with ISI is part of the international Coalition on Every Child's Right to a Nationality, which is led by UNICEF and the Office of the United Nations High Commissioner for Refugees (UNHCR) and works in over 20 countries to address childhood statelessness. We work together with partners and governments in these countries to increase access to birth registration for every child, advocate the reform of gender-discriminatory provisions in civil registration or nationality laws, and ensure that children who are stateless are still able to access school, health and social services.

The child's right to a nationality and childhood statelessness: Texts & materials is one product of our partnership with ISI. It is a primer on statelessness and children's right to nationality, made up of relevant materials that have been carefully selected to introduce the issues.

We hope you find these materials helpful as we work together to achieve a world in which every child has a nationality.



Cornelius Williams
Associate Director Child Protection, UNICEF

Introduction

This Texts and Materials book on *'The Child's Right to a Nationality and Childhood Statelessness'* complements the **UNICEF and ISI Advanced intensive training on childhood statelessness & the child's right to a nationality**. All course participants are required to read this book before attending the course. It will also be a useful reference resource after having completed the course, as well as for those who have not undergone the training.

This is a Texts and Materials book. This means, the book largely comprises excerpts from relevant texts and materials – books chapters, reports, articles, jurisprudence, UN materials and treaty provisions – which have been carefully selected to provide the reader with an introduction to the various issues covered. As an educational resource, the purpose of this book is to provide the reader with a wide range of perspectives and contexts, in order to provoke thought and enhance knowledge. As such, **the excerpts of texts and materials in the book do not necessarily reflect the policies or views of UNICEF or ISI**, and should not be construed as such. We are grateful to the publishers and authors of all of the excerpts included in this book and encourage readers to read the original texts where possible, should they wish to further expand their knowledge.

Each chapter has a short introductory text which sets out the issue and provides an overview of the excerpts contained within it. At the end of each chapter, is a list of further resources, as well as a few discussion questions for the reader to contemplate.

The book has three parts. **Part 1** introduces the reader to **basic concepts and challenges** related to the child's right to a nationality and childhood statelessness; **Part 2** looks at **international and regional standards and instruments**; and **Part 3** focuses on **Responding to the denial of nationality and childhood statelessness**. Part 3 deviates in format from Parts 1 & 2, in that it presents the views of key actors working to address childhood statelessness around the world, in addition to drawing on existing texts and materials. The purpose of Part 3 is to inspire reflection and localised action to identify, understand and respond to challenges in relation to the child's right to a nationality and childhood statelessness.

Inevitably, there is overlap between different chapters and sections of this book. No issue neatly fits into its own box, and no writing on statelessness or the child's right to a nationality exclusively addresses one issue alone. Consequently, we have tried to identify excerpts that are most relevant to the focus of each chapter. However, these

excerpts may also provide useful insight into issues covered under other chapters, or indeed, issues not explicitly covered by this book. This overlap is indicative of the interconnected and complex nature of the issue. Any effective response would also have to take consideration of multiple factors – both challenges and opportunities.

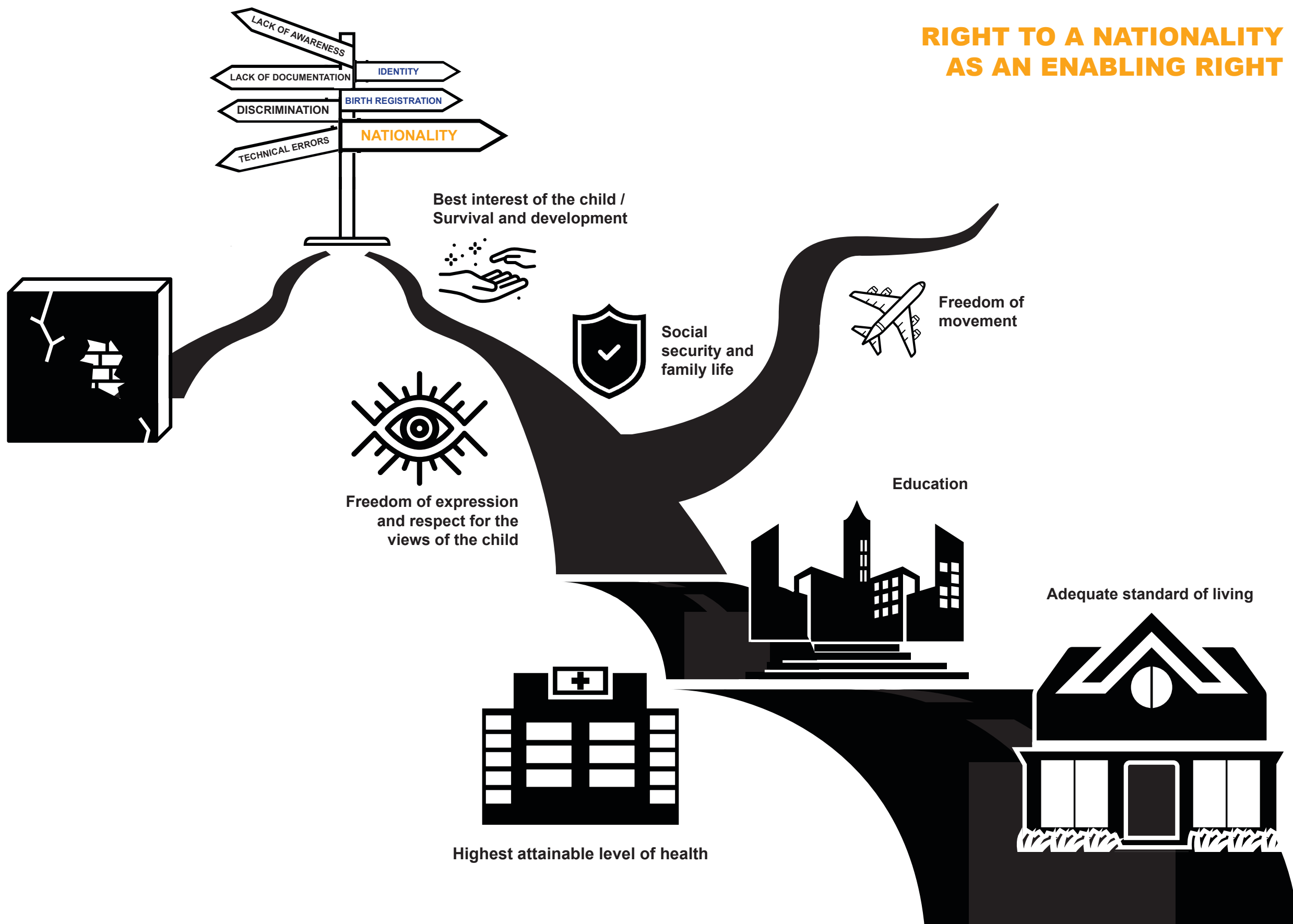
PART 1:

Basic Concepts and Challenges

In **Part 1**, we look at basic concepts and questions related to the child's right to a nationality and childhood statelessness. We also look at the key challenges and considerations to bear in mind in this regard.

There are six chapters in Part 1. **Chapter 1: The child's right to a nationality** attempts to answer the questions: *What is nationality?* and *How do children acquire, prove and preserve their nationality?* **Chapter 2: Childhood statelessness** looks at the questions: *What is statelessness?* and *how are children denied (proof of) nationality or deprived of their nationality?* **Chapter 3: Human rights and development considerations** provides insight into the question; *How does nationality or statelessness influence a child's access to human rights and development?* This is followed by three chapters on key challenges. **Chapter 4: How does discrimination relate to statelessness?** **Chapter 5: How does (forced) migration relate to statelessness?** and **Chapter 6: How does (lack of) documentation relate to statelessness?** These chapters look at three fundamental and cross-cutting issues, which both cause and are exacerbated by statelessness. This mutually reinforcing and perpetuating nexus between discrimination, (forced) migration and (lack of) documentation and statelessness, means that childhood statelessness will only be effectively addressed, if these other wider challenges and their relationship with statelessness are also understood and addressed.

RIGHT TO A NATIONALITY AS AN ENABLING RIGHT



Chapter 1:

The Child's Right to a Nationality

“Nationality” refers to a specific legal bond between an individual and a State, usually on the basis of a connection through birth on the territory, descent, marriage, residence or another factor. Nationality does not indicate a person’s ethnic or social origin. Every person, and therefore every child, has the right to a nationality under international law.

Nationality is also an enabling right and can be considered as a key gateway right needed to enjoy one’s other rights. It is the legal bond between a person and a state, one that conveys rights and responsibilities as well as a status of belonging and membership to that country. While enabling rights are important throughout life, they are perhaps most so during childhood, the formative years when one’s identity, personality and life trajectory are set in motion. Childhood statelessness can therefore have severe implications in terms of human rights, child protection, non-discrimination and development. This is a truth so foundational, which those who work to address childhood statelessness consider so self-evident, that it is often assumed to be universally known and understood. Yet the public perception of nationality, and of children’s enjoyment of nationality, often betrays a certain disregard for the reality of childhood statelessness as a feature of today’s world. Successfully asserting the right of every child to a nationality, requires us to challenge the prevailing misconceptions of children’s experience of the denial of this right.

Most children acquire their nationality at birth, without any difficulties, through one of two main principles or a combination thereof: *jus soli* (birth in the territory of the state) and *jus sanguinis* (descent from a parent who is a national). The majority of these children will preserve their nationality throughout their lives. Some children will also go on to acquire additional nationalities, either in childhood or adulthood.

Yet, a child may start out life stateless by being denied their right to acquire a nationality at birth or may become stateless during childhood because nationality is lost at a later moment in time. Further, a child may be unable to prove their nationality due to lack of documentation. If this child belongs to a discriminated against minority, border or migrant community, the risk of statelessness associated with the lack of documentation would be greater, as their belonging is more likely to be questioned.

Understanding what is required to protect and fulfil every child's right to nationality requires getting to grips with how the system of nationality works and the contexts in which things may go wrong for children. When speaking with children about these issues, legal language and abstract concepts like nationality and statelessness may be difficult to understand. Consequently, discussing these topics with children may demand an adapted approach in which notions of membership and the function of nationality take a more central role.

This chapter explores the definition of nationality and its importance to children, looks at the mechanics of nationality to build an understanding of why childhood statelessness happens and challenges the reader to reflect on how to talk effectively about the issue, including with children.

Discussion questions

1. What is a nationality, and is it a right or a privilege?
2. Is State practice to grant or deny nationality regulated in any way by international law?
3. Why is it particularly important that children have a nationality?
4. What are the challenges and disadvantages faced by children denied a nationality?

Texts and Materials

Institute on Statelessness and Inclusion (ISI),
Statelessness Essentials: Childhood Statelessness.

ISI 2018, p. 5; 7

[<https://files.institutesi.org/childhood-statelessness.pdf>](https://files.institutesi.org/childhood-statelessness.pdf)

What is nationality and why is it important for children?

A nationality is the legal bond between a person and a country. It conveys the status of belonging and membership to that country, a place and a community. Modern bureaucracies take the possession of a nationality as the norm. As such, despite human rights being universal in theory, in practice, those without a nationality find it much more difficult to access their rights or to challenge any violation of their rights. Basic human rights are often out of reach for stateless persons, due to their inability to demonstrate a legal bond with their own country. Nationality in that sense functions as a gateway right, enabling the enjoyment of other child rights

Having a nationality allows children to go to school and learn new things, to get health care when they need it, to travel abroad and to feel like they belong to the place where they live and that they know.¹ Without a nationality, stateless children have difficulty exercising their rights, struggle to feel like they belong and grow up to be disenfranchised and excluded adults.

“All my friends go to places and I could not go to them. I feel sad because I don’t have ID and all my friends have ID... I don’t like to be stateless because it’s not fair.”

A young stateless girl in Lebanon.

How is nationality acquired by or denied to children?

The vast majority of children acquire their nationality at birth; immediately, automatically and without any difficulty. They get their nationality either via their parents, or because they were born in the territory of their country (or both). This is however not the case for all children. When a child does not acquire any nationality at birth or loses their only nationality during childhood, this makes them stateless.

A child may not acquire a nationality at birth for

“Jus sanguinis”: nationality from your parents

A child shall acquire German citizenship by birth if one parent possesses German citizenship.

“Jus soli”: nationality of the country of your birth

Mexican nationals by birth are persons born in Mexican territory regardless of parents’ nationality or immigration status in Mexico.

¹ Having a nationality also affords a children protection by the state, establishing a legal bond between the child and the state.

multiple reasons, such as failure or inability to register the child's birth (correctly), which makes it difficult to prove where the child was born or who the parents are, or when the child's parents are stateless themselves and have no nationality to pass on. This situation in which statelessness is passed from parent to child is the single biggest cause of childhood statelessness in the world. It persists due to a failure of countries to respect and fulfil the basic human right of every child to a nationality.

Nationality can also be lost, as has happened to entire groups, often minorities in their country such as Dominicans of Haitian descent, leaving entire communities, including children, stateless. Nationalities may also be lost when a country ceases to exist and the new, successor state denies nationality to some citizens of the previous country, or taken away from people who are deemed to have committed acts against a country's interests. When this happens, the children of such persons sometimes also have their nationality taken away – despite this being prohibited by international law.

Jacqueline Bhabha, 'The Importance of Nationality for Children'
in Institute on Statelessness and Inclusion (ISI),
The World's Stateless Children.

Wolf Legal Publishers 2017, p.112-118
<<https://files.institutesi.org/worldsstateless17.pdf>>

1. Introduction

In a world where the [principle of non-discrimination](#) was fully realised, nationality would not matter. Nationality would not affect access to basic services such as health care and education, or to place related activities such as crossing an international border, or moving freely within a state. This is not the world we live in. Despite three quarters of a century of global human rights norms and [two decades of near universal child rights principles](#), [nationality matters](#). And it matters for children as much as it matters for adults. The importance of nationality for children overlaps but is not co-extensive with the importance of nationality for adults...

2. Nationality, children and individual rights

Nationality is the legal confirmation of a reciprocal bond between person and state, a bond that connotes obligations and privileges. Many of these obligations and privileges are not applicable to nationals under 18 years of age: children cannot vote, they cannot stand for public office, they cannot serve on juries, and, as a matter of international law, they cannot be compelled to participate in active combat. But these exclusions do not negate the importance of nationality for children.

Among a plethora of examples, consider the following. First, even a very young child, like an adult, will need proof of nationality to qualify for safe and legal border crossing. Second, more age specifically, though primary education is supposed to be free and universally available to all children irrespective of nationality, comparable international mandates do not apply to other, equally critical, educational opportunities, a deficit with consequential implications. Compared to their non-national peers, [children who are citizens generally have privileged access to early childhood development and preschool opportunities, as well as to post primary education, college scholarships and other educational facilities.](#) The same [enhanced access for citizen children also applies to health care, to social welfare protections and to other critical economic and social rights facilities.](#)

3. Nationality, children and relational benefits

It is not just individual rights and benefits that are at stake for children when questions of nationality are at issue. Relational benefits, and in particular the right to respect for family and private life, are also implicated, benefits that constitute a peculiarly important set of ties in childhood, given its characteristics of dependence, vulnerability and rapid developmental growth. A child's early environment, physical but also emotional and affective, has lifelong potential impacts on his or her [wellbeing and functioning as an adult.](#) More particularly, as widely recognised, the family constitutes "the fundamental group of society and the natural environment for the growth and wellbeing of all its members *and particularly children*". Access to family life, to the predictability and security that guaranteed continuity of contact to parents or other caregivers, is critical for healthy development. [Children separated from their parents have higher mortality and morbidity, and are at far greater risk of abuse and violence.](#) It is for this reason that the Convention on the Rights of the Child reserves its strongest language for states' obligations to avoid the separation of parent and child:

*States Parties **shall** ensure that a child **shall not** be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is **necessary** for the best interests of the child.*

The ability to enjoy and depend on family life may be critically tied up with questions of nationality. A stateless child or a child who cannot prove his or her nationality may have difficulty asserting a claim to enter or to remain in the country where key family members live, with life shattering implications.

Consider the following cases, separated by over a century, each based on one of the two central principles for nationality acquisition, *jus soli* (birthright citizenship) and *jus sanguinis* (citizenship by descent). The first case illustrates the importance of nationality for securing entry to a place where a child's family resides, to ensure reunification. [In 1897, Leong Quai Ho attempted to return to San Francisco, her city of birth, after a stay in China. But the San Francisco immigration inspectors challenged her *jus soli*](#)

[claim to US nationality](#). They asked: “In what part of China were you born.” “I was not born in China,” Leong explained for the second time, “I was born in California.” “Well go on,” frustrated inspectors prodded, “give us the rest of your story, let’s have it.” Though a citizen, she did not look like one. [Eventually, but only after protracted and costly litigation, was Leong Quai Ho finally admitted to the US and allowed to reunify with family](#). Because of questions about her nationality, Ho’s whole future was plunged into uncertainty.

The second case concerns the other element in the right to respect for a child’s family life, the prevention of separation from family. In 2001, the U.S. Supreme Court considered another East Asian case where a child’s entitlement to US nationality was at issue. Tuan Anh Nguyen was born to an American father and a Vietnamese mother in Vietnam. The parents never married and the mother left the family shortly after Nguyen’s birth. When the boy was six, he moved to the US with his father and lived there with him throughout his childhood. [His early biography only became salient when he was convicted of a felony and, as is mandatory for aliens convicted of serious criminal offences, served with a deportation order as his term of imprisonment came to an end](#).

For Nguyen in his early twenties to be deported to Vietnam, a foreign country to which he had no ties—linguistic, cultural or personal—would be devastating. But avoiding this depended on proof of his US nationality. Had his parents married, or his mother rather than his father been a US national, Nguyen would have had little difficulty in asserting his US nationality by descent (or *jus sanguinis*), [subject to certain residence and procedural requirements](#). But because neither of those circumstances obtained, Nguyen failed in his claim for US nationality and the guarantees of continued family and private life that this would have enabled. Again a child’s nationality could hardly have had more dramatic personal consequences.

4. Nationality, children and a sense of belonging

A key, perhaps the most important, attribute of nationality is non deportability, or the lifelong guarantee of a right to entry and to indefinite residence in the country of one’s nationality irrespective of criminal conviction, prolonged foreign absence or any other personal behaviour. It is through this entitlement that the enduring bonds of national identification are protected. Whether a child (or any individual) identifies affectively with a particular nationality, with the cultural, linguistic or religious environment of the nation in question, is incidental to the legal protection it affords. To be sure, many nationals feel a profound sense of loyalty and comfort from the sensation of community belonging that comes with national membership – the pride in a flag, a glorious history, a sporting victory or a political leader. But the protection afforded by nationality is more fundamental. By blocking and nullifying the threat of deportation, national membership protects the building blocks fundamental to life. It prevents the separation of a child from his or her immediately supportive environment, not only

parents and nuclear family members, but the private life that he or she has built, including the school friends, the cultural traditions, the familiar spaces, as well as the climate, language and foods that constitute the fabric of quotidian rootedness.

5. Nationality, children and public policy

At a time in global history when nationalism and xenophobia are particularly resurgent and when the significance of national borders is being reasserted, even in regions where these concerns had diminished, nationality and the ability to prove it are increasingly salient. As noted, they impinge on access to an extensive set of entitlements and opportunities, and their absence, statelessness, has momentous consequences. “[Nationality] defines the framework in which the balance between self-interest and public concern is negotiated, both by the individual citizen and by the polity, because citizens’ interests are central to the assessment of what is a public good”. The interests of non-citizens or stateless persons, by contrast, are of subsidiary political concern.

Whether they are short term visitors or long term residents, non-citizens lack a vote and thus, as a community, have compromised an at best derivative political leverage vis à vis politicians. [The Swedish government’s abrupt decision in 2016 to reverse its long-standing policy of generous reception of unaccompanied refugee children by restricting access and impeding family reunification, is a case in point.](#) Toleration of increasing levels of Islamophobic rhetoric in mainstream public discourse, as in the case of the 2016 US [Presidential campaign](#) and much [pro-Brexit propaganda](#), is another.

Non-citizens are also particularly vulnerable to the hostility of nationals, convenient targets for marginalisation, scapegoating and stigma at times of national crisis, whether economic, social or both. These detriments also apply to children, despite the fact that, according to binding and very widely ratified international law, states have an obligation to consider the best interests of children, irrespective of their nationality, [in all matters affecting them](#), an obligation that does not apply to adults. This obligation exists for matters of divorce, adoption or access to social welfare services just as much as it does for decisions within the domain of immigration law – [permission to access or remain on the territory](#). Because of their peculiar dependence on state provision – in respect of schooling, primary health care, and social protection for example – children stand to lose critical benefits where their interests are neglected. What is more, because of the distinctive vulnerability that comes with early childhood, [the risks of irreversible harm from rights violations and deprivations are most severe.](#)

Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights'
in Alice Edwards and Laura van Waas (eds),
Nationality and Statelessness Under International Law

Cambridge University Press 2014, p.12-13

1.2. The notion of nationality

The International Court of Justice (ICJ) in the *Norwegian Fisheries* case indicated that 'Nationality serves above all to determine the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals.' Similarly, the ICJ in *Nottebohm* held, in the most frequently cited passage as to the meaning of nationality: '[N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.' Nationality is thus *determined* by one's social ties to the country of one's nationality, and when established, gives rise to rights and duties on the part of the state, as well as on the part of the citizen/national. In turn 'citizenship' is a way to maintain common norms and values of the state as a social and political community.

The modern concept of nationality emerged following the Peace of Westphalia of 1648 and the rise of separate sovereign states. It was essentially a method of classification between those who owed allegiance and those who did not to a particular sovereign, within the new state-based world order. As such, nationality is essentially a matter of domestic law, but it is one with international consequences.

From the perspective of the citizen/national, possessing the nationality of a particular state grants entitlements to a range of goods, services and rights, such as rights to take up residence, participate in public life and to vote, and to consular assistance when abroad. It also includes entitlements to social benefits. Citizens may also be required to perform specific civic duties, including the obligation to defend the state against enemies (military service), to pay taxes, or even to vote. Interestingly, some of these rights and duties are no longer applicable only to citizens, but are regularly extended to permanent residents or certain migrant categories. At the municipal level, it has been said that there are as many variations of citizenship as there are states.

As a concept of international law, however, nationality goes beyond the individual rights of the citizen/national vis-a-vis her state of nationality. In fact, the bonds of nationality create *duties* upon states vis-a-vis other states, such as the duty to readmit one's own nationals from abroad. The bond of nationality also grants particular discretionary rights to the state of nationality, such as the right of that state to exercise 'diplomatic protection' on behalf of its own citizens/nationals. Other aspects of nationality include procedural safeguards against the arbitrary deprivation or loss of nationality, as well

as to some extent shared practices on rules relating to nationality acquisition.

UN High Commissioner for Refugees (UNHCR),
Handbook on Protection of Stateless Persons

UNHCR 2014, p. 13-14; 21-23
<<http://refworld.org/docid/53b676aa4.html>>

(i) Automatic and non-automatic modes of acquisition or withdrawal of nationality

25. The majority of States have a mixture of automatic and non-automatic modes for effecting changes to nationality, including through acquisition, renunciation, loss or deprivation of nationality. When determining whether someone is considered as a national of a State or is stateless, it is helpful to establish whether an individual's nationality status has been influenced by automatic or non-automatic mechanisms or modes.

26. Automatic modes are those where a change in nationality status takes place by operation of law (*ex lege*). According to automatic modes, nationality is acquired as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a State. By contrast, in non-automatic modes an act of the individual or a State authority is required before the change in nationality status takes place.

(ii) Identifying competent authorities

27. To establish whether a State considers an individual to be its national, it is necessary to identify which institution(s) is/are the competent authority(ies) for nationality matters in a given country with which he or she has relevant links. Competence in this context relates to the authority responsible for conferring or withdrawing nationality from individuals, or for clarifying nationality status where nationality is acquired or withdrawn automatically. The competent authority or authorities will differ from State to State and in many cases there will be more than one competent authority involved.

28. Some States have a single, centralized body that governs nationality issues that would constitute the competent authority for the purposes of an analysis of nationality status. Other States, however, have several authorities that can determine nationality, any one of which might be considered a competent authority depending on the circumstances. Thus, it is not necessary that a competent authority be a central State body. A local or regional administrative body can be a competent authority as can a consular official and in many cases low-level local government officials will constitute

the competent authority. The mere possibility that the decision of such an official can later be overridden by a senior official does not in itself exclude the former from being treated as a competent authority for the purposes of an Article 1(1) analysis.

29. Identifying the competent authority or authorities involves establishing which legal provision(s) relating to nationality may be relevant in an individual's case and which authority/authorities are mandated to apply them. Isolating the relevant legal provisions requires both an assessment of an individual's personal history as well as an understanding of the nationality laws of a State, including the interpretation and application, or non-application in some cases, of nationality laws in practice.

[...]

(xiv) Concept of nationality

52. In assessing the nationality laws of a State it is important to bear in mind that the terminology used to describe a "national" varies from country to country. For example, other labels that might be applied to that status include "citizen", "subject", "national" in French, and "nacional" in Spanish. Moreover, within a State there may be various categories of nationality with differing names and associated rights. The 1954 Convention is concerned with ameliorating the negative effect, in terms of dignity and security, of an individual not satisfying a fundamental aspect of the system for human rights protection; the existence of a national-State relationship. As such, the definition of stateless person in Article 1(1) incorporates a concept of national which reflects a formal link, of a political and legal character, between the individual and a particular State. This is distinct from the concept of nationality which is concerned with membership of a religious, linguistic or ethnic group. As such, the treaty's concept of national is consistent with the traditional understanding of this term under international law; that is persons over whom a State considers it has jurisdiction on the basis of nationality, including the right to bring claims against other States for their ill-treatment.

53. Where States grant a legal status to certain groups of people over whom they consider to have jurisdiction on the basis of a nationality link rather than a form of residence, then a person belonging to this category will be a "national" for the purposes of the 1954 Convention. Generally, at a minimum, such status will be associated with the right of entry, re-entry and residence in the State's territory but there may be situations where, for historical reasons, entry is only permitted to a non-metropolitan territory belonging to a State. The fact that different categories of nationality within a State have different rights associated with them does not prevent their holders from being treated as a "national" for the purposes of Article 1(1). Nor does the fact that in some countries the rights associated with nationality are fewer than those enjoyed by nationals of other States or indeed fall short of those required in terms of international human rights obligations. Although the issue of diminished rights may raise issues regarding the effectiveness of the nationality and violations of international human

rights obligations, this is not pertinent to the application of the stateless person definition in the 1954 Convention.

54. There is no requirement of a “genuine” or an “effective” link implicit in the concept of “national” in Article 1(1). Nationality, by its nature, reflects a linkage between the State and the individual, often on the basis of birth on the territory or descent from a national and this is often evident in the criteria for acquisition of nationality in most countries. However, a person can still be a “national” for the purposes of Article 1(1) despite not being born or habitually resident in the State of purported nationality.

55. Under international law, States have broad discretion in the granting and withdrawal of nationality. This discretion may be circumscribed by treaty. In particular, there are numerous prohibitions in global and regional human rights treaties regarding discrimination on grounds such as race, which apply with regard to grant, loss and deprivation of nationality. Prohibitions in terms of customary international law are not so clear, though one example would be deprivation on the grounds of race.

56. Bestowal, refusal, or withdrawal of nationality in contravention of international obligations must not be condoned. The illegality on the international level, however, is generally irrelevant for the purposes of Article 1(1). The alternative would mean that an individual who has been stripped of his or her nationality in a manner inconsistent with international law would nevertheless be considered a “national” for the purposes of Article 1(1); a situation at variance with the object and purpose of the 1954 Convention.

Institute on Statelessness and Inclusion (ISI), *The Girl Who Lost Her Country*

ISI 2018, p. 50-51
<https://files.institutesi.org/the_girl_who_lost_her_country.pdf>

Question 1 What is a nationality? Does everybody get the nationality of the country where they were born?

Having a nationality is like holding official membership of a country. It offers a sense of belonging – to a place and to a community. This is why people often support their national team in sports competitions like the Olympics or World Cup. Because they all feel like they belong, and they want their country to do well.

Each country has its own rules about how you can become a member: rules (or laws) that set out which people are granted nationality. Some countries give nationality to anybody born there. Other countries give nationality to anybody who has a parent

from the country. Most countries allow people who have lived there for a long time or married someone from the country, to apply for nationality. In this way, the real-life connections that a person has with a country form the basis for becoming a national.

There is a very important document called the **Universal Declaration of Human Rights**, which sets out the rights of every single person in the world. The Declaration says that **“everyone has the right to a nationality”**. This means that nationality rules should be fair and everyone should be able to get a nationality somewhere. No one should be stateless.

However, some countries have bad rules, like not allowing women to pass on their nationality to their children or saying that people who belong to certain minorities cannot have nationality. Other countries have good rules that are not practiced properly. For all of these reasons, there are still many people in the world who do not have a nationality.

UN Secretary-General (UNSG),
Guidance Note of the Secretary General:
The United Nations and Statelessness

UNSG 2018, p. 8
<<https://www.refworld.org/docid/5c580e507.html>>

5. Promote the acquisition of nationality as the primary solution

The acquisition of a nationality is the only solution to statelessness as full enjoyment of all human rights is generally only possible when an individual possesses a nationality. In particular, nationality brings with it access to political participation, the full right to residence within a State’s territory, and also a sense of identity. Stateless people can overcome many of the problems they face once they possess a nationality. Enabling stateless persons to acquire a nationality is a foundational step towards legal empowerment to pave the way for their full enjoyment of all civil, political, economic, social, and cultural rights.

Solutions to statelessness generally depend on political will and capacity. This flows from the fact that only States can grant nationality. The will to act may be a significant challenge where statelessness is linked to discrimination. Attitudes which have led to the exclusion of a population must be overcome. Decision makers need to be convinced that the integration of stateless populations will be a positive step. Lack of capacity can play a role where State authorities wish to address problems related to statelessness but do not have the expertise or resources to do so. The UN should therefore highlight the positive effects for States to reduce statelessness by granting citizenship to stateless

persons, stressing the detrimental impact statelessness has on individuals, communities and society as a whole. To address capacity deficits, the UN must stand ready to provide technical and practical assistance to States which decide to take action on statelessness.

Chapter 2:

Childhood Statelessness

A “stateless person” is defined under international law as a person who is ‘not considered as a national by any state under the operation of its law’. International law provides specific forms of protection to children (and adults) who are stateless and sets out specific obligations to states to avoid statelessness. To make effective use of the tools that international law offers, it is important to understand how to interpret and apply the definition of a stateless person – i.e. to know when particular norms can be invoked. Moreover, children may also be at risk of statelessness, for instance due to the lack of key forms of documentation that could be needed in a particular context to ensure recognition of their nationality. To prevent childhood statelessness, it is critical to be able to identify when/why such a risk of statelessness may occur.

Worldwide there are an estimated 15 million stateless people. Their statelessness is a result of a range of factors including discrimination, clashing nationality laws, lack of (functioning) safeguards, nationality problems caused by state succession, or practical and administrative barriers to the acquisition or recognition of nationality. Many situations of statelessness have been allowed to become intergenerational as states fail to take measures to ensure that children of stateless parents acquire a nationality at birth. As such, childhood statelessness is most prevalent within communities that are already affected by statelessness.

Stateless children start life at a disadvantage. They are more likely to be denied (equal) access to education, healthcare, documentation, movement and a range of other rights. If they have inherited their statelessness from their parents, they are also likely to have been born into a situation of disadvantage to begin with. Therefore, those working in the human rights and development fields face the dual challenge of trying to secure a nationality for stateless children, while trying to ensure that as long as they remain stateless, they are not denied, disadvantaged or discriminated against in their access to rights and services.

This Chapter provides an overview of what statelessness is, and looks into how children are made stateless, in denial or deprivation of their right to a nationality.

Discussion questions

- 1.** What is statelessness and what are the main causes of statelessness in the world?
- 2.** How do children become stateless and what can be done to prevent this?
- 3.** What is the impact of statelessness on children?

Texts and Materials

Institute on Statelessness and Inclusion (ISI),
Statelessness Essentials: Childhood Statelessness

ISI 2018, p. 9-12

<<https://files.institutesi.org/childhood-statelessness.pdf>>

The worldwide problem of childhood statelessness

Childhood statelessness is a significant worldwide problem. The UN estimates that approximately **one third of all people affected by statelessness globally are children**. It is a phenomenon found on every continent, and in most countries. In the 20 countries with the largest existing stateless populations, an estimated 70,000 children are born stateless each year. That their situation is often overlooked is testament to the fact that statelessness can have the effect of rendering a person invisible to people in power. But this does not make their predicament any less real.

There are 23 countries known to have non-refugee stateless populations of over 10,000 persons, and in at least 15 additional countries, there are large but unquantified stateless populations.

In most of these countries, discrimination is a key factor as to why people are made stateless. In countries like the Dominican Republic and Myanmar, race and ethnic discrimination resulted in the statelessness of Dominicans of Haitian descent and the Rohingya respectively. In Malaysia and Sri Lanka, British colonial powers moved Indian Tamil labourers to each country, and these communities have had long struggles to secure Malaysian and Sri Lankan citizenship after independence. In Sweden and Germany, statelessness is a consequence of the failure to protect and grant nationality to refugees, migrants and their descendants born in the country.

Questions of stateless children

*“I don’t know, I can’t explain the feeling because the feeling
is like you are less than everyone. Less. I am still someone, but less.”*

A young woman from Ukraine
who grew up without a nationality in the Netherlands.

Statelessness generates a variety of feelings and questions in children and young people. These children’s voices must be listened to by all actors working to address statelessness. When asked about their past, present and future, stateless children expressed resilience

and a sense of injustice and impatience that their nationality status was yet to be resolved.

Statelessness and the disadvantage it creates have the worrying tendency of becoming entrenched. If a child's nationality cannot be established immediately after birth, when the evidence as to who their parents are and where they were born is strongest, it becomes increasingly difficult to do so as the child grows older. Without help early on, a stateless child may live their entire life without a nationality and one day have children who are also denied a nationality.

Parents have questions too...

The parents of stateless children also face great struggles and have many questions and concerns about their children's statelessness status. They often fear for their children's future, to the barriers their children face to accessing and participating in school, their lack of access to health care in case of illness, and emotional wellbeing as part of a country that does not accept them.

“Receiving citizenship, our government says, is a privilege, not a right and I must prove Zara is worthy. She’s 8 years old. How do I prove she’s worthy? She’s sassy and smart, colours within the lines and spouts beautiful poetry. She sings our national anthem with pride and loves this country very much. But this country has little regard for her at this point in time.”

Mother of a stateless child in Malaysia

Institute on Statelessness and Inclusion (ISI), *The Girl Who Lost Her Country*

ISI 2018, p. 51-56

[<https://files.institutesi.org/the_girl_who_lost_her_country.pdf>](https://files.institutesi.org/the_girl_who_lost_her_country.pdf)

Question 2. Does everybody get a nationality if they follow the culture, traditions & rules of the country they live in?

Everyone should have a nationality. This does not (or should not) have much to do with whether they follow the culture, traditions or rules of the country they live in. However, not everyone does.

No one knows the exact number, but we think that at least 15 million people around the world are stateless. Normally, if a person does not have a nationality, it is not

because they have done something wrong. Nor is it because they have failed to follow the culture, traditions or rules of a country or do not have a real connection to it.

It is usually because the country has done something wrong – because it has bad rules, or gaps in them, or has not properly practiced its rules. Sometimes, these are mistakes. But sometimes, they are deliberate, because the country discriminates against certain types of people. [...]

Question 6. Why can't countries make sure all children get a nationality, even if they don't know where they were born or who their parents were?

All countries **can** and **should** make sure children get a nationality, even if they don't know where the children were born or who their parents were. They can do this by making a very simple change to the nationality law of the country. For example, a law can say "Any foundling discovered in Sweden shall be considered to be a Swedish citizen". This is called a "safeguard against childhood statelessness" – it is a special rule that is only needed in cases where a child is not able to get a nationality through the regular rules that exist. Unfortunately, there aren't enough countries that have such a system in place. Even those that do, do not always put these safeguards that exist on paper into practice.

UN High Commissioner for Refugees (UNHCR),
Handbook on Protection of Stateless Persons

UNHCR 2014, p. 9-12
<<http://refworld.org/docid/53b676aa4.html>>

PART ONE: CRITERIA FOR DETERMINING STATELESSNESS

A. The Definition

13. Article 1(1) of the 1954 Convention sets out the definition of a stateless person as follows:

For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

The Convention does not permit reservations to Article 1(1) and thus this definition is binding on all States Parties to the treaty. In addition, the International Law Commission has concluded that the definition in Article 1(1) is part of customary international law. [...]²

² Customary international law applies to all states globally, even those that have not ratified the relevant treaties.

B. General considerations

14. Article 1(1) of the 1954 Convention is to be interpreted in line with the ordinary meaning of the text, read in context and bearing in mind the treaty's object and purpose. As indicated in its preamble and in the Travaux Préparatoires, the object and purpose of the 1954 Convention is to ensure that stateless persons enjoy the widest possible exercise of their human rights. The drafters intended to improve the position of stateless persons by regulating their status. That said, as a general rule, possession of a nationality is preferable to recognition and protection as a stateless person. Therefore, in seeking to ensure that all those who fall within the 1954 Convention's reach benefit from its provisions, it is important to take care that individuals with a nationality are so recognised and not mistakenly identified as stateless.

15. Article 1(1) applies in both migration and non-migration contexts. A stateless person may never have crossed an international border, having lived in the same country for his or her entire life. Some stateless persons, however, may also be refugees or persons eligible for complementary protection...³

16. An individual is a stateless person from the moment that the conditions in Article 1(1) of the 1954 Convention are met. Thus, any finding by a State or UNHCR that an individual satisfies the test in Article 1(1) is declaratory, rather than constitutive, in nature.

17. Article 1(1) can be analysed by breaking the definition down into two constituent elements: "not considered as a national [...] under the operation of its law" and "by any State". When determining whether an individual is stateless under Article 1(1), it is often most practical to look first at the matter of "by any State," as this will not only narrow the scope of inquiry to States with which an individual has ties, but might also exclude from consideration at the outset entities that do not fulfil the concept of "State" under international law. Indeed, in some instances consideration of this element alone will be decisive, such as where the only entity to which an individual has a relevant link is not a State.

C. Interpretation of terms

(1) "by any State"

(a) Which States need to be examined?

18. Although the definition in Article 1(1) is formulated in the negative ("not considered to be a national by any State"), an enquiry into whether someone is stateless is limited to the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, adoption or habitual residence. In some cases this may

³ Stateless persons and refugees are separate categories under international law, although there is some overlap. However, granting refugee status is not a solution to statelessness.

limit the scope of investigation to only one State (or indeed to an entity which is not a State).

(b) What is a “State”?

19. The definition of “State” in Article 1(1) is informed by how the term has generally evolved in international law. The criteria in the 1933 Montevideo Convention on Rights and Duties of States remain pertinent in this regard. According to that Convention, a State is constituted when an entity has a permanent population, defined territory, government and capacity to enter into relations with other States. Other factors of statehood that have subsequently emerged in international legal discourse include the effectiveness of the entity in question, the right of self-determination, the prohibition on the use of force and the consent of the State which previously exercised control over the territory in question.

20. For an entity to be a “State” for the purposes of Article 1(1) it is not necessary for it to have received universal or large-scale recognition of its statehood by other States or to have become a Member State of the United Nations. Nevertheless, recognition or admission will be strong evidence of statehood. Differences of opinion may arise within the international community on whether a particular entity has achieved statehood. In part, this reflects the complexity of some of the criteria involved and their application. Even where an entity objectively appears to satisfy the criteria mentioned in the paragraph above, there may be States that for political reasons choose to withhold recognition of, or actively not recognise, it as a State. In making an Article 1(1) determination, a decision-maker may be inclined to look toward his or her State’s official stance on a particular entity’s legal personality. Such an approach could, however, lead to decisions influenced more by the political position of the government of the State making the determination rather than the position of the entity in international law.

21. Once a State is established, there is a strong presumption in international law as to its continuity irrespective of the effectiveness of its government. Therefore, a State which loses an effective central government because of internal conflict can nevertheless remain a “State” for the purposes of Article 1(1).

(2) “not considered as a national ... under the operation of its law”

(a) Meaning of “law”

22. The reference to “law” in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.

(b) When is a person “not considered as a national” under a State’s law and practice?

23. Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/appeal decisions that may have

had an impact on the individual's status. This is a mixed question of fact and law.

24. Applying this approach of examining an individual's position in practice may lead to a different conclusion than one derived from a purely formalistic analysis of the application of nationality laws of a country to an individual's case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance.⁴ The reference to "law" in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.

Institute on Statelessness and Inclusion (ISI), *The World's Stateless*

Wolf Legal Publishers 2014, p. 19-21; 23-27
<<https://files.institutesi.org/worldsstateless.pdf>>

1. THE PROBLEM OF STATELESSNESS

I. Statelessness under international law

It is important to point out that in finding a person to be stateless, it is not relevant where in the world that person is. A person can be stateless in the country in which he or she was born, has always lived and has all family ties. Equally, a person can be stateless in a migratory context – for instance, losing nationality prior to, as a consequence of or at some point after crossing an international border. Statelessness rests on the fact of lacking any nationality, nothing more. Most stateless persons have not moved from their homes and live in what can be described as their own country. Yet, due to the added vulnerability of stateless persons to discrimination, human rights abuse and even persecution, statelessness can also prompt forced displacement. Some stateless persons, then, become internally displaced persons (IDPs), asylum seekers and refugees. Where a person who "is not considered as a national by any state under the operation of its law" also falls within the scope of the 1951 UN Convention relating to the Status of Refugees, he or she is a stateless refugee. That someone can simultaneously be both stateless and a refugee, asylum seeker or IDP does not lessen their experience of statelessness, which should be taken into consideration when protecting and finding durable solutions for them. [...]

II. Causes of statelessness

There are a variety of circumstances that give rise to statelessness at birth or in later life, and this section highlights some of the most common causes. As this section will

elaborate, there is often an element of discrimination and/or arbitrariness at play, when individuals or entire groups become stateless. Discrimination and arbitrariness can manifest itself in an obvious, aggressive and even persecutory manner, such as when large communities are deprived of their nationality based on ethnicity or religion; or it can be more subtle and latent, such as the failure of states to prioritise legal reform that would plug gaps in the law which could cause statelessness. Thus, it is worth reminding ourselves that while states do have significant freedom to set out their own membership criteria, they also have a responsibility to protect against discrimination and arbitrariness, and to uphold international standards. Statelessness most often occurs when states fail to do so.

Conflict of nationality laws

The classical example is where state A confers nationality by descent while state B confers nationality by place of birth, but the combination of a particular individual's birthplace and parentage is such that neither nationality is acquired. Neither state A nor state B necessarily have 'bad' laws or have picked out the person concerned as being undeserving of nationality, he or she simply fails to qualify under the regular operation of the rules of either state with which he or she has connections. Unless safeguards are in place in the law to prevent statelessness from arising, the regular operation of these states' nationality laws can leave people stateless. While this may seem like an unlikely and marginal occurrence, the scale of international migration today is such that conflicts of nationality laws are becoming more commonplace, increasing the need for safeguards to ensure the avoidance of statelessness. Brazil and Indonesia are among the countries which have introduced such safeguards in recent years in order to address significant problems of statelessness for their citizens and their descendants living abroad.

State succession

A particular context in which the risk of a conflict of nationality laws is high, and where a large number of persons may simultaneously be affected, is that of state succession. When part of a state secedes and becomes independent, or when a state dissolves into multiple new states, the question emerges as to what happens to the nationality of the persons affected. The new nationality laws of successor states may conflict and leave people without any nationality, while the re-definition of who is a national of the original state (where it continues to exist) may also render people stateless. Most often in the context of state succession, it is vulnerable minorities who are associated with either the successor or parent state who are deprived of nationality, exposing the discriminatory motivations and arbitrary nature for such exclusion. Common types of state succession which have resulted in large-scale statelessness are the dissolution of federal states into independent republics (for instance, in the countries of the former Soviet Union and Yugoslavia) and the more recent cases of state secession (for instance, with the splitting off of Eritrea from Ethiopia and South Sudan from Sudan). Situations of emerging or contested statehood complicate this picture further, leading to unique challenges around nationality and statelessness (for instance, for the Palestinians and the Sahrawi). Today's world map looks very different from that of a few decades ago

and political upheaval is likely to continue to bring changes to borders and sovereignty in the years to come. Solving existing cases of statelessness that have already been created by changes in political geography and forestalling new cases in the event of future situations of state succession is one of the major challenges that the international community faces in addressing statelessness.

The legacy of colonisation

While the de-colonisation process technically would be categorised as a form of state succession, the unique challenges presented require separate attention. Many of the most large scale and entrenched situations of statelessness in the world today were born out of the experiences of colonisation, de-colonisation and consequent nation-building. In such contexts, newly independent states (many of which never had a common pre-colonial national identity) have had to deal with borders arbitrarily drawn (often dividing ethnic groups) peoples forcibly migrated (for labour) and the consequences of decades, sometimes centuries of colonial rule which successfully pitted different ethnic and religious groups against each other, privileging some and marginalising others, as part of a wider divide and rule policy. It is not surprising that many newly independent states thus struggled with nation building, national identity and the treatment of minorities. While colonial history does not justify in any way discrimination, arbitrariness and disenfranchisement, this historical context must be understood and addressed in order to reduce statelessness.

Arbitrary deprivation of nationality

Large-scale statelessness can also be caused by the arbitrary deprivation of nationality outside the context of state succession. Arbitrary acts can involve the collective withdrawal or denial of nationality to a whole population group, commonly singled out in a discriminatory manner on the basis of characteristics such as ethnicity, language or religion, but it can also impact individuals who are deprived of their nationality on arbitrary and discriminatory grounds. In many cases, the group concerned forms a minority in the country in which they live. Sometimes they are perceived as having ties to another state, where they perhaps share common characteristics or even ancestral roots with a part of the state's population (such as in the case of the Rohingya in Myanmar and persons of Haitian descent in the Dominican Republic); in other instances, the state uses the manipulation of nationality policy as a means of asserting or constructing a particular national identity to the exclusion of those who do not fit the mould (such as in the case of the Kurds in Syria in the 1960s and the black population in Mauritania in the 1980s). Nationality law may also be designed to restrict the access of certain groups to economic power, especially the right to own property (such as in Liberia or Sierra Leone, where only those who are 'negroes' or 'of negro-African descent' may be citizens from birth). In some cases, individuals or groups are targeted for their political beliefs, since nationality is the gateway to political rights and its withdrawal can be a means of silencing political opponents. Deprivation of nationality on security grounds can also be arbitrary if certain criteria – including due process standards – are not met.⁵ Other forms of discrimination in nationality policy

⁵ For example, in South Africa, due to xenophobia, requirements for proving nationality are strict and arbitrary. This is an example of where discrimination is not directly linked to minorities.

can also create, perpetuate or prolong problems of statelessness. For instance, where a woman does not enjoy the same right to transmit nationality to her child as a man, children are put at heightened risk of statelessness. A stateless, absent or unknown father, or one who cannot or does not want to take any steps that might be required to confer his nationality to the child, can spell statelessness because the mother is powerless to pass on her nationality. This form of gender discrimination is still present in more than 25 countries around the world and many more laws contain other elements of discrimination against women – or sometimes men – in the change, retention or transmission of nationality.

Administrative barriers and lack of documentation

The hand of discrimination can often be seen at play when it comes to obtaining documentation of nationality, with ethnic and religious minorities, nomadic communities and the rural poor more likely to face barriers than religious and ethnic majorities and urban populations. A surprising number of situations of statelessness actually stem from the poor administration or documentation of a country's nationals during the period of state formation or when the first citizenship registration was carried out. In Thailand, Lebanon and Kuwait, for instance, statelessness became a feature of the landscape many decades – and several generations – ago, when the nationality laws were first being administered by the state. Elsewhere, individuals and groups who have had difficulties accessing birth or other forms of civil registration may find themselves unable to satisfy the state that they have connections with it. For example, without proof of place or date of birth, nor of parentage, states may dispute these facts and fail to consider a person as a national even if he or she would qualify under the law on the basis of these ties. The risk of statelessness is greatest where those who have been unable to access civil registration also belong to minority or nomadic groups, migrant or refugee populations, or are affected by state succession. The Roma in countries of the former Yugoslavia and elsewhere in Europe are an evident example of where lack of documentation and civil registration can evolve into a problem of statelessness when several such factors converge.

The inheritance of statelessness

The single biggest cause of statelessness globally in any given year – in the absence of fresh, large-scale situations stemming from one of the above problems – is the inheritance of statelessness. Many contemporary situations of statelessness have their roots at a particular moment in history, such as state succession, the first registration of citizens or the adoption of a discriminatory nationality decree stripping a whole group of nationality, as outlined above. Yet these situations endure and even grow over time because the states concerned have not put any measures in place to stop statelessness being passed from parent to child – or do not implement existing measures to that effect. Furthermore, these situations migrate to new countries along with the (often forced) migration of stateless persons abroad, as in migratory contexts too, statelessness is allowed to continue into the next generations. This means that most new cases of statelessness affect children, from birth, such that they may never know the protection of nationality. It also means that stateless groups suffer from intergenerational marginalisation and exclusion, which affects the social fabric of entire communities.

UN High Commissioner for Refugees (UNHCR),
Special report: Ending Statelessness Within 10 Years

UNHCR 2014, p. 8-10

<<https://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=546217229&query=Special%20Report:%20Ending%20Statelessness%20Within%2010%20Years>>

Over a third of the world's stateless people are children. Many fall into a legal quicksand the day they are born, spend most of their lives battling the inequalities they inherited, and often pass on their heartbreak on to future generations. It may not even be possible to register the birth of a stateless child, making that infant an instant 'non-person' in the eyes of governments. He or she is subject to potential abuse and rejection ranging from lack of access to life-saving immunizations to protection from early marriage. After being required to present his grandfather's death certificate to confirm his nationality, Hussain, a young Kenyan asks, "Can you imagine someone asking you for something you don't have? Asking you to give some proof when you don't really know how to prove it. When my grandfather died I wasn't even born." The risk of unregistered children being left stateless increases when conflict forces them to flee their homes or when they are born in exile. Over 50,000 children have been born to Syrian refugee parents in Jordan, Iraq, Lebanon, Turkey and Egypt since the onset of the conflict. Most are entitled to the nationality of Syria but those who remain without civil birth registration may face serious problems proving this later in life. But registration is not always an easy procedure for refugees. Due to the conflict, many refugees have lost the identity documents which are required in order to register the births of refugee children in the country of asylum. Challenges also arise in relation to registering children born out of wedlock or to parents whose religious marriages have not been formally registered. In Lebanon, UNHCR found that 78% of new births surveyed since their arrival to Lebanon were not registered with the national authorities by Syrian refugees. Further research is underway to assess the scale of the issue in the other main countries of asylum. UNHCR continues to work with national authorities to simplify the requirements for registration, and to make civil registration of marriages and births more accessible to refugees. It has also undertaken a mass awareness-raising campaign in coordination with UNICEF and other partners to explain procedures to refugees, including through brochures and instructional videos shown at help desks, camps and registration points.

<https://www.ohchr.org/Documents/Issues/Women/WRGS/RelatedMatters/OtherEntities/OSJIChildrenNationalityFactsheet.pdf>

Effects of Statelessness among children

Stateless children are particularly vulnerable to the multiple deprivations of rights caused by a lack of nationality. Their stateless status means they have no legal personality and have little or no voice to influence the society they live in.

In theory, basic human rights should be available to everyone, everywhere. However, all states reserve certain rights for their citizens only, and such rights are often not accessible to stateless children. These may include, inter alia, access to certain forms of health care and social security, including child benefits where applicable. When children reach a certain age their right to work, and eventually to vote, may also be affected. In fact, in many places even the most basic human rights are only accessible to nationals. In Kuwait, for instance, stateless persons still struggle to obtain the most basic documents including birth and death certificates.

Perhaps the most obvious challenge facing stateless children is the lack of educational opportunities. While some countries offer free primary education to stateless children, many do not. In Malaysia, stateless children of Indian, Filipino or Indonesian descent in Selangor and Sabah are frequently denied access to basic education in state schools: if a child's birth certificate has "foreigner" written on it, or if the child doesn't have a birth certificate at all, he or she is simply unable to enroll. Similarly, in the Inter-American Court of Human Rights case of *Yean and Bosico v. The Dominican Republic*, the two applicants—both children—had been arbitrarily denied Dominican nationality. As a result they were barred from going to school since identity documents were a prerequisite to enroll.⁶ The Inter-American Court found that the Dominican Republic had violated the right to nationality under the American Convention on Human Rights.

Evidence from some parts of the world suggests that stateless children are at greater risk of human trafficking and other forms of exploitation such as child labor. This connection is evident in the case of the Hill Tribes in Thailand, for example, who—because they are not ethnically Thai—have struggled with statelessness for generations.

⁶ The High Court in South Africa has recently found that all undocumented children are entitled to education, even though the law already provided as much. Even with this judgment in place, denial of education opportunities for stateless children remains widespread.

Chapter 3:

Human Rights and Development Considerations

Statelessness is centrally relevant to the international human rights regime. On the one hand, statelessness is the most extreme violation of the right to a nationality. On the other, the lack of any nationality impedes the access to other rights and services and increases vulnerability to discrimination, exploitation and the violation of one's rights. This multiple victimisation – where the violation of one right can lead to repeated violations over a lifetime – combined with the barriers stateless people face when accessing justice and claiming their rights, makes statelessness a particularly difficult challenge to the universality and indivisibility of human rights.

Similarly, statelessness is relevant to development and the SDGs. In the same way there is a human right to a nationality, SDG Target 16.9 aims to “by 2030, provide legal identity for all, including birth registration”. What ‘legal identity’ entails and whether nationality (the solution to statelessness) comes within its scope is open to interpretation. But this can be seen as a parallel to human rights obligations related to nationality, identity and birth registration, as articulated in treaties such as the ICCPR, CRC, CEDAW, CERD and CRPD. Thus, the SDGs have the potential to provide a complementary framework to end statelessness. Similarly, the SDGs must be implemented in a manner that does not leave the stateless behind. In other words, the same way that lack of a nationality shouldn't be a barrier to human rights protection, it should also not be a barrier to accessing development on equal terms. Consequently, goals and targets related to inter alia, poverty, food, health, education, gender equality, water and sanitation, employment, reducing inequality, peace, inclusiveness, security and access to justice should be approached in a manner that ensures the stateless are accounted for through dedicated strategies to reach stateless persons on the ground.

It is very important to recognise that statelessness is both a human rights and a development issue, and must be addressed through both frameworks, in a manner that doesn't undermine one or the other.

This chapter looks at how nationality or statelessness influence a child's access to human rights and development and provides a brief analysis of what the two frameworks have to offer – their respective strengths and weaknesses.

Discussion questions

- 1.** Hannah Arendt famously described nationality as the right to have rights. Do you agree with this statement? Is the enjoyment of human rights contingent on having a nationality?
- 2.** Which human rights (other than the right to a nationality) are stateless children most likely to be denied, and why?
- 3.** What steps can be taken to ensure that the denial of the right to a nationality does not lead to the deprivation of other human rights?
- 4.** What is the impact of statelessness on development and the fulfilment of the Sustainable Development Goals?
- 5.** What can be done to better align human rights principles and development objectives, in order to protect every child's right to a nationality and the rights of every stateless child?

Texts and Materials

UN High Commissioner on Refugees (UNHCR),

I am Here, I Belong. The Urgent Need to End Childhood Statelessness

UNHCR 2015, p. 9-20

<https://www.unhcr.org/ibelong/wp-content/uploads/EN_2015_IBELONGReport_ePub17.pdf>

EDUCATION

The stateless children and youth consulted for this report confronted numerous challenges when it came to pursuing an education. In some cases, schools denied non-nationals entry to the classroom or demanded fees applicable to foreigners, rendering an education beyond reach. In others, stateless children were refused admission to final exams or had their diplomas and graduation certificates withheld, halting their progress to higher education and better jobs. They frequently found themselves ineligible for scholarships or student loans. Even when other factors were favourable, educational opportunities were cut short because stateless youngsters were denied permission to move within or beyond their countries' borders. Whatever the obstacle, the outcome was the same: another young stateless person unable to reach his or her potential.

Primary education – not always a right

Virtually all of the young stateless people that UNHCR spoke to had been able to attend primary school. While the Dominican Republic, Italy, Malaysia and Thailand do not restrict access to primary education for stateless children, in Côte d'Ivoire and Georgia identity documents are officially required. Despite this, almost all those consulted had found a way to go to primary school, although not without struggle and often reliant on the flexibility and goodwill of school principals and teachers. A number of the parents and children recounted having to persuade school staff regularly to keep the door to the classroom open. "If you don't have documents you are bothered about it at school all the time and you feel embarrassed. But I was able to finish school with the help of my teachers," says Isabella, a young stateless woman of Haitian descent in the Dominican Republic. This too was the case for Ketí (19), in Georgia. She says she was only able to attend school because the school director took pity on her. She recalled the strong sense of gratitude that she felt towards this official, as he would have been personally liable had authorities discovered that he was permitting an undocumented stateless child to attend the school.⁷

⁷ In South Africa, however, school principals are threatened with criminal records and even jail time for allowing children to attend school.

Obstacles to higher education

Though the majority of the young people consulted expressed a strong desire to graduate from secondary school and attend university, very few had been able to achieve either of these ambitions. In Côte d'Ivoire and the Dominican Republic, passing the national exams at the end of primary school is a prerequisite for admission to high school. However, the ability to sit for such exams is often limited to those who can prove nationality. In Thailand and Italy, attending school after ninth grade is often challenging. In Thailand, although there are no formal barriers to higher education, those interviewed explained how travel restrictions imposed on stateless people in the country and the lack of access to scholarship programmes and student loans reserved for Thai nationals, obstructs their access to higher education. "I get pretty good grades," says Patcharee (15), a stateless hill-tribe girl in Thailand. "Maybe I am even at the top of the class. But every time there is a scholarship, it is given to someone who has a national ID card." Her classmate Boon (16), echoes a sentiment expressed by many of the children who were interviewed in all the countries: "It should be the right of every child to study and learn. This is the most important thing."

Negative impact on self-esteem and behaviour

Having to negotiate one's way through the school system frequently results in delays in starting school or moving on to the next term, putting stateless children and youth several years behind their peers. This will often have an impact on them even after they have been able to confirm their nationality. Maria, a young woman in the Dominican Republic, says: "I was not able to attend school for four years because I didn't have a birth certificate. When I finally received my birth certificate I was relieved, but also felt like I had lost four years of my life." Sometimes, arbitrary practices by the authorities leave even children within the same family with different nationality status – and therefore different opportunities. "Some of my siblings have documents and have been able to go to university. I'm from the same parents but I can't go to university because I don't have documents," says Alejandra, a young stateless woman born in the Dominican Republic. A few children have seen their lack of nationality, and inability to attend school, lead to serious social problems. In the case of Edwin (16), a stateless boy of Tamil origin in Malaysia, the impact of being deprived of the discipline and socializing benefits of school was stark. Orphaned at a young age, he grew up in a foster home without proper care or support. Unable to attend school because of the high 'foreigners fees' imposed on those without an ID card, he fell in with the wrong crowd and became addicted to drugs and alcohol. Now on the road to rehabilitation, Edwin draws a strong connection between his situation and his lack of nationality: "If I had a document showing that I was a national I probably wouldn't be where I am today. I probably wouldn't have mixed with the wrong company and wouldn't have picked up bad habits. I would be in school and on my way to chasing my dreams of being a football player for Malaysia. I have my own style. It's called the Edwin style. It's better than Ronaldo's style, although he did inspire it."

HEALTH

More than 30 countries require documentation to treat a child at a health facility. In at least 20 countries, stateless children cannot be legally vaccinated.⁸ Travel restrictions, the prohibitively high medical costs levied on non-nationals and discrimination conspired to impede access to health care services by many of the stateless children and youth surveyed. This not only affected their ability to participate in preventive child-health programmes, it also prompted decisions to defer or forgo professional treatment even for serious illness or injury. The psychological toll of childhoods spent stateless also had serious consequences for the self-esteem and future prospects of some of the young people, even if they were able to acquire nationality during adulthood.

Obstacles to treatment

Many participants in the consultations said they had difficulties in accessing health care due to lack of national identity documents. In Italy, Roma parents noted that because their stateless children were not able to use public paediatric services or child health education, they had resorted to taking them to the emergency departments of public hospitals, even for basic ailments. Sandokan, the stateless Roma father of disabled Christina, says: “It’s important for parents to receive health education from a qualified paediatrician. Information on nutrition and immunization – you won’t get this from the emergency department of a hospital. But that is our only option for health care – even for a sore throat.” In Malaysia, parents and guardians of young stateless children with profound disabilities spoke of the difficulties they faced in trying to access State care and support for these children. Santosh, the father of a 14-year-old boy suffering from spina bifida, was unable to obtain a State-sponsored wheelchair, necessary for his son’s mobility. He finally managed to raise the funds through a community NGO. In Italy, Sandokan worries constantly about his disabled daughter’s health and ability to take care of herself without State support. “While I am around I can look after her,” he says, “but I won’t be able to look after a disabled child for another 30 or 40 years.”

Cost barriers

The most significant barrier to accessing health care highlighted by participants in the consultations was the high cost of treatment. Although States frequently offer subsidized or even free health services to their nationals, a person who is stateless will often have to pay the higher fees imposed on foreigners. This often puts much-needed treatment out of reach. For some of the parents interviewed, the prohibitively high costs of treatment applied to non-citizens, meant that their own births and those of their children had taken place at home rather than in a hospital, making it difficult to secure birth registration documents. In a few cases, parents admitted that they would consider fraudulently using the nationality identity documents of friends and

⁸ This also poses a risk to countries in terms of the general management of preventable diseases.

neighbours. Shanti, the mother of a stateless boy of Tamil origin in Malaysia, says: “My son is four years old, he has never been to a hospital. He was even born at home. Why? Because he does not have citizenship. If he gets very sick in the future and needs to go to hospital we will just borrow someone else’s documents.”

Stateless children recounted situations where their families had incurred serious debts after borrowing from friends and neighbours to pay medical bills. King (19), from the Akha hill-tribe community in Thailand, remembers when his brother, also stateless, had a serious car accident: “For him to be treated, we had to pay the foreigners’ price. My mum borrowed a lot of money from a neighbour. She is still paying it back.” Pratap (15) from Malaysia recalls how, after severely injuring his leg playing football, his lack of nationality was still the first consideration for the hospital: “I felt angry because no one wanted to help me, even when I was clearly in pain. They scrutinized my status even though it was an emergency. Is it my fault that I don’t have a nationality? I was born in this country like any other Malaysian. Why do I have to suffer this way?”

Risk-taking, humiliation and psychological scars

For some, seeking assistance or loans to access health care was not even an option. Unable to provide the necessary documentation to obtain treatment and unable to afford the high costs, the family of Jirair (19) in Georgia took the risk of treating him at home despite the seriousness of his injuries. “When I was younger,” says Jirair, “I broke my leg. Even though I needed to, we didn’t go to the emergency department of the hospital because we knew that without [nationality] documentation we would not be admitted. I was treated at home. I took a long time to heal – it was really hard”. The constant humiliation of not being able to prove one’s eligibility for treatment was raised as a significant impediment by a number of participants. Elena, a stateless mother in the Dominican Republic, remembers the battle she waged to convince the medical staff at the hospital to help her child: “It is humiliating not being able to present documents. Even at the hospital I was told that I couldn’t get treatment for my baby because we didn’t have documents. They only helped us after long persuasion.” Kavita (22) in Malaysia explains how being stateless made her hesitant to get medical attention, even when it was clear that she needed it: “Lately I have been coughing a lot. And there has been blood. I visited a clinic and took medication but it didn’t work. The clinic told me to go to the hospital, but to go there is very embarrassing. They ask a million questions about where I am from because I don’t have proof of nationality. They are suspicious and it makes me feel like I am stealing something. So I can’t go.” Tragically, a childhood of living with statelessness appeared to have extracted a serious psychological toll on a significant number of the participants. Individuals frequently described themselves as “invisible”, “alien”, “living in a shadow”, “like a street dog” and “worthless”. Others, like Paloma (16) in the Dominican Republic described the paradoxical sentiments of belonging yet being excluded. She says: “I feel Dominican, regardless of documents, but people see me as less Dominican because of my lack of documents.” In Malaysia, a dejected Kavita has thought of drastic actions. “Sometimes I feel that I should attempt

suicide,” she says. Only thinking of her family has prevented her from taking that route. Leli (19), who had been stateless since birth but recently acquired Italian citizenship, spoke of her difficulties in coming to terms with her new identity as a national: “Even though I now have Italian nationality,” she says, “being stateless stays inside you – like a permanent mark.”

Being a child

In addition to denying fundamental children’s rights, statelessness threatened the freedom of the participants to feel secure, to play, to be carefree – to simply be children. Competing in sports and enjoying school holidays are things that many children take for granted, but the story was often very different for the children and youth who were consulted. Labelled as outsiders in what they saw as their own country, they had to deal with being treated differently from an early age. Some were also forced to grow up too quickly – because they had to work from a young age, live in insecure housing arrangements or endure troubled relationships with authorities. In more extreme situations, these children found themselves prey to exploitation and abuse.⁹

Growing up too soon

Like children anywhere, many stateless children spend their spare time playing sport and dreaming of careers as professional athletes. But the wings of such dreams are often clipped early on. As Niran (16), in Thailand, explained: “I want to play with others. But sometimes, because I don’t have nationality, I cannot join the competition. I really want to be a professional football player.”

In the Dominican Republic, many of the participants highlighted baseball, the most popular sport in the country, as their favourite recreational activity. Even though some of them had proven abilities to take their hobby a step further, playing baseball competitively was simply out of the question: “My son was offered the possibility to join a team and go and play baseball even abroad. But without documents it is not possible for him to register with the team”, explained one mother. By imposing limitations on access to work and welfare services, statelessness often places a severe financial strain on families, forcing even the youngest family members to work. In Georgia, access to all State services, including social assistance, requires identity documents. Jirair says: “When you do not have documentation, you are not entitled to any assistance [...] I have always worked, ever since I was very young. I have responsibility for my grandmother. She is also stateless.” Some teenagers in the Dominican Republic revealed how they spent their school vacations scavenging in the hopes of earning a little extra income for their families. One of them is Joe, who can often be found “on vacation” in the San Pedro de Macoris rubbish dump. Set among the sprawling sugar plantations in the

⁹ Stateless children without birth certificates also cannot legally be adopted, meaning they grow up in children’s homes where they often develop attachment disorders as a result of not having a primary caregiver. The risks for these most vulnerable children are even higher than for those in nuclear families.

eastern part of the country, this “playground” is where he spends entire vacation days, sorting through the rubbish for scraps of metal. He says can earn up to 50 pesos (just over one USD 1) per day. “I like going to school,” says Joe, who lives with his family and attends school in nearby El Soco, one of the cinder-block compounds built to house plantation labourers and their families since the first half of the 20th century. “I especially like maths,” he says, although his baseball cap suggests another interest shared by almost all Dominican youth. “When I grow up I want to be a baseball player,” he confesses. “But I don’t play baseball this summer.”

Constant insecurity

Statelessness may also expose children to experiences that can make them feel insecure and frightened to move around. In Malaysia, Sajna (19) recalls an incident when she was just 17 that has stuck with her: “Two years ago I was on a bus which was stopped at a roadblock. The police were looking for bandits. They checked me and because I did not have any proof of nationality they took me off the bus. It was so embarrassing; as if I was a criminal. I went to the police station and we finally settled the matter. It was a terrible experience.”

Joseph (23) in Côte d’Ivoire explains how he fears leaving his home village: “I can’t move around because the police and gendarmerie ask for documents. I don’t have documents so they ask me for money. Because I can’t pay, they threaten to beat me and arrest me.”

Security was seen as integrally linked to citizenship. One stateless parent from Italy, Dumitru, recalls how, as an 18-year old, he had faced arrest and been threatened with deportation. Another stateless father, Sandokan, noted that Italian nationality was an especially important form of protection in light of the fact that his family was readily identifiable as Roma and thus subject to discrimination.

In Thailand, Artee (18) explains that without citizenship, her family could, at any moment, be evicted from their home: “My mother bought land informally from someone she knew, but because none of us have nationality she could not have her name put on the title to the land. I feel really frightened that our home could be taken at any time”.

Vulnerability to exploitation and abuse

Statelessness can also exacerbate existing vulnerabilities, and in extreme cases, lead to exploitation and abuse. In Côte d’Ivoire, many abandoned children are stateless and their lack of documents proving their identity and nationality makes their already precarious situation even more so. David (10) is not able to go to school because his caregiver believes it would not be possible without documents. His situation has taken

a serious toll on him; he is incontinent, and as a result is made to sleep alone. While his friends and foster siblings study, David takes the family's sheep out to pasture and does chores around the house.

Mistreatment can take different forms as stateless children grow older. Clémentine (22) and Odile (21) are stateless sisters living in Abidjan, Côte d'Ivoire. When they were very young they were made to work in a restaurant and later forced into prostitution by the aunt in whose care they had been placed as small children. Lacking the protection of nationality documents they found themselves trapped. Only after the situation became intolerable did they find the courage to flee. However, they lost all their belongings, including the birth record of Clémentine's four-year old son, leaving him at a high risk of statelessness.

EMPLOYMENT

The single most cited frustration of young people consulted for this report was the lack of jobs to match their ability, ambitions and potential. Left unresolved, statelessness created new and insurmountable roadblocks for them as they were moving from childhood to adolescence and adulthood. Whether as a result of their limited access to educational opportunities or inability to travel as freely as their national counterparts, stateless youth often found that statelessness held them back from freedom, independence and a break from the poverty and marginalization they had grown up with. Many revealed how they had settled for a life that allowed them to meet their basic needs, but fell far short of the future they had imagined for themselves.

Uncertainty and disillusion

Most of the young people interviewed revealed that as they approached school-leaving age they developed an acute sense of the impact that statelessness would have on their future prospects. "My entire life is a question-mark," says Vikash (23) from Malaysia, summing up the frustration, uncertainty and disillusion about the future articulated by many of the stateless youth that UNHCR spoke to. He and others wanted to travel to work in Singapore or India, but without travel documents even a journey beyond the borders of their federal state could land them in detention. Javier (19) in the Dominican Republic, now a construction worker, has unfulfilled ambitions because without documents proving that he is a national, he has not been able to acquire the necessary academic qualifications: "I want to study law because being a lawyer is a profession that I respect" he says "My dream is to practice law and help people with problems."

Many of the stateless young people interviewed said they had realized how severely their employment horizons were curtailed because of restrictions on their travel to look for work beyond their local communities and districts. As King (19) from Thailand says: "To get a good job I need work experience. But each time I want to travel beyond

the district borders I have to get a permit. It's a real hassle and means that I miss out on the experience I need to be competitive. I watch others surge forward. Sometimes I feel like this is the end." Through persistence and determination, some stateless youth have made it to the end of demanding and competitive selection procedures – only to be refused employment because their lack of nationality prevented them from meeting formal requirements for the job. Kavita in Malaysia wanted to teach art but no college would admit her because she was stateless. Undeterred, she applied for a job with the local nursery school, but despite excelling during the interview she was refused employment because she could not set up a bank or pension account. Now, she works in a friend's grocery store. "It's a dead-end job," says Kavita. "But, for now this job has been very helpful since I don't have proof of any nationality and can't work anywhere else. But I wish to become a teacher. It's been my ambition since I was very young. I now tutor children at my uncle's house. It's how I keep my dream alive." Unable to acquire professional qualifications, many stateless young people pursue vocational courses or voluntary work just to obtain some useful skills. Valentino (21) a stateless Roma man, convinced his municipal council to allow him to attend a baking course. "I have done a municipal course in pizza making," he says. "I became really good. I worked at a friend's pizzeria and the customers asked if there was a master pizza maker in the house! I even started teaching pizza-making to Bangladeshi migrants in the course. I would love to have my own pizzeria but for that I need to get citizenship. I want to find a job, a house. I want a regular life. For others, these things might seem trivial, but for me they are not."¹⁰

UN High Commissioner for Refugees (UNHCR),
Special report: Ending Statelessness Within 10 Years

UNHCR 2014, p. 14-15

<https://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=546217229&query=Special%20Report:%20Ending%20Statelessness%20Within%2010%20Years>

Off Limits

In countries across the globe many jobs are off limits or severely restricted for non-nationals, including public service, teaching, law, medicine and engineering. Some stateless people may be blocked from the labour market altogether. Even if they can find work, stateless people often have to accept wages substantially lower than nationals, little chance of promotion and the expectation of dismissal at any moment. "My salary is nothing more than pocket money," says Aldulrahman, who lives in Kuwait. Because of such situations, stateless people face greater everyday pressures than other groups. In Myanmar, for example, nationals normally use state hospitals and clinics. However,

¹⁰ For others, the impact of statelessness has led to suicide or attempted suicide. In South Africa, there have been two cases of suicide reported due to the denial of citizenship.

because of government rules, stateless people have to resort to private clinics—which are much more expensive—or rely on non-profit organizations. This pattern is repeated in other countries. In Kenya, the government issued free mosquito nets, but only households with official IDs were eligible. “Does malaria only attack Kenyans?” one frustrated stateless person asked at the time. There are occasional breakthroughs, but rarely without a twist in the tail. Sleiman is not authorized to work because he is stateless, but he nevertheless runs a successful wrought iron business in Lebanon. His company is registered in the name of his wife, who is a Lebanese national.¹¹ Sleiman is also a successful rally car driver and to recognize his sporting achievements, a cedar tree was officially planted in his honour. But despite his many attempts to be recognized as a Lebanese national, he remains unable to represent Lebanon at international sports events and is still stateless. His pain and frustration is apparent when he says: “I am nearly 50 years old and I am tired of begging.

UN Secretary-General (UNSG),
Guidance Note of the Secretary General:
The United Nations and Statelessness

UNSG 2018, p. 7-8

<<https://www.refworld.org/docid/5c580e507.html>>

4. Respect the human rights of stateless persons and provide for their specific protection needs

Universal human rights standards apply irrespective of possession of a nationality, with only a very limited set of rights reserved for citizens. But stateless persons have protection needs distinct from those of other non-citizens. Stateless persons are uniquely vulnerable to prolonged detention and States should be sensitized to respect the rights of stateless persons to be free from arbitrary detention as a result of their stateless status. Stateless persons require support in areas where a State of nationality would generally take action, for instance in relation to the issuance of identity and travel documents. Stateless persons who do not enjoy the right to return to and reside in another State should be granted residency and concomitant civil, political, social, economic and cultural rights and have a realistic prospect of acquiring the State’s nationality in the future.

A prerequisite for the protection of stateless persons is ensuring that the State can identify who is stateless and who is not. States are encouraged to establish formalized statelessness determination procedures with due process safeguards for individuals to claim protection as a result of their statelessness status. This is particularly relevant in the context of cross-border movements, where stateless individuals are outside of their

¹¹ Even informal work is a risk, since being out in public exposes stateless persons to a heightened risk of arrest and detention.

country of habitual residence.

Most stateless persons reside in the country of their birth or a successor State. But statelessness might result in forced displacement, in particular where it results from arbitrary deprivation of nationality, and many stateless persons do in fact cross an international border and become refugees. Forced displacement, in turn, may also result in statelessness.¹² When stateless persons are simultaneously refugees, they must be treated as such and afforded the protection foreseen under international refugee law, specifically under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and the prohibition of non-refoulement in customary international law.

The grant of leave to reside within a State and related rights to stateless persons as set out above do not resolve their situation entirely as they are unable to enjoy rights reserved for nationals. Consequently, these protections should be viewed as a temporary solution until such time as the individuals concerned are able to acquire a nationality.

Institute on Statelessness and Inclusion (ISI),
Statelessness Essentials: What Development Actors Need to Know

ISI 2017, p. 7

[<http://www.institutesi.org/statelessness-for-development-actors.pdf>](http://www.institutesi.org/statelessness-for-development-actors.pdf)

How does (lack of) nationality impact development?

Nationality is a gateway through which people can access rights and services. Without it, the stateless often struggle to enjoy quality education and health care; safe, secure and dignified work; inheritance and ownership of property; and basic banking, mobile phone and other services.

*“[My brother] is very good at studying, he was top of high school
but right now he can’t study anymore because of his lack of citizenship.”*

Stateless persons also face difficulties obtaining identification documents, including birth and death certificates, marriage licenses, driving licenses, and passports. Without such documents, it is almost impossible to leave, re-enter and live in their countries, without having their legality and belonging questioned. This lack of status can lead to arbitrary arrest and (at times indefinite) detention as authorities attempt to expel them.

*“When you do not have documentation, you are not entitled
to any assistance [...] I have always worked, ever since I was very young
I have responsibility for my grandmother. She is also stateless.”*

¹² Even migration within state borders can create statelessness due to the difficulty of proving nationality when one does not have proof such as witnesses or proof of schooling.

Perceived as outsiders, the stateless can be vulnerable to victimisation, discrimination and exploitation. They may be seen as less ‘deserving’ of protection and support. They are frequently unable to participate in political and social life. Under these conditions, it is difficult for stateless persons to realise their capabilities and live with dignity, free from poverty. The denial of their fundamental rights and their exclusion from development activities, is also heightened by their inability to access justice. This results in a vicious circle, which is difficult to break.

Families can have members with citizenship and members who are stateless, causing severe distress to all. Mothers who cannot pass their nationality to their children due to gender discriminatory nationality laws, worry that their stateless children will not be able to live normal happy lives. When a whole stateless community is excluded, marginalised and even vilified, tensions can lead to violence. In Myanmar for example, stateless Rohingya suffer widespread and systematic violence, perpetrated by both state authorities and civilian groups. When stateless victims of persecution flee their country, their vulnerability and needs are heightened, and reaching them to meet their protection and development needs becomes more complex still. **It is evident therefore that statelessness is detrimental to human development.**

Institute on Statelessness and Inclusion (ISI),
*‘Statelessness, Human Rights and the Sustainable
Development Agenda: A Working Paper’*

ISI 2017, p. 8-9

<https://files.institutesi.org/SDG_working-paper2017.pdf>

As there are clear overlaps between the frameworks, there are also clear points of divergence. The most significant is that while human rights are justiciable (or enforceable), the SDGs are not. The justiciability of human rights law comes with its own challenges. International law is notoriously ‘far’ from its subjects, and even those who can access UN human rights treaty bodies through individual or group complaints, often receive only token relief, which may progress human rights jurisprudence without necessarily solving the problems faced by the applicants. Regional human rights mechanisms (in Africa, the Americas and Europe) are relatively more accessible, and play an important role, particularly when national mechanisms fail to protect. At national level – with courts having fundamental rights jurisdiction – rights are more tangible, but as set out above, stateless persons have difficulties accessing justice through these mechanisms. Nevertheless, the monitoring role played by the UN Treaty Bodies and Human Rights Council (through the Universal Periodic Review) and the obligations that stem from international, regional and national human rights law still comprise a much stronger and more established framework to shape policy and law than the SDGs, and one through which individuals and communities may more readily assert their rights

and access justice. The different approaches to justiciability of the two frameworks is evident in the fact that international reporting on progress under the SDGs is purely voluntary for states, whereas states are obligated to periodically report on their human rights performance.

That the human rights framework sets out obligations and the development agenda is aspirational is not in itself necessarily a problem. However, as discussed below, it is of concern when the aspirations of the development agenda fall short of the obligations of human rights law. This counter-intuitive messaging, that states have come together to agree a set of aspirations, some of which fall short of their previously agreed obligations, raises concern that the SDG framework may be set against the human rights one and used to undermine human rights standards. It is important to be alert to this danger and to ensure that while the SDG framework should be used to complement the human rights framework, it should not undermine it. In this context, it is of concern that the draft indicator to SDG 16.9 - “Percentage of children under 5 whose births have been registered with civil authority”, is less ambitious than the legal obligation under CRC Article 7, that “the child shall be registered immediately after birth”.

The other key point of divergence, alluded to above, is that international human rights law allows for some differential treatment between nationals and non-nationals (to the disadvantage of the latter), whereas the SDG framework does not differentiate between these two groups. For example, the International Covenant on Socio-Economic Rights provides developing states with some leeway in implementing its obligations under the Covenant, when it comes to non-nationals. Article 2.3 of the Covenant states that: “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.” The rationale behind this provision is that developing countries may not have the resources to fulfil all their obligations under the Covenant, and in planning and implementing, it may deprioritise non-national’s access to certain rights. The thinking behind this is that non-nationals – if they require this safety net – could arguably return to their own countries to benefit from the full enjoyment of economic rights. This provision does not take into consideration the uniquely vulnerable situation of stateless persons who are vulnerable everywhere, particularly those who are stateless in their own countries.

The SDGs take the opposite (and fairer) approach of not discriminating against migrants or non-nationals, but clearly articulating that the most vulnerable should be reached first. In other words, when resources are scarce, there is a strong argument to be made for starting with the worst off – even if these are non-nationals. This approach is refreshing and has the potential to plug a big protection gap in the international human rights framework.

3.3. Aligning human rights obligations with development goals

Greater awareness of the points of divergence as well as overlap will enable us to enhance the complementarity of these two frameworks, to ensure maximum possible protection, inclusion and benefit for the stateless and other vulnerable groups.

Significantly, it is evident from the above that a world in which statelessness exists and stateless persons are discriminated against is one in which it is more difficult to fulfil the obligations of human rights or reach the aspirations of development.

For development to be sustainable (and human rights to be universally enjoyed), statelessness must be solved.

As highlighted above, there is ample overlap and synergy between the human rights framework and the development agenda. The human rights framework however, offers something that the development framework does not – it places the individual at the centre and provides him or her with the means by which to hold accountable, duty bearers with obligations to fulfil. Thus, one key means of making the SDGs ‘sustainable’ is to align them to human rights obligations. For example, the right of every child to an education and the goal of achieving education for all must speak to each other. The child who is excluded from accessing education should have a means of accessing justice and demanding her right.

While the question of aligning these two frameworks has a wider resonance, it is of real relevance to the stateless – a group with significant challenges accessing justice. In other words, not only do the human rights and development frameworks need to be aligned, they both need to do better by the stateless.

Chapter 4:

Key Challenges 1 -

How Does Discrimination Relate to Statelessness?

Discrimination is the main cause of statelessness. Discriminatory nationality laws, discrimination against minorities in the context of de-colonisation and state succession, the inheritance of statelessness, gender discrimination and poor administrative practices and procedures, which mostly impact the rural poor and ethnic and/or linguistic minorities, can all cause statelessness. In return, statelessness can lead to further discrimination.

Understanding and responding to this phenomenon is therefore essential, if childhood statelessness is to be effectively addressed.

This Chapter presents texts and materials that explore and explain the mutually reinforcing nexus between statelessness and discrimination.

Discussion questions

1. What is the link between inequality, discrimination and statelessness?
2. Can you think of examples of how discrimination on the basis of gender, race, language, disability, social origin and political opinion can cause statelessness?
3. What are the main international law provisions which prohibit discrimination, and how can these be utilised to combat discrimination which causes childhood statelessness?
4. Are minorities more likely to face statelessness? Why?
5. How does discrimination cause intergenerational statelessness and what can be done to address this?

Texts and Materials

Institute on Statelessness and Inclusion (ISI),

Statelessness Essentials: Citizenship and Statelessness: (in)Equality and (non) Discrimination

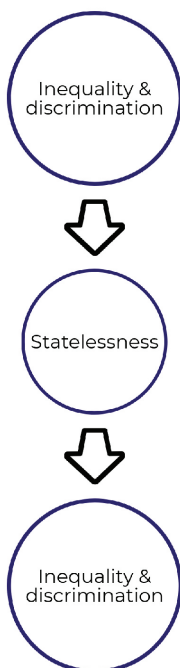
ISI 2018, p. 8-11; 13-14; 23-24

<<https://files.institutesi.org/Statelessness-and-discrimination.pdf>>

INEQUALITY, DISCRIMINATION AND STATELESSNESS

Human rights professionals working with stateless communities will undoubtedly recognise the ‘traditional’ categorisation of causes of statelessness, such as conflict of nationality laws, the inheritance of statelessness by new-born children, state succession, administrative challenges, the lack of birth registration and the like.

Yet in some ways, the focus on these ‘traditional’ categories has limited statelessness actors’ understanding of the role of inequality and discrimination in causing statelessness, limiting the effectiveness of their responses. Some methods engaged to tackle statelessness only address the symptoms of statelessness and not the root causes.



There is an inextricable link between inequality, discrimination and statelessness. Inequality and discrimination both cause statelessness and impact the stateless. Understanding and addressing inequality and discrimination is critical to the full appreciation of the issues related to statelessness. Further, it is important to understand how stereotypes, prejudice and stigma are used against different groups and communities to fuel inequality and discrimination and cause statelessness. Ignorance about, or the neglect of vulnerable groups can deepen their inequality and increase their risk of statelessness.

It is not only intentional stigmatisation, prejudicial treatment or discrimination that leaves groups vulnerable, marginalised and at risk of statelessness. Action and inaction frequently have unintended consequences. When this is the case, the challenge for human rights and statelessness stakeholders is to hold states to account where they fail to act with diligence or put in place mechanisms to manage such risks.

STATELESSNESS CAUSED BY INEQUALITY AND DISCRIMINATION

Protected grounds

International human rights law protects against discrimination on a wide range of grounds. It adopts what is termed **indicative** rather than an **exhaustive** approach to deciding which grounds (including personal characteristics or status) should be protected from discrimination. Some protected grounds, like race, sex or political opinion are explicitly listed as prohibited grounds of discrimination together with an ‘other status’ clause. Listed grounds act as indicators to courts when deciding if a non-listed ground should be protected as an ‘other status’.



Treaty bodies have been able to ‘read into’ human rights treaties, protection from discrimination on grounds such as sexual orientation which was not explicitly listed. Statelessness is not listed as a protected ground in international human rights treaties but may be ‘read into’ them.

A protected ground can be an actual or perceived **immutable** characteristic (which is unchangeable, entrenched and innate, e.g. race) or **mutable or acquired** status (which has been imparted on the individual and may change, e.g. statelessness).

Courts often apply different levels of scrutiny to different grounds of discrimination. For example, human rights law requires ‘very weighty reasons’ to justify a difference in treatment because of race or sex. Whereas less weighty reasons may be required to justify a difference in treatment because of language.

Gender Discrimination

At present approximately 50 countries have nationality laws which directly discriminate against women in the ability to acquire, change or retain their nationality, or confer nationality on their children or spouse. These countries include the Bahamas, Cameroon, Kuwait, Lesotho, Malaysia, Morocco, Nepal, Qatar and Saudi Arabia. Where a mother is prevented from passing her nationality to her child, that child may be at risk of statelessness if they are also unable to acquire nationality from their father.

Indirect gender discrimination can also cause statelessness, for example, in situations where single mothers cannot register the births of their children due to social stigma.¹³

¹³ Gender discrimination when it comes to single fathers can also be a factor. In South Africa, the High Court has found it to be unconstitutional not to allow single fathers to register the births of their children without the presence of a

Race, Ethnic, Religious and Linguistic Discrimination

Large groups that are stateless tend to be ethnic, religious, racial or other minorities, who have been excluded through the denial or stripping of citizenship. Regardless of whether this exclusion was intentional (e.g. Rohingya in Myanmar) or due to a historical accident (e.g. Hill Tribes in Thailand), statelessness becomes a defining characteristic of the group and a basis for further exclusion. Statelessness that arises out of state succession and de-colonisation is most likely to be inflicted on minorities who are perceived as outsiders brought in by the former colonial powers (e.g. Tamils of Indian origin in Sri Lanka) or as a group loyal to the previous larger state (e.g. ethnic Russians in Latvia), despite the fact that these communities have lived in such countries for several generations. Where poor administrative practices such as the lack of birth registration lead to statelessness, racial and ethnic minorities who for reasons of exclusion, language, poverty or other factors cannot access registries (e.g. Roma in Europe) are disproportionately impacted. Where statelessness is inherited, there is likely to be less political will to rectify the statelessness of minority communities (e.g. Karana of Madagascar). Where forced migration causes or leads to statelessness, discrimination is often a factor as to why a minority was forced to leave a country or faces barriers to integrating in a new one (e.g. stateless Kurds from Syria). [...]

Social Origin

Covert discrimination against socio-economically disadvantaged groups – most often the rural poor who cannot acquire documentation – can play a significant role in causing statelessness. Unseen barriers to accessing centralised administrative offices e.g. language, literacy, the cost and time of travel and lack of access to (information about) simplified documentation processes, are acutely felt by the socio-economically disadvantaged. The resulting lack of documentation – while not akin to statelessness (many citizens do not have documentation) – can result in statelessness for those who cannot prove their place or date of birth, parentage etc. This is particularly so if the disadvantaged group is a minority or lives in a border area, whose ‘belonging’ is more likely to be questioned.

Birth and Inheritance

“No discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents”.

The inheritance of statelessness is the biggest cause of statelessness in the world. The failure of States to find solutions for statelessness means that new generations are born into statelessness every day. The lack of will to address statelessness is often linked to

documented mother (*Naki v The Minister of Home Affairs*). The law discriminates against such fathers by not allowing them (indirectly) to pass nationality to their children.

discriminatory attitudes and perceptions about belonging, including of children born out of wedlock. International law draws a red line on this issue and explicitly prohibits discriminatory treatment of children due to their birth status.

Disability discrimination

“Children with disabilities are at a particular risk of not being registered at birth which exposes them to further protection risks including statelessness”.

Article 18(1)(a) of the CRPD requires State Parties to ensure that persons with disabilities ‘[h]ave the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability’. However, many countries – including Yemen and Ecuador - discriminate against people with psychosocial or intellectual disabilities, including those who lack mental capacity, in naturalisation proceedings, increasing their risk of statelessness.

Prejudicial social attitudes which may result in the failure of parents to register the births of disabled children – or barriers they face in doing so – can also cause statelessness.

Political Opinion

In recent years, there has been an alarming surge in using deprivation of nationality as a ‘tool’ to protect national security, and the abuse of these powers to target human rights defenders. Stripping political dissenters of their nationality is becoming an increasingly common way for authoritarian states to suppress political opinion and free expression. Bahrain, Kuwait and Turkey are examples where this ‘tool’ has been used, raising a serious risk of statelessness where those affected do not have a second nationality.¹⁴

Other Grounds

The above are illustrative and not exhaustive examples of how inequality and discrimination can cause statelessness. As research develops it is inevitable that discrimination against other protected groups that relates to statelessness will be uncovered. For example, discrimination in access to nationality based on residence status (as a prerequisite for the application of statelessness safeguards) is becoming an increasing concern.¹⁵

¹⁴ See for example *Anudo v. Tanzania* (2018).

¹⁵ See the work of Bronwen Manby, who writes extensively on the effect that modernisation has on making stateless persons known in Africa

Perceived Characteristic

Statelessness can also occur when individuals are perceived to possess a characteristic they do not in fact possess. Often communities that become stateless are perceived as foreigners or outsiders whose marginalisation makes them vulnerable to discrimination and inequality. The belief that an individual or a community is from ‘elsewhere’, for example that they are Malawian not Kenyan or Iraqi not Kuwaiti is a common trend across different statelessness situations. [...]

| The Prohibition of Discrimination under International Law | |
|--|---|
| Treaty & Article(s) | Protected Grounds |
| 1954 Convention - 3 | Race, religion or country of origin. |
| CERD - 1, 2, 4, 5, 6 | Race, colour, descent, or national and ethnic origin. |
| ICESCR - 2(2) | Race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. |
| ICCPR - 2(1), 4(1), 24(1), 26 | Race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. |
| CEDAW - All | Gender (women). |
| CRC - 2(1), 7(1), 8(1) | Child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. |
| CAT - 1(1) | All grounds |
| CPRMW - 1(1), 7(1) | Sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. |
| CRPD - All | Disability; also 6 (women); 7 (children); 16(5) (women and children); 28 (2)(b) (women, girls, older people). |
| CED - 13(7) | Sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group. |

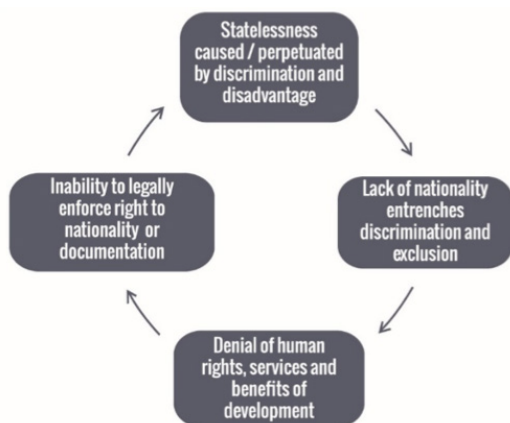
INEQUALITY AND DISCRIMINATION OF THE STATELESS

All human beings are born free and equal in dignity and rights. (Article 1 of the UDHR)

Nationality is one among many human rights everyone is entitled to. It is denied to stateless people, yet denial of nationality should not mean other human rights protections should fall away for them. That being said, international law is inherently discriminatory – privileging citizens over non-citizens (e.g. in relation to the right to vote or free movement). These legal rules are based on the principle that everyone will enjoy the rights which attach to nationality somewhere. However, the stateless – perennial outsiders – are disregarded in this calculation. As a result, they:

“Face challenges in all areas of life, including: entering or completing schooling; accessing healthcare services [...] obtaining a birth certificate [...] falling back on social security [...] obtaining a passport or indeed being issued any form of identity documentation [...] international travel [...] and] free movement”.

Stateless populations can be vulnerable to discrimination, harassment, incitement to violence and exploitation. They may be seen as less ‘deserving’ of protection and support. They are frequently unable to participate in political and social life. Under these conditions, it is difficult for stateless persons to realise their capabilities and live with dignity, free from poverty. They are also vulnerable to arbitrary and lengthy immigration detention. In extreme cases, stateless persons suffer persecution and endure forced displacement. The denial of their fundamental rights and their exclusion from society is further heightened by their inability to access justice. This results in a vicious cycle, which is difficult to break.



The nature of inequality and discrimination means that left unchecked, it is inevitable. Indeed, in more sinister cases, such as the Rohingya, it is the reason a minority is stripped of its nationality – so that they can be discriminated against more intensely and with less scrutiny, on the justification that they do not belong and are not entitled. Therefore, in addition to continuing to face discrimination on the basis of pre-existing characteristics, a person’s status as stateless often becomes

a basis for further discrimination. Both additive and intersectional discrimination have become regular features of the statelessness, inequality and discrimination landscapes.

The stateless can be a minority within a minority. For example, marginalisation is both a cause and a consequence of statelessness amongst Roma. It has manifest:

“as lack of financial means, lack of access to education, to civil status documentation, to governance and democratic structures, to formal employment, to healthcare, and to basic dignity and a sense of self-worth and belonging”.

The intergenerational nature of most stateless situations in the world further entraps the stateless into poverty. The statelessness of parents is often inherited by their children and grandchildren, exacerbating and perpetuating their exclusion, disadvantage, poverty and marginalisation. Without the means to break this cycle, it continues unabated.

Amal de Chickera and Joanna Whiteman, ‘Addressing Statelessness Through the Rights to Equality and Non-Discrimination’
in Melanie Khanna and Laura Van Waas (eds),
Solving Statelessness

Wolf Legal Publishers 2016, p. 100-107

Less obviously linked to discrimination is statelessness occurring as a result of State succession. Historically this has been seen as a “technical”, almost neutral, cause of statelessness. However, closer analysis reveals that here too discrimination may play a significant role. Indeed, most often, “it is vulnerable minorities who are associated with either the successor or parent State who are deprived of nationality, exposing the discriminatory motivations and arbitrary nature for such exclusion”. This reality has played out in relation to the former Union of Soviet Socialist Republics (USSR), the former Yugoslavia (for example, many Roma are stateless in the Balkan States), Kurds whose country was divided among Iran, Iraq, Syria and Turkey, and Eritreans in Ethiopia. The experience of colonisation and de-colonisation is also an example of State succession and caused many of the most large scale and entrenched situations of statelessness in the world today. In such contexts, newly independent States (many of which never had a common pre-colonial national identity) have had to deal with borders arbitrarily drawn (often dividing ethnic groups) peoples forcibly migrated (for labour) and the consequences of decades, sometimes centuries, of colonial rule which successfully pitted different ethnic and religious groups against each other, privileging some and marginalising others, as part of a wider divide and rule policy.

As contemporary States are responsible for protecting the human rights of all people subject to their jurisdiction, they cannot hide behind the veil of “colonisation” to justify or explain away the discriminatory treatment and disenfranchisement of marginalised groups. However, understanding this historical context and its implications for equality and non-discrimination are an essential pre-requisite to addressing them.

Bad administrative practices often enable discrimination and prejudice to be determinative of whether or not a person will be recognised as a citizen in a given country. This is particularly common where individual officers are given broad discretion to determine the outcome of an application for citizenship documentation. In Madagascar for example, Malagasy identity is perceived by many Madagascans as racially determined. In a recent study, individuals reported that discriminatory attitudes based on race held by local officials influenced the rejection of their applications for citizenship or for a national identity card. For example, those who had names which were “not considered Madagascan – such as Arab, Muslim or Comorian sounding names – often encountered problems” and faced officials who felt they were “not really Madagascan”. The lack of judicial oversight of these individual decisions means that individuals have little recourse to contest administrative decisions. The cumulative impact of such poor administrative practices can be profound. “In Thailand, Lebanon and Kuwait for instance, statelessness became a feature of the landscape many decades – and several generations – ago, when the nationality laws were first being administered by the State.” Almost inevitably, it was vulnerable groups who were excluded – those who live in remote areas, have nomadic lifestyles, are from an ethnic minority, etc. Their statelessness has since been used as the justification for their continued exclusion from society down the generations. A more subtle form of discrimination can also play out. This is where socio-economically disadvantaged groups – most often the rural poor – cannot acquire documentation due to difficulties in accessing centralised administrative offices. The resulting lack of documentation – while not akin to statelessness (many citizens around the world do not have documentation) – can result in statelessness for those who cannot prove place or date of birth, parentage or other information needed to demonstrate eligibility for citizenship. [...]

While there is general consensus that stateless people face barriers in accessing the services central to the enjoyment of their rights, the connection to discrimination and inequality is not always noted. The obligation of the State to ensure equal access to rights for all (although subject to discretion in certain areas as highlighted below) goes beyond the mere legal statement that (for example) all children have the right to an education. The State must ensure that legal, administrative and practical barriers to accessing education are removed and that all children have access to education that meets a certain minimum standard. It must ensure that those whose particular circumstances and vulnerabilities make them less likely to be able to enjoy equal access to education are identified and steps taken to mitigate the barriers they face.

One such barrier that stateless people face in accessing education and various other rights and services, is that they often lack the documentation required for administrative purposes. A simple attitudinal shift that sees those without documentation (including the stateless) not as (variously) at fault, unworthy, a threat, outsiders or disqualified, but rather as people whose equal access to rights and services is being hampered by the non-fulfilment of an administrative step (that for most people can easily be taken) will go a long way to strengthening the equal access to rights and services of stateless persons.

Another barrier is simply one of prejudice by individual officials or members of society: “[m]y neighbours speak badly to me because I am stateless. They tell me I’m not worthy of doing anything.” Stateless people have reported being exploited by, for instance, employers who know that it is particularly difficult for them to find work and so they may be more willing to work illegally on a low wage.

As a result of these (and other) factors, the vulnerability of stateless people is often a complex phenomenon. It is not just that they are stateless. It is also that they are an unwanted ethnic minority and are considered to be outsiders and are poor and have faced marginalisation and disadvantage with cumulative effect for many generations. Simplistic, one dimensional “solutions” that, for example, guarantee the right to education for stateless people without taking into account their historical disadvantage and the other factors that shape their reality are not likely to succeed. Equal access to rights for stateless people cannot be ensured only by focusing on their statelessness. A holistic approach is needed.

Peggy Brett, ‘Discrimination and Childhood Statelessness in the Work of the UN Human Rights Treaty Bodies’

in Institute on Statelessness and Inclusion (ISI),
The World’s Stateless Children

Wolf Legal Publishers 2017, p. 172-173; 175-178; 181-183
<<http://children.worldstateless.org/3/the-right-of-every-child-to-a-nationality/discrimination-and-childhood-statelessness-in-the-work-of-the-un-human-rights-treaty-bodies.html>>

2.1 Discrimination on grounds of race or religion

A small number of states maintain clearly discriminatory laws that restrict nationality to individuals of a particular race or religion. The Committee on the Rights of the Child has criticised such laws as a violation of the right to nationality read in conjunction with the prohibition of discrimination. [...]

In other states, instead of defining who is eligible for nationality, the law (or the interpretation of the law), serves to exclude certain groups or individuals. Such exclusionary measures are recognised, for instance, in the Committee on the Elimination of All Forms of Racial Discrimination’s (CERD) recommendation that States “[ensure that legislation regarding citizenship and naturalisation does not discriminate against members of Roma communities](#)”.

Other Treaty Bodies have made recommendations to particular States where they have identified problems, such as the Committee on the Rights of the Child’s

[criticism of Israeli legislation](#) preventing the children of Israeli citizens and individuals from the Occupied Palestinian Territories from acquiring Israeli nationality. [...]

2.3 Discrimination related to acquisition of nationality from parents

[...] Other treaty bodies have made similar recommendations, stressing the gender-based discrimination inherent in such laws and, in some cases, echoing the concern that they increase the risk of statelessness. Such recommendations have, however, rarely considered the extent to which these laws discriminate against the child on the basis of the nationality of their father, as well as against the parent who is unable to transmit nationality. This is particularly striking in the work of the CERD since the question of discrimination on grounds of the parent's nationality would seem to fit naturally into its mandate.

Similarly, the Committee on the Rights of the Child has framed its recommendations on gender-based discrimination in nationality laws as a matter of prevention of statelessness and discrimination against women. When addressing a woman's ability to transmit nationality to her children, this omission is not significant, but articulating the ways in which such laws also discriminate against the child could help to draw out why other provisions of nationality laws may be problematic from the perspective of the child's right to a nationality. For instance, this approach provides a framework to talk about provisions which discriminate against fathers in the transmission of nationality to their children, or where there is no gendered aspect to the laws, but distinctions are made between citizens from birth and naturalised citizens.

Discrimination on grounds of their birth out of wedlock particularly affects children. Often the impact on the right to nationality is linked to gender-based discrimination that prevents women transmitting their nationality to children and recommendations by the Committee on the Rights of the Child and CEDAW have been made on this basis. However, in some cases the issue has been addressed as a matter of discrimination against the child on the basis of the status of their parents. For example, the Human Rights Committee recommended that Japan [“remove any provisions discriminating against children born out of wedlock from its legislation”](#). [...]

2.4 Administrative and Practical Barriers to Nationality

Discrimination in access to nationality often arises where particular groups or individuals are already marginalised or subject to discrimination. For instance, low levels of birth registration among certain sections of the population can affect their access to nationality by leaving children without proof of their place of birth and parentage (and therefore their eligibility for nationality). On this basis, Treaty Bodies have recommended special measures to promote birth registration among marginalised groups.

Recommendations have also been made on removing administrative and practical measures preventing access to nationality for certain individuals or groups. In its General Comment on People of African Descent, the [CERD highlights](#) the need to address both discriminatory laws and other barriers to people of African descent accessing nationality. [...]

Naturalisation laws that impose unreasonable requirements, such as a high level of knowledge of the language of the state, have been criticised by the CERD. The CRPD has also highlighted the [discriminatory aspect of naturalisation laws](#) that exclude persons with disabilities. Such provisions may be particularly problematic, since children with disabilities are sometimes discriminated against in nationality laws and are less likely to be registered at birth, increasing their risk of statelessness and, therefore, the need to apply for naturalisation.

Treaty Bodies have also addressed the intergenerational impact of statelessness arising from historic exclusion and marginalisation. In this context, they have made recommendations stressing the need for special measures to promote access to nationality for persons, particularly children, from these stateless populations. [...]

4. ACCESS TO RIGHTS FOR STATELESS CHILDREN

Human rights treaties generally guarantee rights to all those within the territory or jurisdiction of the State. That stateless persons are included within the scope of human rights treaties and protected from discrimination in access to rights is beyond doubt, and has been laid out in the General Comments of Treaty Bodies. For example, the Committee on Economic Social and Cultural Rights' General Comment on non-discrimination specifically mentions children born of stateless parents among those who are protected from discrimination based on birth and includes stateless children in the list of non-nationals to whom the rights set out in the Covenant also apply [“regardless of legal status and documentation”](#).

In their concluding observations Treaty Bodies have highlighted in particular the need to avoid discrimination in access to education and health care for stateless children. For instance, the Committee on Economic, Social and Cultural Rights recommended that Vietnam [“recognise and register children \[...\] who are currently stateless, and ensure that they receive the necessary education, health care and other social services”](#). Other recommendations have referred to the obligation to ensure all rights, or made [specific reference to rights such as freedom of movement](#). [...]

While emphasising the importance of guaranteeing stateless children's access to rights, the Treaty Bodies have made it clear that this does not abrogate the state's obligations with regard to the right to nationality.¹⁶

¹⁶ South African courts have interpreted the best interests of the child to include not being stateless even where the child has a permanent residence permit. See *DGLR v The Minister of Home Affairs*.

Why are minorities more vulnerable to statelessness?

Statelessness is often not an accident, but a logical outcome of discrimination. Governments may deliberately manipulate nationality law as a tool of repression against particular minorities who they consider belong elsewhere. This can be done to gain political advantage by unifying other groups against the “other”. It can also be done simply to affect demographics that will result in an electoral advantage for one group or party. In Cote d’Ivoire, descendants of laborers brought in by the French came to be denied recognition as nationals because otherwise the balance of electoral power would be upset. Therefore, one of the most direct consequences of statelessness may be the exclusion of minority groups from voting.

Certain factors, like poverty, limited access to justice, or lack of official documentation may elevate an individual’s risk of statelessness, often affecting minorities in particular. Different types of discrimination may be linked to statelessness. It is rare that nationality laws are overtly racist or discriminatory. More often people become stateless through indirect discrimination, when nationality laws appear neutral, but in reality they disproportionately affect minorities. In other cases, nationality laws may be implemented in discriminatory ways by administrators, registrars and officials, especially if they have discretionary power in naturalisation or registration procedures. Moreover, members of minority groups are often not in a position to challenge these decisions either because they are poor, less educated, do not speak the official language, live in remote areas or have a limited understanding of their rights.

Europe’s stateless Roma

In Europe, one of the most vulnerable groups to statelessness is the Roma who have historically been abused, neglected and excluded from majority societies. Stateless Roma are spread across a number of European states, especially Russia, Slovakia and the countries of the former Yugoslavia. Many Roma who fled the Yugoslavian war as refugees, remain stateless in other European countries, like Italy. [...]

The situation of stateless Roma in Europe is rooted not only in state succession and lack of birth registration but also in widespread and deep-seated discrimination against the community. Therefore, tackling discrimination is crucial to ending minority communities’ statelessness around the world.

Betsy Fisher, 'Gender and Birth Discrimination and Childhood Statelessness'

in Institute on Statelessness and Inclusion (ISI),
The World's Stateless Children

Wolf Legal Publishers 2017, p. 185-188

<<http://children.worldsstateless.org/3/the-right-of-every-child-to-a-nationality/gender-and-birth-status-discrimination-and-childhood-statelessness.html>>

1. Introduction

In most countries, nationality is conveyed through lineage rather than by birth in territory. When women are unable to convey nationality to their children in these countries, children will likely be stateless in any situation where the father cannot or will not convey nationality and there is no safeguard against statelessness. For this reason, much attention has been given to reforming gender-discriminatory nationality law.

Under international law, discrimination is “[any distinction, exclusion, restriction or preference or other differential treatment](#)” on prohibited grounds that limits an individual’s access to a human right, such as the [right to acquire a nationality](#) or to have [one’s birth registered](#). Thus, if an individual faces additional obstacles in obtaining nationality or birth registration because of their gender or ethnicity or birth status, this is unlawful discrimination. This essay summarises a [longer article](#) to highlight how, in countries of the Gulf Cooperation Council (GCC), gender and birth status discrimination in birth registration, family, and criminal law can create new cases of statelessness.

2. Discrimination in civil registration law

Birth registration is crucial to ensure that children who are entitled to a nationality are recognised as nationals, because birth certificates record crucial information which demonstrates the child’s right to nationality through their parents or through their birth in a country’s territory. Many states’ civil registration laws or practices limit mothers’ ability to register their children’s births or limit the parents’ ability to register non-marital children, thus discriminating on the basis of the parents’ gender or marital status. Because birth registration is so crucial to preventing statelessness, states should eliminate all obstacles to and discrimination in birth registration including legal or practical limitations on mothers registering births or limitations on parents registering births out of wedlock.

3. Discrimination in family law

Discrimination in family law can also create a risk of statelessness. Many countries do not have adequate means for non-marital children to legally establish their relationship to their father. When nationality can only be derived from the father, children who cannot verify their paternity – especially non-marital children – may be left stateless.

Other states limit their nationals' ability to marry foreigners, and children who are born to such prohibited unions will be considered non-marital children. As seen above, this may mean that fathers cannot establish the relationship to their children to convey nationality or that parents cannot register their children's births. Then, children who are or who are considered to be non-marital children may not receive nationality, which is discrimination on the basis of birth status. Every attempt should be made to ensure that all children, regardless of their parents' nationality or birth status, are registered at birth and receive a nationality, as required in Article 7 of the Convention on the Rights of the Child.

4. Discrimination in criminal law

Finally, criminal prohibitions of adultery create risks of statelessness and pit access to one human right directly against another. Officials in countries that criminalise adultery report that parents may abandon children rather than face criminal penalties. Abandoned children receive nationality as foundlings, or children whose parents cannot be identified, rather than from their parents. In other words, the child who receives nationality, does so at a cost of the right to family life.

5. Conclusion

Some discriminatory policies create the greatest risk of statelessness when paired with gender-discriminatory nationality laws. For example, if mothers can convey nationality, then establishing paternity is less critical in preventing statelessness. In each case, though, discrimination on the basis of gender and birth status violates international law and leaves children vulnerable to statelessness.

Chapter 5:

Key Challenges 2 -

How Does Lack of Documentation Relate to Statelessness?

Birth registration is the process through which a child's birth is recorded in the civil registry by the government authority as part of a state's Civil Registration and Vital Statistics (CRVS) system. It provides the first legal recognition of the child and provides a 'legal identity'. The right to be registered at birth is separate from but linked to the right to a nationality as birth registration documents birth details – such as date, place of birth and parents – which are also the facts that determine which nationality rules apply and therefore which nationality the child receives. Lack of documentation can therefore function as a barrier to obtaining nationality or recognition as a citizen. When minority or indigenous groups, migrants or refugees lack birth registration the risk of statelessness is greater. At the same time, international human rights law protects the right to be recognised as a person before the law. Yet, the majority of stateless persons have no legal identity documentation while statelessness can also function as an obstacle to birth registration. The relationship between birth registration, legal identity and nationality/statelessness is therefore a complex and important one to understand, especially with the push to “provide legal identity to all, including birth registration, by 2030” under Target 16.9 of the Sustainable Development Goals (SDGs).

This Chapter brings together a number of key texts regarding the issue of birth registration and documentation of stateless children.

Discussion questions

1. How does birth registration help combat childhood statelessness? Can birth registration ever be harmful to securing nationality for a child?
2. As every child has the right to immediate birth registration, what steps can be taken to ensure that birth registration procedures are accessible and not complicated?

- 3.** What are the strengths and weaknesses of the Sustainable Development Goals' approach of 'legal identity for all' to achieve birth registration, and how can we ensure that statelessness is addressed through these efforts?
- 4.** Where individuals or communities are denied access to birth registration due to discriminatory laws, policies and practices, what arguments can be made against them?

Texts and Materials

UN High Commissioner for Refugees (UNHCR), *Good Practices Paper - Action 7:* *Ensuring Birth Registration for the Prevention of Statelessness*

UNHCR 2017, p. 3; 5; 7-8; 9
<<https://www.refworld.org/docid/5a0ac8f94.html>>

Individuals may be at risk of statelessness if they cannot prove that they have links to a State. The lack of birth registration and documents certifying birth can create such a risk. On its own, lack of birth registration does not usually mean that a person is stateless or even at risk of statelessness. However, possession of a birth certificate helps to establish entitlement to nationality and is often a prerequisite for obtaining documentation that proves nationality. In some countries a birth certificate alone is regarded as proof of nationality, particularly where nationality is acquired automatically based on birth in the territory. At the same time, many countries only issue national ID cards at the age of majority. Where this is the case, birth certificates often serve as a temporary proof of nationality when children need to take final exams, graduate, or access healthcare.

Some population groups are at particular risk of statelessness because their situation makes it difficult for them to register births or obtain related documents. They include nomadic and border populations, minorities, refugees, IDPs, and migrants. Abandoned, orphaned, unaccompanied or separated children are especially vulnerable and often lack any documents establishing their identity. In the absence of birth registration documents, persons living in border areas and nomadic populations who cross international borders may find it difficult to establish their entitlements as nationals in either of the States in which they live. Migrants in an irregular situation may be unwilling to approach the authorities to register their children for fear of being identified or deported. Minorities are often denied equal access to rights and services, including access to documentation. Refugees and IDPs can be at risk of statelessness when their documents have been lost, left behind or destroyed during flight. The destruction of State archives and civil registries can also make it difficult to confirm their identity, and they may find it difficult to access civil registration in the countries in which they have found safety. [...]

Birth registration procedures can be complex and lengthy. They usually involve several steps, including a birth notification issued by hospitals (in most countries), the recording of the birth in the State's civil registry, and the issuance of an official birth certificate. Completing these steps usually involves paying fees, which can be an obstacle for many, especially when higher fees or 'fines' are charged for late birth registration. Parents may also fail to register births simply because they lack awareness of its significance or do not understand the procedures. Many only realize the importance of registration when

they enroll their children in school or try to access other State services. In order to register a child, some States require parents to provide their marriage certificate, their own birth certificates, and valid residence permits for both parents.

The documentary requirements imposed by some countries can create insurmountable obstacles to birth registration.¹⁷ Parents with limited access to documentation may find it impossible to register a birth, further entrenching their documentation problems. In some countries, the lack of supporting documents results in incomplete information recorded on the birth certificate, which can make it difficult to establish nationality. UNHCR has partnered with a number of Governments to reduce barriers to registration for refugees. In Lebanon, the Government now accepts the Syrian Family Booklet as proof of parental identity and marital status to register births. In Bosnia and Herzegovina, civil registries now recognize refugee cards as official ID documents for the purpose of birth registration. Physical access to civil registration services can be problematic in remote areas where distance and transportation costs are prohibitive, or where freedom of movement is limited, for example in refugee and IDP camps. Jordan provides an example of how this can be overcome. In other cases, language barriers and illiteracy may hinder people from approaching civil registration authorities or understanding how to complete the necessary procedures.

Discriminatory laws and practices also affect birth registration. People may be prevented from registering births on grounds of gender, ethnicity, race, religion, or for other reasons. In some countries, law or practice requires both the father and mother to be present to register a birth; in others only the most senior male in a household may do so. This increases the risk that children will not be registered if they are born out of wedlock, or born to fathers who are absent, unknown, deceased, stateless themselves, or unwilling to complete the relevant administrative process. Where this is the case, mothers may be reluctant to approach the authorities because births out of wedlock are stigmatized. Regulations and practices that discriminate on grounds of gender can prevent registration and may lead to statelessness. [...]

Strengthening existing civil registration systems is often necessary to make birth registration universally accessible. Countries are doing so through integration of civil registration services into other public sectors, improving access by bringing services closer to the people, and through digitalization. It has been shown that birth registration rates have risen where synergies have been developed with other sectors such as health, education and social security. In the health sector, and particularly in maternal health services, midwives, doctors and birth attendants play a key role in informing parents about the importance of birth registration and associated procedures. Health professionals are also a vital entry point to the registration process since in most countries they are responsible for issuing birth notifications, the first step in the process.

Where civil registration services are unavailable or out of reach due to high transportation costs, poor road infrastructure, poverty or low levels of literacy, it is

¹⁷ South African courts have found that a strict approach to a list of requirements for birth registration is unconstitutional (see *Naki v The Minister*).

important to bring services to the concerned population. In Kenya, UNHCR supports partners to conduct mobile birth registration exercises in areas where stateless communities live, notably Kwale and Kilifi counties. These exercises are planned and conducted in collaboration with the Civil Registration Services department. In Jordan, the Government established dedicated civil registration offices and mobile services in the country's refugee camps, thereby making services directly available to the population at risk.

Many countries have not yet transitioned from paper-based to digital civil registration systems. Digitization offers opportunities to overcome geographic and administrative obstacles to registration through the adoption of new technologies. While privacy risks need to be addressed carefully, digitized birth registration has the potential to strengthen civil registration and statistical systems.

Low levels of awareness in certain communities are an obstacle to birth registration in many countries. Through information campaigns and community-based outreach programmes, UNHCR and its partners are helping governments to raise public awareness of the importance of birth registration and associated procedures. Community and religious leaders play an important role in transmitting information to parents and families and explaining the different steps required. UNHCR's partners also assist individuals to access and complete birth registration procedures. Mass awareness campaigns are often conducted in collaboration with relevant line Ministries. They include broadcasts on national television and radio, distribution of leaflets in local languages, use of visual images to improve take-up, and direct engagement with communities. [...]

Legal and paralegal assistance by UNHCR's NGO partners is making an important difference in the lives of those seeking to obtain birth documentation and establish their nationality. In addition, UNHCR partners with the private sector, development actors, think tanks, faith-based institutions and others.

United Nations Children's Fund (UNICEF),
A Passport to Protection: A Guide to Birth Registration Programming

UNICEF 2013, p. 6; 8; 42; 118
<https://www.unicef.org/protection/files/UNICEF_Birth_Registration_Handbook.pdf>

The impact of the lack of a birth certificate on the individual is becoming ever more evident in the modern world, as identification is required to access an increasingly wide range of services, entitlements and opportunities. For example, in many low-income countries, even in remote rural areas, proof of identity is required for the acquisition

of a mobile phone. The impact of globalization, trade liberalization, economic shocks, war, natural disasters and climate change has led to an acceleration of cross-border population movements worldwide, including mixed migration. The situation of the growing number of persons who have no documented identity or are stateless is serious. [...]

The risks that are faced by children who are not registered are tremendous, and may hinder access to other child rights. UNICEF supports universal birth registration within the context of an overall child protection system. Such an approach recognizes the link between non-registration and the risk of exploitation and abuse; that knowing the age of a child provides protection from child labour, from being arrested and treated as an adult in the justice system, forcible conscription in armed forces and child marriage. A birth certificate can support the traceability of unaccompanied and separated children, promote safe migration and be a vital factor in preventing statelessness. [...]

Marginalized children

Registration rates are generally lower than average for vulnerable children, including: urban slum-dwelling children; children from minority groups, migrant, refugee and IDP populations; children who are stateless, disabled, or orphaned; and children born during or just after wars or natural disasters. [...]

Approximately 230 million children under the age of five are not able to access this right, however, hindering their ability to access protection from violations (e.g. trafficking, prosecution as an adult), and the provision of documents that support their life capacities and participation in state activities (e.g., driving license, passport, voter lists, ID cards). It is very important to know the number of children in a country in planning policy in social sector and other programmes. The registration itself provides two important pieces of information – place of birth and parentage – either of which can prove to be essential for obtaining citizenship and thereby preventing statelessness.

Bronwen Manby, “Legal identity for all” and Childhood Statelessness’
in Institute on Statelessness and Inclusion (ISI),
The World’s Stateless Children

Wolf Legal Publishers 2017, p. 314-316; 319-324; 325
<<http://children.worldsstateless.org/3/childhood-statelessness-and-the-sustainable-development-agenda/legal-identity-for-all-and-childhood-statelessness.html>>

2. Birth registration in the SDGs and the #IBelong campaign

The SDGs and UNHCR's campaign to end statelessness agree on the importance of universal birth registration: "[the continuous, permanent and universal recording within the civil registry of the occurrence and characteristics of birth, in accordance with the national legal requirements](#)". Universal birth registration is already a long-standing objective of UNICEF and other agencies concerned with child welfare. Birth registration is important not only for statistical purposes of planning and monitoring government policy, but also to [assist in child protection](#). The requirement for registration and the availability of a birth certificate [can help to combat trafficking of children, and provides proof of age for criminal justice, immigration and other government systems](#).

Birth registration also features as Action 7 in the ten-point action plan for the #IBelong campaign. Birth registration provides evidence of the key pieces of information—where a person was born and who his/her parents are—needed to establish which nationality a child has been attributed at birth or may have the right to acquire later. The concept of birth registration is well understood, and there are extensive international guidelines on its implementation. The obstacles to universal birth registration are also well understood, as are the steps needed to overcome them. They include both simple failures of administration, and deliberate patterns of discrimination based on factors such as birth out of wedlock, sex or legal status of the parent registering the birth, ethnicity, location of birth, or livelihood of the community from which the child comes. In some countries, rules preventing parents without documents from registering the birth of their children make lack of birth registration a hereditary condition.

The proposed indicator to measure progress towards Target 16.9 is the percentage of children under five whose births have been registered, a statistic already collected in many countries through surveys conducted by [UNICEF](#). Although there are important criticisms—from [those who argue](#) that the indicator should be the percentage of children under one year old, to capture the completeness of current registration levels, and/or the percentage of the entire population, or who emphasise the importance of the issuance of birth certificates as well as the registration of births—the under-five registration rate is now the established indicator for SDG 16.9. There is no indicator proposed for other forms of recognition of legal identity beyond birth registration, nor consensus on what success in achieving the broader target would look like. [...]

4. Legal identity and statelessness

SDG Target 16.9 recognises by its wording that universal birth registration is not a complete solution to the question of legal identity, although it proposes no indicator to measure progress other than the coverage of birth registration among those under five years old. Universal birth registration is equally not a complete solution to the problem of statelessness. Only a few countries provide that a birth certificate is in itself proof of nationality; such a provision in the laws of one country can in any event not

bind another state where a child might be entitled to nationality. In some countries, foreign civil registrations have no legal effect even in relation to proof of parentage or marriage. Conflicts of laws mean that some children cannot acquire the nationality of (one of) their parents, even if all details are recorded.

Neither the SDG target nor the #IBelong action plan mention the recording of other life events in a complete civil registration system; although this may also be critical to assert some rights, including the right to the nationality of a particular state. These events include marriage, where birth in or out of wedlock—often defined as a formally registered marriage—creates different rights for children to acquire nationality; adoption, where a child has been adopted from another country; and death, where registration of the death of a parent may be necessary for an orphan to claim rights. The SDG target also does not have any equivalent to Action 8 in the #IBelong campaign, calling on states to issue nationality documentation to those with entitlement to it.

Moreover, although discriminatory practices and administrative blockages hinder universal access to birth registration in many countries, states are often less likely to place obstacles in the way of birth registration than recognition as a national. For those children who do not have at least one parent officially recognised as a national of the country of birth, the risk of statelessness may be high even if the birth of that child is registered. This can be the case even if the parent and the child are both in principle entitled to recognition of nationality of that state under the law. The risk of statelessness is higher in states where the general rate of documentation has historically been low and where new identification systems are being introduced. But even in states where almost everybody exists on one official register or another, this near-universal confirmation of legal identity does not eliminate statelessness. It is very possible for a person to hold proof of legal identity and even of legal immigration status in a country of residence and at the same time to be stateless.

For example, many [ethnic Russians in the Baltic states are stateless](#)—they hold the nationality neither of their state of residence nor of the Russian Federation—but the vast majority do not lack a legal identity, since they are legal residents where they live, are issued identification documents indicating that status, and indeed are generally entitled to more rights than other foreigners. Similarly, in Lebanon, there is a longstanding population of stateless persons whose ancestors were not included, or were recorded as foreign, in the population register established in the 1920s following the creation of Lebanon at the break-up of the Ottoman Empire. They are not undocumented—they are, paradoxically, registered and given identification cards as ‘unregistered’ (*maktoum al kayd*) or ‘registration under study’ (*kayd al dars*)—and they are recognised as legal residents. However, people with this status have greatly reduced rights in Lebanon compared to full citizens. Although there were efforts to reduce the number of these stateless persons by providing an exceptional [route to naturalisation in the 1990s](#), the number remains high, and increases because Lebanon provides no access to nationality based on birth and residence in the territory, while a Lebanese woman has no right to transmit her nationality to her child in any circumstances. Similar problems exist in

Syria, with serious consequences for those who are now refugees.

By contrast, many millions of people in Asian and African countries lack both birth registration and other proof of legal identity, but only some of them are also stateless. Those who are at risk of statelessness are those who lack documents and in addition fall within a group facing discrimination and exclusion within that society generally: typically, members of certain racial, ethnic or religious groups, children born out of wedlock, orphans, trafficked children, refugees and IDPs, and the descendants of people who have migrated from another country—including those who were forcibly transplanted by the colonial powers before independence.

Hence, not everyone lacking proof of legal identity is stateless; while not everyone who is stateless lacks proof of legal identity. This conundrum is recognised by [UNHCR's guidance](#) that statelessness is a mixed question of fact and law. Determining whether a person is stateless, whatever their existing documentation, may require the exhaustion of all avenues to apply for recognition of nationality by any state to which the person has a connection. The often inaccessible and politicised procedures to resolve these questions have encouraged development agencies wishing to mobilise the power of identification to try to work around official blockages.

5. Digital identity and biometric identification

The World Bank's 2016 [World Development Report \(WDR\)](#), focused on the development benefits from digital technologies, recommends that the best way to achieve the SDG legal identity target is “through digital identity systems, central registries storing personal data in digital form and credentials that rely on digital, rather than physical, mechanisms to authenticate the identity of their holder.” The Bank argues that digital forms of official identity can increase access to both public and private services where civil registration is weak; digital identity systems can also help to reduce some forms of corruption, such as double-dipping for entitlements or ghost workers in public employment. The increased availability of affordable technology to capture biometric details provides new ways to authenticate identity and ensure uniqueness, creating much stronger levels of certainty that the person holding a document is the person to whom it was issued, or removing the need for a document altogether. In high-income countries, new digital identification systems are based on long-standing paper systems of civil registration and other forms of identification. Although the WDR also emphasises the importance of strengthening the “[analog foundations of the digital revolution](#)”, it suggests that low-income countries may leapfrog the paper-based stage, and move straight to digital identification.

One frequently cited example of such leapfrogging is the Indian Aadhaar (“foundation”) programme, established in 2009, which issues a 12-digit unique identity number to any resident of India, after collecting biometric data

and other basic information. As of mid-2016, more than one billion people in India had been issued an Aadhaar number; and there were plans and first steps to issue Aadhaar numbers at the time of registration of birth. The number and linked biometric data are used for the purpose of verifying identity irrespective of nationality or migration status. Indeed, for many situations in which proof of identity is important, legal status is irrelevant: public health and social protection programmes usually aim for complete coverage regardless of the immigration status of the people targeted; while a retailer does not care if the person buying a product is a citizen or not, so long they can be traced to pay the bill. A [World Bank paper](#) concludes that the value of Aadhaar as a form of identity “implies that those who were previously marginalized can now be included in a number of welfare programs.” The World Bank also acknowledges risks with the digital identity agenda, including for privacy and data security, but argues that these can be mitigated. In relation to the rights of children, it identifies one key gap in these new digital systems: where they are without a solid foundation in civil registration, children are usually excluded (even if not in the Aadhaar case), and continue to be unregistered.

An Aadhaar-type programme, however, has another critical weakness in relation to securing legal identity: it says nothing about entitlement to citizenship nor about legal status in the country. It can be argued that this is rather a strength: the programme simply sidesteps the complex and controversial questions about legal status and nationality among the many formerly undocumented residents of India, on the basis that proof of identity is useful in itself both for those holding it and for the authorities. However, this sidestep raises the question of whether Aadhaar registration in fact provides a person with a ‘legal identity’ in the sense understood by the SDGs: although government-issued, it is purely a system of authentication of identity, with no guarantee of ability to enforce rights or access the state system for other purposes. If it is a legal identity, the identity is purely that of ‘resident’, not even ‘legal resident’. In addition, the statistics available on Aadhaar coverage indicate that areas where rates of existing forms of identification are low also have low registration with Aadhaar; there are more new entrants to the system through regular birth registration than there are through the ‘introduction system’ provided for under [Aadhaar](#). Rather than leapfrogging, or creating a new foundation, the system is for the most part built on already existing ‘foundations’. On the other hand, its computerised record of identification and authentication could in due course facilitate resolution of the more complex issues.

There are some overblown claims about the ability of these biometric systems to eliminate doubts over the identification of citizens and foreigners, in contexts where such uncertainties had nothing to do with authentication of the person holding an identity card, and everything to do with law and politics. There is also a risk of creating unnecessary demand for new identification systems, or of rolling out or merging the new systems too quickly, driven by the availability of new technology. Where many databases are linked, but adequate safeguards are not put in place, a person who “existed” on some registers but not others may be excluded from all. The safest approach seems to be to start from the civil registration system, so that digital

legal identity starts from facts established at birth in the analogue world. At the same time, where long struggles over election rigging have resulted in voter registration being entrusted to an independent electoral commission, there are concerns about relying on national identity systems under the control of the executive for that purpose. Privacy and data protection is a concern for such systems everywhere. [...]

6. Legal identity and ending childhood statelessness

The power of birth registration is that it establishes an officially recognised legal identity very shortly after birth. The longer it takes to establish a nationality the more difficult it becomes. Those who are adults before they attempt to prove their origins and nationality may find it impossible to do so; or they may only succeed at great effort and cost. Those vulnerable children who are in situations of difficulty and remain completely undocumented are thus greatly at risk of statelessness. For these children, lack of a nationality may not be their most obvious or urgent problem; but a total lack of documentation means that statelessness is a real risk, and likely to be a more important issue the older they become. Moreover, if “legal identity” beyond birth registration is understood to apply to adults, which is the case for many national identity card systems, children are by definition left excluded.

The focus on birth registration brought by the SDG Target 16.9 is therefore a welcome one. But neither birth registration nor the broader ambition of providing “legal identity for all” fully address the question of statelessness among children—and the adults they become. Even with universal birth registration, many children will be left stateless.

Chapter 6:

Key Challenges 3 -

How Does (forced) Migration Relate to Statelessness?

Statelessness and (forced) migration are intertwined in a complicated nexus. Statelessness can be, and often is, a root cause of (forced) migration. Meanwhile, (forced) migration can lead to situations of statelessness. For a number of reasons, migrant and refugee children face a higher risk of becoming stateless. Statelessness can also create a variety of additional difficulties and risks for these children, including increased risk of human trafficking and immigration detention.

This Chapter includes a number of texts regarding the nexus between forced migration and childhood statelessness, unpacking the main challenges and exploring the frameworks and strategies that may help to offer solutions.

Discussion questions

1. How can displacement cause statelessness and how can statelessness cause displacement?
2. How can we ensure that the right of every displaced child to a nationality is protected?
3. What long-term solutions can be put forward to avoid statelessness and protect every child's right to a nationality in the context of displacement?

Texts and Materials

**Institute on Statelessness and Inclusion (ISI) and
Norwegian Refugee Council (NRC),**
Understanding Statelessness in the Syria Refugee Context

Online Toolkit, ISI and NRC 2016
<<http://syrianationality.org/>>

Nexus with displacement

“We recognize that statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness”.

New York Declaration for Refugees and Migrants
UN General Assembly, September 2016

Not all refugees are stateless and not all stateless persons are refugees. Most stateless persons have never been displaced. However, more than [1.5 million people are both stateless and refugees](#). Stateless persons may also be among the world’s Internally Displaced Persons and many more displaced persons are at risk of statelessness. The nexus between statelessness and displacement exists on several levels:

- [Statelessness can lead to forced displacement](#)
- [People can be at risk of becoming stateless as a result of displacement](#)
- [Being stateless can increase people’s vulnerability in displacement](#)

Statelessness as a cause of displacement

Statelessness is often the result of discrimination and leaves people in an extremely vulnerable position. The denial or deprivation of nationality may be only one component of a larger policy of oppression or even persecution. When stateless populations find themselves subject to systematic human rights violations, they can be forced to flee their country. Often risking their lives – migrating through unlawful and dangerous routes because they lack travel documents – stateless people seek safety and security elsewhere.

In some cases, stateless communities have been directly encouraged to leave their country and, in extreme situations, even forcibly deported by the government. For example, in 1989 an estimated 75,000 black Mauritians were denationalized and a significant number deported across the borders into Senegal and Mali where they lived for years as refugees. In situations of political turmoil, natural disaster or conflict, stateless persons may have less resources and opportunities to fall back on and this

can also make them more prone to becoming displaced, including across international borders.

Refugees at risk of statelessness

The unstable and uncertain circumstances that come along with forced displacement can increase the risk of statelessness – even for those who held a nationality prior to displacement. Refugees may lose their identity documents and be unable to prove the bond with their home country. Being undocumented does not equate to being stateless, but it makes it challenging to prove nationality and increases the risk of statelessness. This is particularly the case in protracted situations of displacement, when it becomes even harder to maintain legal links with the country of origin over time and as new generations grow up in exile.

Children born abroad to refugee parents can be at risk of statelessness, for instance due to conflict of nationality laws between the host country and the country of origin. These children become stateless when parents cannot fulfil the conditions for nationality set out in their country of origin's nationality law (e.g. by producing identity documents, a marriage certificate or registering the child's birth) and the host country does not provide for [a safeguard in their law to ensure that stateless children born on their territory acquire a nationality](#). More on the risk of statelessness, especially for children born in exile, in the Syria refugee context can be found [here](#).

Vulnerabilities of stateless refugees

Being a refugee and stateless can make people more vulnerable to harm and less likely to seek or benefit from support. The conventional humanitarian response may not adequately identify, understand and respond to the uncommon situation of stateless people who are forcibly displaced. This leaves them at increased risk compared to non-stateless refugees. For example:

- Stateless persons may be prevented from seeking refuge in other countries due to lack of documentation or neighbouring States' unwillingness to allow stateless persons to enter
- Stateless persons who are displaced are at increased risk of being detained or forcibly returned due to lack of identity documents
- A person's statelessness may result in greater limitations on freedom of movement and difficulties accessing financial aid or humanitarian assistance because of lack of documentation
- Unlike other refugees, once the fear of persecution ceases, stateless people may not be able to return to their country of origin because they are not nationals (and so do not have an absolute right to enter and remain in that (or any other) country).

Jyothi Kanics, ‘Migration, Forced Displacement and Childhood Statelessness’

in Institute on Statelessness and Inclusion (ISI),
The World’s Stateless Children

Wolf Legal Publishers 2017, p. 210-216; 217-222

[<http://children.worldsstateless.org/3/migration-displacement-and-childhood-statelessness/migration-forced-displacement-and-childhood-statelessness.html>](http://children.worldsstateless.org/3/migration-displacement-and-childhood-statelessness/migration-forced-displacement-and-childhood-statelessness.html)

2.1 Reasons for flight or migration

UNICEF estimates that sixty-five million children are ‘on the move’ around the world fleeing from conflict, poverty and extreme weather. The conditions and developments in children’s community of origin can influence their ability to establish their nationality, especially once they are on the move. Some children may be stateless in their home country, while others may face the risk of statelessness due to lack or loss of documentation as well as separation from family. Children affected by armed conflict often experience the loss of family members and separation from their parents or primary caregivers. Civil war and state succession may lead to ethnic cleansing and denationalisation of some groups. Children who have fled may not even be aware that they have been stripped of their nationality. Other migrant children may think that they have two nationalities because their parents come from two different countries, yet if those communities or countries are in conflict, neither may recognise the child as a national. Furthermore, when parents possess different nationalities, the child may also face challenges when dual nationality is actively restricted by their parents’ home countries. Children born in transit, particularly during sea crossings, may face other challenges to documenting their birth and acquiring a nationality while on the move. Migrant children who have been arbitrarily deprived of their nationality and forced to flee persecution are particularly vulnerable to further violations of children’s rights.

2.2 Problems with birth registration

Legal parentage is said to be ‘the gateway through which many of the rights of children, and obligations to children, flow.’ This is one of the reasons why birth registration has been recognised as a ‘critical first step’ in ensuring the rights of children on the move. As the birth certificate given following registration normally includes proof of parentage as well as place of birth, it is often an essential tool in establishing those important links. In this regard, birth registration is “often essential to the reduction and prevention of statelessness.” However, this does not mean that all children without birth certificates are stateless because most children automatically acquire nationality at birth based on their family links according to the *jus sanguinis* rule. However, for certain categories of children – including asylum seekers, refugees, and migrant children – lack of birth registration may result in statelessness, especially when such documentation is required

in order to prove family relations or place of birth. Worryingly, evidence shows that birth registration rates are generally lower than average for vulnerable and marginalised children, including internally displaced, migrant, and refugee children, as well as children born during or just after wars or natural disasters.

Many migrant children lack birth registration because of weak civil registration systems in their countries of origin as well as discrimination and barriers to registration. This gap in child protection is still a widespread problem in many countries of origin. Migrating without proper documentation, in an irregular manner, children may later face real difficulties in trying to establish a link with their home country. In addition, children born outside their parents' home country in an irregular situation may also encounter barriers in trying to acquire the nationality of their parents, as well as accessing birth registration and nationality in the country of their birth. This is because some States refuse to register the children of non-nationals or may require a period of legal residence in order to do so, which often excludes not only irregular migrant children, but also asylum seekers and refugees who may not meet the requirements.

Furthermore, the attitudes and inaction of local authorities may exclude irregular children from birth registration. Irregular migrant parents may also fear repercussions if they approach the authorities to register their children. Without a birth certificate, such children are likely to lack the evidence that may be necessary if acquisition of nationality is not automatic, and, therefore, are in danger of remaining stateless. Finally, in some cases, there may be no barrier to birth registration, but the information provided on the birth certificate, for example only the name of the mother and not that of the father, may be insufficient for the country of origin to recognise the child as one of its nationals. It is crucial that host countries improve birth registration procedures and related documentation so that children do not fall through such gaps.

2.3 Gender discrimination

Gender discrimination [...] affects women from some of the main countries of origin of asylum seekers and refugees such as Iran, Iraq, Somalia, Sudan, and Syria. In such cases where the child is unable to acquire the father's nationality because the father is stateless, unknown or absent, the child risks remaining stateless if there is no safeguard in place to allow them to acquire the nationality of their country of birth or residence. Furthermore, the child may also be unable to acquire the father's nationality if according to the laws of his country this is not possible when he is unable or unwilling to fulfil the necessary administrative requirements, or if the child is born out of wedlock or born abroad. The persistence of gender discrimination in some countries' nationality laws means that for asylum seeking, refugee, and migrant children, the loss of their father or separation of their family may leave them stateless.

2.4 Lack of safeguards

In line with international law and best practice, States should adopt safeguards in their legislation in order to grant nationality to children born on their territory who would otherwise be stateless. Ideally, such measures will automatically grant nationality or, alternatively, create a non-discretionary application process as soon as possible after birth. [...]

It is also necessary to advocate that safeguards be designed and implemented in order to give special consideration to the situation of asylum-seeking and refugee children. Some States have deliberate policies not to confer nationality to children born to refugees, especially when a parent is unable to confirm their identity. However, when a child does not acquire the nationality of his or her parent automatically, the country of refuge should grant them its nationality in line with Article 1 of the 1961 Convention on the Reduction of Statelessness. For example, this would be warranted in cases where the very nature of refugee status precludes parents from contacting their consular authorities. With regards to the naturalisation of stateless migrant and refugee children who were not born on the territory, there should be a facilitated naturalisation procedure available. While some States still have strict criteria regarding the proof of identity necessary for naturalisation, other States make special accommodations for refugees. [...]

2.6 Return measures

Finally, it is important to consider how forced deportation and expulsion, as well as assisted voluntary return measures, may contribute to violations of migrant children's rights and make it even more difficult for them to prove the necessary link with a country that may enable them to acquire a nationality. Forced deportation and expulsion measures may separate children from their families and place them in a more vulnerable situation. Additionally, in some cases, return procedures have increased vulnerability for children because they were removed without vital documentation, such as their birth certificate, when they had been born abroad outside their parents' country of origin. If unable to register upon return, these children may be treated as non-citizens in their or their parents' country of origin and can face many barriers in accessing education, healthcare and other services.

The checklist on implementing returns in line with children's rights contains a good practice indicator to ensure that all necessary documentation including birth certificate, health and education records is acquired pre-departure. Projects monitoring the effects of return policies on separated and unaccompanied children also identified the possession of a birth certificate to be in the best interests of the child and essential for the child's ability to exercise their rights upon return. Further attention should be given in future monitoring projects of this kind to ensure that children possess not only a birth certificate upon return, but also that safeguards are in place to identify and to

resolve any cases of statelessness.

3. THE IMPACT OF STATELESSNESS ON CHILDREN ON THE MOVE

Statelessness has a significant impact on children and on the realisation of all of their rights. The UN Convention on the Rights of the Child (CRC), which has been ratified by 196 States, takes a holistic approach towards children's rights, which are indivisible and interrelated. Equal importance should be attached to each and every right of the child. Yet, when we review the clusters of the CRC, it is very apparent that stateless 'children on the move' are at risk of serious violations in every category outlined below. [...]

3.2 Civil rights and freedoms: birth registration, identity, nationality and family relations

All children should be registered immediately after birth and have the right to acquire a nationality (Article 7) but many stateless migrant children encounter obstacles with birth registration, as noted above. This means that the child's right to identity, which encompasses name, nationality and family relations, is compromised (Article 8). Without the sense of belonging that identity creates, children and youth grow up socially excluded and often living in poverty. Living in such conditions on the margins of society can [influence](#) some stateless youth to decide against founding a family and having children of their own.

3.3 Violence against Children

Stateless migrant children are often at risk of abuse and exploitation. In particular, [girls may be forced into early marriage](#) including as a means of escaping poverty or attempting to secure a nationality through marriage. Additionally, those who are irregular and stateless are [more vulnerable](#) to arbitrary and lengthy immigration detention especially because their lack of nationality creates a barrier to removal procedures. Immigration detention is [never in the best interests of the child](#) and should be avoided. As [emphasised by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#): "Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development." Detention results in mental health problems and higher rates of suicide and self-harm. Moreover, despite a lack of documentation, some stateless children will be removed in violation of the principle of non-refoulement and, therefore, risk facing persecution, exploitation and abuse.

3.4 Family environment and alternative care

‘Children on the move’, particularly those fleeing conflict and persecution, may become separated from their families. In this context, refugees and stateless persons may not be able to obtain the necessary documentary evidence for the family reunification process. Stateless children often face unsurmountable barriers to family reunification especially when they lack documents to prove their family links and to allow them to travel freely or even to return to their country of birth. At the same time, separated and unaccompanied stateless children are [often denied alternative care or placed in care arrangements that are not equitable](#) and that do not meet the standards offered to children who are nationals.

3.5 Freedom of movement

Stateless migrant children may face severe limitations on their ability to travel and to choose a place of residence. This further limits their opportunities for education, work and leisure. As noted above, it can also infringe on their right to private life and their ability to enjoy their family life.

3.6 Basic health and welfare

Another obvious violation of the [rights of stateless migrant children](#) is the barrier that many face when trying to access healthcare services. Many States require documentation to provide medical treatment and some do not even provide vaccination to stateless children. Additionally, higher medical costs for non-nationals and discrimination prevent stateless children from exercising their right to health. Irregular status or non-national status also often means exclusion from social welfare and child benefits. Stateless migrant children generally have a lower standard of living and most live in poverty on the margins of society. The denial of property rights may further contribute to living in precarious conditions and to intergenerational poverty.

3.7 Education, leisure and cultural activities

All children have the right to education ([CRC Article 28](#)), play, leisure, and cultural activities ([CRC Article 31](#)). However, problems in accessing and continuing education are one of the most frequently reported effects of statelessness. In particular, such obstacles severely limit the opportunity of stateless adolescents to pursue higher education or to benefit from vocational training opportunities. Furthermore, stateless migrant children belonging to ethnic and linguistic minorities may not be able to exercise their cultural rights ([CRC Article 30](#)) and, for example, to study in their native language. Lack of educational opportunities diminish their chances of securing decent job prospects in the future. [Stateless youth express frustration with such circumstances.](#)

[which prevent them from applying their skills and realising their full potential.](#)

3.8 Special protection measures

There is evidence that shows that both [children without birth certificates and stateless children are more vulnerable](#) to sexual exploitation, trafficking, and recruitment into armed forces. Without documentation, stateless children are often denied access to education and livelihood options. Due to social deprivation, they may end up living and working in street situations and [face further protection risks](#). Their marginalisation and lack of prospects to earn a living make them vulnerable to being exploited in the worst forms of child labour. Stateless children rarely receive the protection and support that they deserve including measures that may be necessary for their physical and psychological recovery as well as social reintegration.

Sophie Nonnenmacher and Ryszard Cholewinski, 'The Nexus Between Statelessness and Migration'

in Alice Edwards and Laura van Waas (eds),
Nationality and Statelessness Under International Law

Cambridge University Press 2014, p. 247; 259

Statelessness and migration are closely inter-related. Statelessness is often a consequence and cause of migration: patterns of migration contribute to the creation and prolongation of cases of statelessness while statelessness has a role in driving migration. While this nexus remains relatively understudied, there is increasing evidence linking statelessness and migration as a growing number of people around the world fall into situations of limbo and despair.

In regions of the world with high numbers of stateless persons, crossborder migration occurs irregularly as these individuals generally do not hold identity or travel documents permitting them to cross borders lawfully. Increasingly, migrants may enter another country with an effective nationality but, because of their irregular stay abroad, are stripped of the protection of their nationality. Regardless of the way they entered the destination country, individuals in an irregular situation who cannot prove their nationality may face many human rights violations, including indefinite immigration detention or a prolonged lack of any status resulting in denial of or limitations on access to important economic and social rights, and they may also be unable to return to their original place of residence. [...]

10.4.3 Unaccompanied minors

Unaccompanied minors, including those children who are abandoned, orphaned or separated from their parents or legal guardians, without clear indication of parentage and nationality, are at greater risk of de facto statelessness. Children may be unaccompanied because of separation from their family while seeking asylum across borders, displacement in war zones, abandonment for social or economic reasons, or because of their parents' deportation due to an irregular immigration status. Exploitation by human traffickers also frequently results in children finding themselves in an unaccompanied situation.

In the case of unaccompanied minors, birth registration is important. In the process of separation, registered children can lose documentation, have it destroyed by traffickers, or destroy it themselves to avoid identification. However, depending on the accessibility of registration records and the circumstances of departure, these children are likely to be identified, verified and sent to either a third country or their country of origin. This may not occur in the case of unregistered minors, who do not possess officially documented proof of age, lineage, or nationality, and thus face the possibility of becoming stateless without an identity or familial link. To avoid statelessness among unaccompanied children, some countries, such as Indonesia, Laos and Vietnam, have crafted provisions in their domestic citizenship policies that grant nationality to children born to stateless parents, or of unspecified origin or unknown parentage.

Lucy Hovil, 'Ensuring That Today's Refugees are Not Tomorrow's Stateless: Solutions in a Refugee Context'
in Melanie Khanna and Laura Van Waas (eds),
Solving Statelessness

Wolf Legal Publishers 2016, p. 72-78

2. The interaction between displacement and statelessness

The very existence of statelessness is the result of norms that are embedded in the notion of the State as a primary means of organising inclusion and exclusion within a polity. Yet in the Great Lakes region, the context in which discussions around the nexus between displacement and statelessness takes place is particularly challenging given the turbulent history and evolution of "citizenship" in the region. Concepts around belonging were irrevocably changed with the advent of colonialism, which demarcated State boundaries across the continent that defined a person's relationship to the State and, perhaps more significantly, to a demarcated territory: the movement of people within specific areas now became labelled "cross-border". It represented a defining moment in the development of notions of belonging, as borders defined the limits of

inclusion and exclusion and limited the possibility of fluid forms of allegiance. It defined the jurisdiction of the State, re-defined the parameters of power, and regulated the movement of people. With the creation of national boundaries, anti-colonial struggles were premised on the idea of national belonging within its current configuration, and nationalism as a liberation struggle against colonialism brought with it the identification of nation and State. In the aftermath of such struggles, the repatriation of those who had fled anti-colonial struggles was key in the politics of self-determination that eventually led to African decolonisation and the formation of independent States: the return of refugees represented “an important symbolic legitimisation of independent African sovereignty” and in return became “a symbolic reclaiming of the state, not only by individuals as citizens, but by the nation as political community”.

However, since then many States in Africa have been characterised as much by their failure to build viable shared identities within the new State structures as their success. As Harrington argues, although legal citizenship was established at independence with African constitutions guaranteeing the equality of citizens, “few states conveyed to their people the political rights generally regarded as inherent in citizenship today, such as to vote or to stand for election”. They also did not guarantee the right to public and social services. Consequently, “states had little political or financial incentive to deny individuals citizenship”. Yet in the past two decades, the significance of citizenship has begun to change as a result of growing democratisation, respect for human rights, and pressure on African States to provide basic social services. As a result, citizens, at least in principle, have increasing rights and power. In other words, the opening up of political space and in particular democratisation – although incomplete and imperfect – has introduced new salience to notions of citizenship. If citizens have the right to vote, then deciding who is and is not a citizen can be a critically important strategy for maintaining power through elections. Although increased democratisation and respect for the rights of citizens is a positive development in many respects, it has also fostered more exclusive understandings of citizenship – and opened the door for the creation of statelessness. In other words, by raising the stakes through increasing the quality of citizenship, both the incentive to exclude, and its practical consequences have increased – and, therefore, the possibility of statelessness, as legally defined, has not only been created but is exacerbated.

Another particular aspect of the risk of statelessness in the region is the lack of documentation available to many of the region’s citizens. In 2013, UNICEF estimated that Uganda and Tanzania were among the 10 countries worldwide with a combined number of 12 million children under five unregistered. Although birth registration is not proof of nationality in and of itself, it is critical to establishing the elements necessary to establish citizenship, including both parentage and location of birth. In a context in which the evidentiary elements of citizenship are likely to be unavailable, practical measures and the political and social understandings of administrative officials take on particular importance.

Consequently, the discourse of displacement inevitably highlights and emphasises

national identity – or lack thereof – at all stages in the trajectory of displacement. As a root cause, notions of inclusion and exclusion have often been the cause of the violence that has led to displacement: people have been violently forced from their homes on the basis of their membership of a particular group or as a result of their presence in a specific territory – or both. Whether or not they were legally stateless prior to flight, their exclusion from the polity has often been a key component to their reasons for flight.

The creation of significant numbers of refugees across the region has taken place within this context and inevitably interacts with the complex dynamics of national citizenship. The fundamental premise on which refugee status is configured is that those who are either legally excluded from, or in practice cannot access, the rights of citizenship in their countries of origin as a result of persecution are given a surrogate form of protection – but one that is temporary until such time as they can meaningfully re-assert the bonds of citizenship. But in reality, too often this re-nationalisation does not happen: while the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) enjoins States Parties to facilitate the naturalisation of refugees in their countries “as far as possible” (Article 34), in practice in the Great Lakes region this seldom happens, leaving return as the only viable means to reassert citizenship. Yet return remains elusive for the hundreds of thousands who remain in a protracted situation of displacement for years or even decades, leaving them in a semi-permanent state of emergency. Kenya’s Dadaab refugee camp, which has now been in place for 25 years, provides a stark example.

Once in exile, the rights and protection that should be attached to citizenship are effectively denied to refugees, particularly those who have found themselves in “protracted” situations. Unable to assert citizenship rights in their home country, as evidenced by their inability to return home, yet with little prospect of attaining a new citizenship, tens of thousands have had their lives put on hold. While refugees typically retain their nationality of origin, and therefore are not stateless, the line between a protracted situation of exile and statelessness can be extremely blurred. For instance, although in theory nationality can be passed from parents to children in refugee contexts, children born in exile inevitably move one step further away from their parent’s original citizenship – whether by law (for instance through the loss of documentation, or through laws that render nationality acquired through inheritance of lesser value than that acquired through (*jus soli*), or in practice (for instance through lack of political recognition of their nationality) – leaving them acutely vulnerable to being stateless. For instance, many Burundian refugees born in Tanzania felt unable to return to Burundi as they did not know where their ancestral land was. They will often not have taken positive steps to ensure that their parent’s citizenship is asserted in practice, by ensuring access to appropriate documentation, etc. and critical documents for establishing their nationality, such as their parents’ IDs, may have been destroyed in flight. And yet, throughout the region, citizenship policies exclude them from accessing citizenship automatically on the basis of birth in the territory (*jus soli*). Indeed, throughout the region, only Tanzania allows citizenship on this basis in law, and even

there this legal provision is generally not respected in practice. Their access may be further impeded by a lack of adequate systems in place to register births in situations of displacement, lack of options for naturalisation and other elements that place them at considerable risk of encountering problems when and if they seek to claim citizenship.

Exclusion from the possibility of naturalising can be seen as intimately linked with other refugee policy responses that focus on exclusion, including governments' privileging of repatriation as the only viable solution to the near total exclusion of integration. In a context in which the default position of host governments (and as a result, UNHCR) has often been to house refugees in camps and settlements, while many have technically "enjoyed" international protection under refugee law, in reality the conditions of their exile – constrained by lack of freedom of movement and exclusion from meaningful integration, among other issues – has been characterised by marginalisation from meaningful engagement with the State. UNHCR's new 'Alternatives to Camps' policy, discussed below, offers a significant opportunity to challenge the status quo in this regard. While host countries are likely to be reluctant to grant refugees citizenship under any circumstances, this trepidation is only likely to be increased in circumstances in which *de facto* integration has been discouraged by encampment. The reality is that many refugees remain in exile indefinitely and lack of access to naturalisation means that they are effectively left with no State to assert their rights.

Finally, linkages between forced migration and statelessness are particularly pertinent in discussions on "durable solutions" – which, ultimately, are supposed to be about the (re)securing of citizenship ties either through returning "home" or through obtaining a new nationality. Repatriation has been aggressively pursued as the optimal outcome in any situation of displacement, to the neglect of both resettlement and local integration – just as those who are stateless are often told to look elsewhere for their nationality. All too often refugees have, in practice, become pawns in inter-State relationships through tripartite agreements that have had a negative, rather than the intended positive, impact on the basic rights of refugees, and those who are displaced have, at times, been forced to return "home" even though the circumstances that made them flee have not changed or have not changed sufficiently. For instance, in July 2010 Ugandan police, in conjunction with staff of the Office of the Prime Minister's Directorate of Refugees, carried out an operation to round up and remove approximately 1,700 Rwandan refugees living in Nakivale and Kyaka II refugee camps and return them to Rwanda.

The international community's emphasis on return to the exclusion of local integration and resettlement is perhaps the strongest reason why refugees – or their descendants – might eventually become stateless. The end of the Cold War was thought to herald a time when everyone could return home, leading High Commissioner for Refugees Ogata to call in November 1991 for a "year of voluntary repatriation". Yet such optimism was short lived as the conflicts of the 1990s showed sustainable re-establishment after repatriation to be impossible in many cases: the persistence and nature of these conflicts – which were characteristically intra-State rather than inter-State – meant that the notion and durability of "repatriation" became increasingly

questionable. As a result of the failures of repatriation and reintegration and the lack of alternatives being offered, many refugees in protracted situations have fallen off the official radar and sought to “invisibly” integrate without the backing of a legitimate national identity as a crucial form of protection. For instance, Burundian refugees who had left the settlements found that they were not included in the naturalisation scheme as a result; and those who live in cities without official permission often encounter greater challenges in accessing protection than those who remain on the official radar.

As a result, there is a possibility that tens of thousands of refugees – and in particular, their children – will eventually become stateless. Of course, the point at which a refugee should or could be defined as stateless is hard to ascertain. As Manby states, there is often no clear line between those who have a nationality and those who are stateless, “and it may only gradually become apparent that a person is, in fact, ‘not considered as a national by any State under the operation of its law’ (the official international law definition)”. Even where statelessness per se does not occur, individuals may find that they are unable to access the protection that they need, including tools used by nationals to access travel documents (in particular if they are unable to access protection from the only State that they have ever known). Indeed, it may be awkward to even speak about “return” in the case of individuals who, though considered to be “refugees” may have been born and lived their entire lives in the host country. Such individuals may find it hard to access rights in the country of their supposed nationality, because they are unable to speak the national language or because they are unable to assert belonging at the local level, critical to accessing land and other resources. Indeed, in the case of Rwanda and the tripartite agreement with the Democratic Republic of the Congo, the very right to repatriate under facilitated return itself was in question for those who were seen as not legitimately Congolese. However, it is certainly clear that if appropriate preventative action is not taken to resolve prolonged exile, over time tens of thousands of former refugees are likely to become stateless.

PART 2:

International and Regional Protection Standards and Instruments

In **Part 2**, we look at the current legal framework, mechanisms and instruments which can be drawn on to address childhood statelessness and protect the rights of stateless children across the globe.

There are six chapters in Part 2. **Chapter 7: The Convention on the rights of the Child** looks at the CRC and the various standards contained therein. **Chapter 8: The UN Statelessness Conventions** looks at the 1954 and 1961 Statelessness Conventions. **Chapter 9: Other UN and Human Rights Treaty Body Standards** provides an overview of how the right to a nationality is protected through other human rights treaties and UN human rights mechanisms, including the ICCPR, CERD and CEDAW. **Chapter 10: Regional Standards** looks at applicable African, Inter-American, European, MENA regional standards and jurisprudence. **Chapter 11: The Sustainable Development Agenda** looks at the way the UN Sustainable Development Goals can be utilised to address childhood statelessness. Finally, **Chapter 12: Standards related to Migrants, Displaced Children and Refugees** looks at the two UN Refugee Compacts.

The Child's Right to a Nationality: Global and regional standards



Child's right to acquire a nationality and safeguards against statelessness



Convention on the Rights of the Child (Art. 2, 3, 7, 8)



1961 Convention on the Reduction of Statelessness (Art. 1)



International Covenant on Civil and Political Rights (Art. 24.3)

Prohibition of discrimination in nationality laws



Convention on Elimination of all forms of Discrimination Against Women (Art. 9)



Convention on the Elimination of Racial Discrimination (Art. 5.d.iii)



Convention on the Rights of Persons with Disabilities (Art. 18.2)



Protecting the right to nationality and the rights of stateless migrants



1954 Convention relating to the Status of Stateless Persons



Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Art. 29)



Global Compact for Safe, Orderly and Regular Migration



Global Compact on Refugees

AMERICAS



American Convention on Human Rights



EUROPE



European Convention on Human Rights



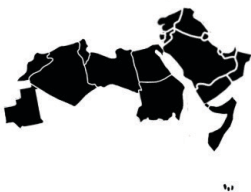
European Convention on Nationality



The Convention on the Avoidance of Statelessness in relation to State Succession



MIDDLE EAST AND NORTH AFRICA



Arab Charter on Human Rights



Covent on the Rights of the Child in Islam

AFRICA



African Charter on the Rights and Welfare of the Child



African Charter on Human and Peoples' Rights



Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa



Draft Protocol to the African Charter on Human and Peoples' Rights to the Specific Aspects of the Right to a Nationality and the Eradication of Staelessness in Africa*



ASIA AND THE PACIFIC



Association of South East Asian Nations Human Rights Declaration



Legally binding



Legally non binding



Direct mention of the right to nationality

*Pending adoption

Chapter 7:

The Convention on the Rights of the Child

The **Convention on the Rights of the Child** (CRC), with **196 States Parties**, is the most widely ratified international human rights treaty. It sets out the civil, political, economic, social and cultural rights of children who are defined in article 1 as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

The **Committee on the Rights of the Child** is the body of 18 independent experts that monitors the implementation of the CRC and its Optional Protocols by States Parties. Under this mandate, the Committee issues authoritative guidance on the content of the CRC provisions through its “General Comments” on particular articles of the Convention or thematic issues. The Committee also organises “Days of General Discussion” on a biennial basis to further the understanding of specific child rights issues. Moreover, since the Third Optional Protocol on a communications procedure (OPIC) entered into force in April 2014, the Committee is able to consider individual complaints alleging violations of the Convention.

According to the Committee, the rights set out in the CRC are to be enjoyed by all children “irrespective of their nationality, immigration status or statelessness” (**General Comment 6**). Nevertheless, nationality plays a crucial part in a child’s life. Article 7 of the CRC is clear and unambiguous in its affirmation of every child’s right to acquire a nationality and of every state’s obligation to protect children from statelessness. Indeed, nationality is an important aspect of a child’s identity and serves as a ‘gateway’ right, facilitating children’s access to and enjoyment of other human rights. Statelessness is never in a child’s best interests and international law protects the right of every child to acquire a nationality.

This Chapter provides an overview and analysis of Article 7 of the CRC as well as the Guiding Principles of the Convention (Articles 2, 3, 6 and 12) in relation to the child’s right to a nationality, safeguarding against childhood statelessness and the rights of stateless children.

Discussion questions

- 1.** What are the key provisions of the CRC which protect every child's right to acquire a nationality?
- 2.** What are the Guiding Principles of the CRC and how does each Guiding Principle complement and strengthen the application of article 7 CRC?
- 3.** How has the Committee on the Rights of the Child interpreted the scope and application of Article 7 CRC, and how has this informed our understanding of every child's right to acquire a nationality?
- 4.** How does the CRC protect children from statelessness and what specific obligation does it set out in this regard?

Texts and Materials

Maria Jose Recalde Vela,

Interview with Benyam Dawit Mezmur, Chairperson of the United Nations Committee on the Rights of the Child

2017

<http://children.worldstateless.org/3/the-right-of-every-child-to-a-nationality/an-interview-with-benyam-dawit-mezmur-chairperson-of-the-united-nations-committee-on-the-rights-of-the-child.html>

3. What has been the Committee on the Rights of the Child's approach to protecting and promoting every child's right to a nationality?

There was a very interesting [recent publication by the Institute on Statelessness and Inclusion](#) which gave us very a detailed insight into some of the ways in which the CRC has dealt with the issue of statelessness. One of the conclusions that actually came out from that report is the fact that over the course of about 22 years —it explored the first Committee recommendations issued in 1993, until some of the most recent recommendations of 2015 — is that we have made close to 120 recommendations. The recommendations have dealt with nine different issues or themes related to children's right to nationality. Gender equality is one of them, birth registration, foundlings, and non-discrimination, among others. Furthermore, the Committee has also flagged issues related to international adoption and the issues of remedies. Our recommendations in relation to loss and deprivation of nationality also related to article 8 of the CRC, which specifically addresses the right of the child to preserve his/her identity. These are all areas in which we have tried to engage states.

In terms of substance, the Committee has, for instance, called for the ratification of the two Statelessness Conventions. These continue to be critical instruments and we systematically recommend ratification. We have also called for the withdrawal of reservations that states have made in relation to article 7 of the CRC and article 9 of the CEDAW. In fact, because the CEDAW Committee often gives recommendations to states to withdraw reservations to article 9, we have often reinforced those recommendations and we have often used those recommendations from the CEDAW Committee to make the argument that they should not only withdraw reservations to article 7 CRC, but, where applicable, also to article 9 CEDAW. One of the other issues that I think we have tried to engage states on is the prevention of statelessness among children born on their territory. In this regard, we have often recognised that states could not accept an obligation to grant nationality to every child born on their territory, regardless of the circumstances. This is one of the reasons why during discussions on the nationality provision in the ICCPR, states said 'we cannot give the right to nationality; we actually have to say the right to acquire a nationality'. However, we have to understand that in

circumstances where the child would otherwise be stateless, I think that the prevention of childhood statelessness becomes a very critical issue. We are not prescribing universal *jus soli*, but we are actually saying that in instances where a child would otherwise be stateless, there must be a safeguard in place within legislation and practice.

Our engagement with the issue of children's right to nationality has not only increased in terms of numbers over the years, but I think that the quality of the engagement has also improved. A whole range of stakeholders — from members of the secretariat of the UN High Commissioner for Human Rights, the members of the Committee, civil society organisations, UN Agencies particularly UNHCR, and other stakeholders including children themselves — can take credit, not only for the number of recommendations but also for the quality of recommendations and the extent to which the Committee continues to cover the various important themes that I mentioned earlier. I also recall occasions during the child participation process when civil society organizations brought children with them to the pre-sessions and issues of nationality were raised by some of the children, which I think is very useful. With the advancement of technology, for instance in-vitro fertilization and the use of surrogate mothers, I believe there are few more emerging themes within the issue of nationality that will naturally grow in the conversations with stakeholders and within the Committee.

At this juncture I want to point out a couple of methodology issues related to our engagement. We usually say that as the Committee, our engagement with states is as good as the information base that we have in front of us. You have to remember that during the constructive dialogue with a state time is very limited: a maximum of six hours of dialogue with a state party. The questions that are raised range from article 1 to article 41. Therefore, the issue of children's right to nationality has to contend with a whole range of other issues that will also be important. This means that the more precise, the more nuanced, and the more up-to-date the information the Committee has in relation to the right to nationality, the better the engagement with the state. I found it especially useful when there are specific court decisions that have covered legislation or practice on nationality, to be provided with this information so we can have a nuanced conversation with the state. I also personally found it very useful when the relevant provision(s) of a state's law are actually provided word by word, so that the engagement with the state is more informed. Therefore, there are instances where issues of nationality are actually very important, but as a Committee, we have been unable to engage with the state party with the necessary vigour and depth. In part, this is because we do not have adequate information before we engage with the state-party. In those instances where we might try to engage with the state party without the necessary details, we might run the risk of appearing to be out of our depth. So a detailed information base on the situation of nationality in a state is crucial for a nuanced dialogue with a state as well as to draft focussed, and precise recommendations.

I also want to mention the importance of 'making the circle of stakeholders bigger'. When alternative reports are submitted to the Committee—which are often submitted

by coalitions of civil society organizations—it is important to ensure that the issue of statelessness is given the attention it deserves in the report. We continue to benefit from the submission of separate reports focusing on nationality, and I am aware that the Institute on Statelessness and Inclusion has been doing this for more than a year, and a number of other organisations—including the confidential submissions by UN Agencies, in particular UNHCR—highlight the issue of statelessness. One cannot over-emphasise the importance of these submissions; they allow the Committee to engage with the state party in a more informed and nuanced manner. One of the areas where I believe there needs to be better engagement is the extent to which National Human Rights Institutions engage with the Committee, but also the extent to which various civil society organizations working on the issue of statelessness engage with NHRIs. The issue of statelessness should become an issue that the NHRIs deal within their alternative submissions, in their engagement with the government, and in their engagement with various stakeholders.

Finally, I think that we need to be aware that in a number of countries we have engaged with, we have come across instances where the administrative system in place for the acquisition of nationality creates so many unnecessary obstacles for parents and children. They must appear before a special committee, and an overseeing committee, and another committee, and in a number of instances, these special committees distribute rights in an arbitrary manner. They are not always just and not always legal, and are sometimes biased or based on individual connections, and there is uncertainty within these processes. In a number of instances, we have also found these processes to be inaccessible. They are often not accessible and understandable to adults let alone children. The more inaccessible and the less understandable these processes are, the more prone they are to corrupt practices. I think that, moving forward, this is one of the areas where we can improve engagement, not only the Committee but also those who provide information to the Committee, so that the administrative processes that states have are scrutinised closely from a variety of child rights angles.

Institute on Statelessness and Inclusion (ISI),
*Addressing the Right to a Nationality Through
the Convention on the Rights of the Child: A Toolkit for Civil Society*

ISI 2016, p. 7-10
<https://files.institutesi.org/CRC_Toolkit_Final.pdf>

Why is the Convention on the Rights of the Child so important?

While the CRC is an autonomous instrument, it sits within the broader body of international and regional standards and mechanisms relating to children's right to a nationality. As such, and particularly given the almost universal ratification of the

Convention, the norms and principles contained within the CRC inform the interpretation of other human rights standards and the recommendations made by their monitoring mechanisms. Consequently, by further clarifying and expanding the normative content on the right of every child to acquire a nationality, the Committee can positively influence the work of other mechanisms. In the same vein, the work of the Committee in interpreting Article 7 CRC may equally draw on the broader normative development on the right to nationality and avoidance of childhood statelessness.

The right to a nationality is reaffirmed in Article 7 CRC, which pays particular attention to the avoidance of childhood statelessness, setting out that:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, **in particular where the child would otherwise be stateless.**

Moreover, in accordance with Article 8 CRC, “*States Parties undertake to respect the right of the child to preserve his or her identity, including nationality [...] without unlawful interference*” and “*[w]here a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*” The article ensures that a child’s right to preserve their identity, including their nationality, name and family relations, must be protected. Not only should these be protected, but where a child has not obtained, or has had any aspect of their identity taken away from them, the State must make efforts to remedy this.

What key principles inform the right of every child to a nationality?

In interpreting the content of the rights protected under the CRC, the Committee gives particular consideration to the General or Guiding Principles that inform the implementation of all rights in the convention. The **General Principles** that the Committee has identified as cross-cutting in the CRC are:

- Non-discrimination (Article 2)
- Best interests of the child (Article 3)
- Right to life, survival and development (Article 6)
- Respect for the views of the child (Article 12)

All of these General Principles are relevant to the problem of childhood statelessness and the protection of children’s right to a nationality. However, the principle of non-discrimination has had a particularly strong influence in informing the interpretation of States Parties’ obligations. Indeed, a number of relevant recommendations on the child’s right to a nationality have been made in respect of improving the application of

Article 2, rather than Article 7, of the CRC.

The principle of **non-discrimination** dictates that children have the right to acquire a nationality, irrespective of the child's or his or her parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. "*Where a child is precluded from obtaining a nationality on discriminatory grounds, this amounts to arbitrary deprivation of nationality*". Article 9(2) of the Convention on the Elimination of All Forms of Discrimination Against Women requires States to grant women equal rights with men with respect to transmitting their nationality to their children, echoing the obligation contained in Articles 2 and 7 of the CRC. In fact, it is important to note that the CEDAW requires that all women have equal nationality rights with men in relation to acquisition, changing, retention and conferral of nationality to their children and spouses.

The **principle of the best interests of the child**, which gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere, has also been explicitly referenced by the CRC Committee within recommendations on nationality. This principle must be respected by States in legislative and administrative acts in the area of nationality, including in the implementation of safeguards for the avoidance of statelessness among children. This principle and its influence on the scope and content of children's right to acquire a nationality has received only limited attention by the Committee to date, especially as compared to the central role it has played in relevant regional jurisprudence and in the ACERWC General Comment on children's right to a name and nationality under Article 6 of the African Charter on the Rights and Welfare of the Child. As the African Committee of Experts on the Rights and Welfare of the Child has explained, being stateless as a child is generally an antithesis to the best interests of children. The importance of this principle is underscored in the *Mennesson v. France* decision (on nationality in the context of surrogacy) in which the Court ruled that even though the children's parents had broken the law (as surrogacy is prohibited under French legislation), causing the denial of certain elements of the children's identity, "*a serious question arises as to the compatibility of that situation with the child's best interests, respect for which must guide any decision in their regard*".

The application of this principle implies, among other things, that a child must acquire a nationality at birth or as soon as possible after birth, children must not be left stateless for an extended period of time, nor with their nationality status undetermined.

The **right to life, survival and development** aims to ensure that all children have opportunities to develop fully in all areas of life, i.e. physical, mental, spiritual, moral, psychological and social development. This is confirmed by the Committee's statement that it expects States Parties to interpret "*development*" in its broadest sense as a holistic concept. In its first General Comment the Committee on the Rights of Persons with Disabilities noted the importance of birth registration in protecting the right to life of children with disabilities, noting that lack of birth registration "*not only denies them citizenship, but often also denies them access to*

health care and education, and can even lead to their death. Since there is no official record of their existence, their death may occur with relative impunity.” This is, of course, not only true of children with disabilities; any child whose birth is not registered is placed in a more vulnerable position. Furthermore, birth registration and thus official documentation of the existence of the child will help the State to fulfil its obligations in relation to the development of the child. The right to life, survival and development also relates to the right of the child to acquire a nationality and the importance of ensuring that the child acquires a nationality as soon as possible after birth. While in theory human rights and the provisions of the CRC guarantee rights to all children, and “there is no legal basis upon which States that have arbitrarily deprived a child of his or her nationality can justify the denial of other human rights to the child on grounds of his or her resulting statelessness”, in practice access to rights and the services needed for the ‘physical, mental, spiritual, moral, psychological and social development’ may be limited or more difficult to access for non-nationals, including stateless children. More generally, stateless or undocumented children may find themselves living in a precarious situation which in itself can impede their full development.

Respect for the views of the child (or the right to be heard) entails a child’s right to express his or her views freely in “*all matters affecting the child*”, and for those views to be given due weight in accordance with the age and maturity of the child. This principle reflects the position of a child as an active participant in the promotion, protection and monitoring of his or her rights. The Committee stresses that this principle applies equally to all measures adopted by States to implement the CRC, thus, also measures regarding children’s right to a nationality. The right to be heard is directly relevant to the child’s right to a remedy, since this depends on the child’s ability to access procedures for remedying the violation. One area in which this could be particularly relevant to the right to nationality is situations where a child may have the possibility of acquiring multiple nationalities at birth, for instance if the child’s parents are of different nationalities and could each transmit their nationality to the child. The principle that the views of the child should be taken into consideration would suggest that in this situation the child should be allowed to hold both nationalities, or if assigned one nationality, have the option of reclaiming the other nationality once they are of an age to express an opinion on the matter. This provision, considered with the right of the child to acquire a nationality, might also suggest that provisions on naturalisation need to take into consideration the rights of the child. In particular rules which prevent children (particularly stateless children) applying for naturalisation in their own right or do not give them an opportunity to be heard if the naturalisation of a parent would affect their status might be problematic. Furthermore, the Committee underlines the importance for States to respect this principle when dealing with stateless children outside their country of origin to ensure that such particularly vulnerable children are included in decision-making processes within the territories where they reside. This would also apply, for example, to decisions relating to the deportation of stateless children or members of their families. This principle is also of relevance to civil society actors reporting to the CRC as a reminder of the importance of ensuring that the views of children are taken into consideration in reporting and developing

recommendations and where possible supporting children to produce their own reports and engage directly in the process.

It must be noted that there remains scope for the Committee to further elucidate the significance and impact of the General Principles of the CRC on the interpretation and application of Article 7 of the Convention.

Institute on Statelessness and Inclusion (ISI), *Statelessness Essentials: The Convention on the Rights of the Child*

ISI 2018, p. 9; 11-12; 14
<<https://files.institutesi.org/statelessness-and-CRC.pdf>>

The CRC was adopted in 1989, recognising that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection”. The right to a nationality (Art. 7 CRC), holds an important place in the convention because nationality is, in practice, key to unlocking access to other fundamental rights set out in the CRC. It is therefore often referred to as an “enabler” right.

Article 8 CRC ensures that a child’s right to preserve their identity, including their nationality, name and family relations, must be protected. Not only should these be protected, but where a child has not obtained, or has had any aspect of their identity taken away from them, the state must make efforts to remedy this and help them re-establish their identity. [...]

Article 7 CRC

1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and, as far as possible, the right to know and be cared for by his parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligation under the relevant international instruments in this field, **in particular where the child would otherwise be stateless.**

CRC Committee

The CRC Committee is a body of 18 independent experts that monitors implementation of the CRC and its optional protocols. Under this mandate, it issues authoritative guidance on the content of CRC provisions through the publication of “General Comments” on particular articles or thematic issues. The Committee also organises “Days of General Discussion”, on a biennial basis, to further the understanding of specific child rights issues. With the entry into force of the Third Optional Protocol on a communications procedure (OPIC), in April 2014, the Committee is also able to consider individual complaints alleging violations of the Convention.

The 3 themes on which the Committee has adopted most recommendations are:

1. To end gender discrimination in nationality law

The Committee recognises that gender discrimination in nationality remains a serious concern worldwide and has clarified in its recommendations to states that they have the obligation under articles 2 and 7 CRC to ensure the equal rights for men and women to pass their nationality to their children. Children should have equal opportunity to access their mother or father's nationality, regardless of whether they are born in or out of wedlock, the nationality of the other parent, or the place of birth of the child.

2. To grant nationality to stateless children born in the territory

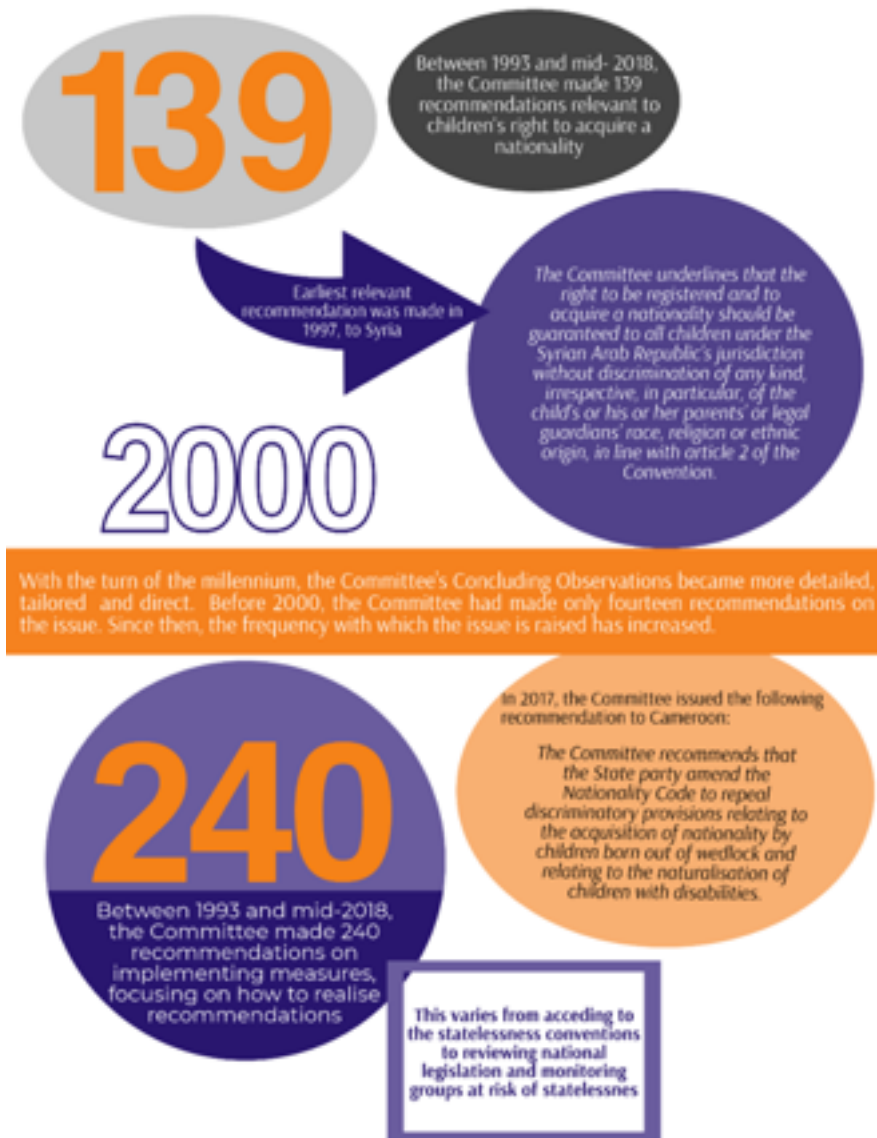
The CRC Committee has clarified that article 7 CRC requires states to grant nationality to all children born on their territory if they would otherwise be stateless, regardless of:

- The parents' legal status, including residence status
- The parents' sex, race, religion or ethnicity, social origin or status
- The parents' past opinions or activities
- The child's belonging to a(n) (ethnic) minority group

This interpretation of how to ensure the right of a child to nationality is one of the most effective ways to prevent childhood statelessness, whether it results from inheritance of statelessness or arises from a conflict of nationality laws.

3. To register all births, to help protect the right to nationality

The CRC Committee acknowledges that not being registered at birth can prevent access to a nationality and lead to statelessness. Birth registration provides official evidence of key facts relating to a child's birth, including birthplace and parentage, without which the child may face difficulties proving his/her entitlement to nationality under the law and may not be considered as a national by the state. Importantly, the right to birth registration is especially stressed for specific disadvantaged groups that are more likely to be affected by statelessness such as, refugee and asylum-seeking children, ethnic minority children, children born out of wedlock, and children born abroad.



Chapter 8:

The UN Statelessness Conventions

The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the two UN Conventions dedicated to protecting stateless persons and reducing statelessness respectively. Of the two conventions, the 1961 Convention is particularly important, as it contains a strong safeguard against childhood statelessness.

This chapter includes key texts, which provide an overview of the 1961 Convention and, to a lesser degree, the 1954 Convention, and how they can be utilised to address childhood statelessness.

Discussion questions

1. What is the approach taken by the 1954 Convention to identifying and protecting stateless persons?
2. Does the 1954 Convention provide stateless persons with greater protection than found under international human rights law?
3. What safeguards does the 1961 Convention provide against statelessness?
4. What value does the 1961 Convention add to the CRC which protects every child's right to acquire a nationality?

Texts and Materials

UN General Assembly, *Convention Relating to the Status of Stateless Persons,*

28 September 1954 (United Nations, Treaty Series, vol. 360, p.117), p. 2
<<https://www.refworld.org/docid/3ac6b3840.html>>

The 1954 Convention's most significant contribution to international law is its definition of a "stateless person" as someone "who is not considered as a national by any State under operation of its law." For those who qualify as stateless persons, the Convention provides important minimum standards of treatment. It requires that stateless persons have the same rights as citizens with respect to freedom of religion and education of their children. For a number of other rights, such as the right of association, the right to employment and to housing, it provides that stateless persons are to enjoy, at a minimum, the same treatment as other non-nationals.

UN General Assembly, *Convention on the Reduction of Statelessness,*

30 August 1961 (United Nations, Treaty Series, vol. 989, p. 175), p. 1
<<https://www.refworld.org/docid/3ac6b39620.html>>

The Convention on the Reduction of Statelessness was adopted on 30 August 1961 and entered into force on 13 December 1975. It complements the 1954 Convention relating to the Status of Stateless Persons and was the result of over a decade of international negotiations on how to avoid the incidence of statelessness. Together, these two treaties form the foundation of the international legal framework to address statelessness, a phenomenon which continues to adversely affect the lives of millions of people around the world. The 1961 Convention is the leading international instrument that sets rules for the conferral and non-withdrawal of citizenship to prevent cases of statelessness from arising. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to article 15 of the Universal Declaration of Human Rights which recognizes that "everyone has the right to a nationality." Underlying the 1961 Convention is the notion that while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided. By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness over time. The Convention seeks to balance the rights of individuals with the interests of States by setting out general rules for the prevention

of statelessness, and simultaneously allowing some exceptions to those rules. The 1961 as favourable as possible' and some demand the same treatment as nationals. There non-nationals. However, most of the provisions ask contracting states to offer 'treatment Convention establishes safeguards against statelessness in several different contexts. A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless.

Laura van Waas, 'The UN Statelessness Conventions'
in Alice Edwards and Laura van Waas (eds),
Nationality and Statelessness Under International Law

Cambridge University Press 2014, p. 72; 73-74

3.2.1 Protecting stateless people: the approach of the 1954 Convention

[...] What underlies the stateless person's 'unprotected' status and what renders him or her in need of international protection, is simply the absence of a nationality. It is neither relevant how the individual came to be without nationality nor where the person subsequently finds him or herself. Once stateless – and bar some limited exclusion clauses – a person is entitled to the benefits of the 1954 Convention. [...]

The benefits accruing to the status of 'stateless person' under the 1954 Convention come in the form of a set of civil, economic, social and cultural rights for which a minimum standard of treatment is guaranteed. The topics covered are the same as those dealt with in the Refugee Convention, upon which this instrument was modelled. They are: religious freedom, access to courts, (moveable, immoveable and intellectual) property, education, employment and labour rights, freedom of association, social security, housing, rationing, free movement and legal personhood. Significantly, although the 1954 Convention does not require states parties to grant their nationality to stateless persons, it does call on states to facilitate the naturalization of stateless people, with a view to helping them to resolve their situation by acquiring a nationality as quickly and easily as possible.

The actual standard of treatment to be enjoyed by a stateless person differs from one right to another, again mimicking the Refugee Convention in this regard. The base level of rights enjoyment is that 'accorded to aliens generally in the same circumstances' and effectively amounts to a non-discrimination clause for stateless persons vis- a -vis other non-nationals. However, most of the provisions ask contracting states to offer 'treatment as favourable as possible' and some demand the same treatment as nationals. There are also a number of absolute rights, to be accorded to stateless people regardless of whether these are available for the country's own nationals. The 1954 Convention also

copied another technique of the Refugee Convention: extending these benefits of the convention on a gradual scale, according to the degree of attachment between the person and the state. Thus, only a few of the rights housed in the 1954 Convention can immediately be invoked by anyone within a state's jurisdiction who satisfies the definition of a stateless person. Many of the entitlements are only offered to those who are lawfully present, lawfully staying or even habitually resident in the territory of the contracting state.

The prescription of different standards of treatment, to be enjoyed in accordance with different levels of attachment to the state, creates a complex picture in terms of the exact benefits stateless people are entitled to enjoy under the 1954 Convention.

UN High Commissioner for Refugees (UNHCR),
Preventing and Reducing Statelessness:
The 1961 Convention on the Reduction of Statelessness

UNHCR, 2014, p. 2-5
<<https://www.refworld.org/docid/4cad866e2.html>>

Why is the 1961 Convention relevant today?

Although it has long been understood that statelessness should be avoided and that this goal can only be achieved through international cooperation, many States have yet to take action to ensure that everyone enjoys the right to a nationality. Due to the differing approaches taken by States with regard to the acquisition and loss of nationality, some individuals continue to “fall through the cracks” and become stateless. Common rules are therefore essential to address such gaps. The 1961 Convention is the only universal instrument that elaborates clear, detailed and concrete safeguards to ensure a fair and appropriate response to the threat of statelessness. Accession to the 1961 Convention equips States to avoid and resolve nationality-related disputes and mobilize international support to adequately deal with the prevention and reduction of statelessness. A higher number of States Parties will also help to improve international relations and stability by consolidating a system of common rules.

How the 1961 Convention helps to avoid statelessness

WHEN DOES THE 1961 CONVENTION APPLY? - The 1961 Convention sets out rules for the conferral or non-withdrawal of nationality only where the person in question would be left stateless. In other words, the provisions of the 1961 Convention offer carefully detailed safeguards against statelessness that should be implemented through a State's nationality law, without specifying any further parameters of that law.

Beyond these few, simple safeguards, States are free to elaborate the content of their nationality legislation. However, these rules must be consistent with other international standards relating to nationality.

HOW CAN THE 1961 CONVENTION ASSIST STATES IN REDUCING STATELESSNESS? - By applying the safeguards elaborated in the 1961 Convention wherever a person would be left stateless, States can prevent new cases of statelessness from arising. The 1961 Convention's provisions are, however, equally relevant to the task of reducing statelessness. It does this in two ways. First, prevention of statelessness leads to a reduction of statelessness over time. Second, when bringing their domestic legislation into line with the safeguards detailed in the 1961 Convention in order to prevent future statelessness, States are encouraged to also use this opportunity to reduce statelessness. For example, States may apply newly introduced safeguards retroactively and accordingly allow for acquisition of nationality by stateless people.

WHAT DOES THE 1961 CONVENTION ASK STATES TO DO? - There are four main areas in which the 1961 Convention on the Reduction of Statelessness provides concrete and detailed safeguards to be implemented by States in order to prevent and reduce statelessness. UNHCR can offer technical support to help States ensure that these safeguards are reflected in their nationality legislation and practice.

- *Measures to avoid statelessness among children*

Articles 1 to 4 principally concern the acquisition of nationality by children. States shall grant their nationality to children who would otherwise be stateless and have ties with them through either birth in the territory or descent. As a result, where children are born in the territory but acquire the nationality of a foreign parent, there is no obligation to grant nationality. Nationality shall either be granted at birth, by operation of law, or upon application. The 1961 Convention permits States to make the conferral of nationality subject to certain conditions, such as habitual residence for a certain period of time. Under Article 2, States shall grant nationality to foundlings (children found on the territory).

- *Measures to avoid statelessness due to loss or renunciation of nationality*

Articles 5 to 7 prevent statelessness in later life by requiring prior possession or assurance of acquiring another nationality before a nationality can be lost or renounced. Two exceptions to this rule are provided for: States may withdraw nationality from naturalized persons who subsequently take up long-term residence abroad for more than seven consecutive years and from nationals who were born abroad and are not resident in the State when they attain majority, provided certain other conditions are met.

- *Measures to avoid statelessness due to deprivation of nationality*

Articles 8 and 9 of the 1961 Convention deal with the deprivation of nationality. States may not deprive any person of their nationality on racial, ethnic, religious or political grounds. Deprivation of nationality that results in statelessness is also prohibited,

except where the individual obtained nationality by misrepresentation or fraud. States may retain the right to deprive a person of his or her nationality even if this leads to statelessness where he or she has committed acts inconsistent with the duty of loyalty to the State or has made an oath or formal declaration of allegiance to another State. In deciding whether to deprive an individual of his or her nationality, the State should consider the proportionality of this measure, taking into account the full circumstances of the case. Due process guarantees need to be respected throughout the procedure regarding deprivation.

- *Measures to avoid statelessness in the context of State succession*

State succession, such as the cession of territory by one State to another and the creation of new States, can lead to statelessness unless proper safeguards are in place. Avoidance of statelessness in such cases is essential to promoting social inclusion and stability. Article 10 addresses the specific context of State succession and asks States to include provisions to ensure the prevention of statelessness in any treaty dealing with the transfer of territory. When no treaty is concluded, the State(s) involved shall confer its/their nationality on those who would otherwise be stateless as a result of the transfer of territory.

DOES THE 1961 CONVENTION REQUIRE STATES TO ADOPT THE JUS SOLI DOCTRINE? - No. The 1961 Convention does not compel States to confer nationality to all children born on their soil (jus soli doctrine) or to all children born to one of their nationals (jus sanguinis doctrine). It recognises the legitimacy of both birthplace and descent as criteria for acquisition of nationality at birth. The Convention therefore contains safeguards to avoid statelessness based on both doctrines. Where a child would otherwise be stateless and has a link based on birth on the territory or to a national, the 1961 Convention requires States Parties to grant nationality. Such conferral of nationality may be made subject to a number of additional conditions.

UN Secretary-General (UNSG),
Guidance Note of the Secretary General:
The United Nations and Statelessness

UNSG 2018, p. 4; 5
<<https://www.refworld.org/docid/5c580e507.html>>

1. Base action on international norms and standards related to nationality and statelessness

Internationally agreed rules relating to the prevention and reduction of statelessness and standards of treatment of stateless persons address many of the challenges faced by stateless individuals. Such rules are provided by an interrelated set of norms found

in two international conventions on statelessness, a range of standards contained in universal and regional human rights and other instruments, and customary international law. [...]

Two international conventions dedicated to statelessness complement international human rights law. The 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) lays the cornerstone of the international protection regime for stateless persons in providing the universally accepted legal definition of a stateless person, thereby establishing an internationally recognized status for stateless persons, extending to them specific rights, for instance, relating to administrative assistance and issuance of identity and travel documents. The 1961 Convention on the Reduction of Statelessness (“1961 Convention”) sets forth practical obligations that States parties must undertake to prevent and reduce statelessness.

One reason that efforts by the UN to address statelessness have been hampered is the relatively low number of States parties to the 1961 Convention and the 1954 Convention. The UN must promote ratification/accession of these and other relevant international treaties, including at the regional level. One important entry point for such advocacy is the Universal Periodic Review (UPR) process, which all Member States participate in on a cyclical basis. UN Country Teams should engage strategically with this process as a tool for encouraging accessions to the UN Statelessness Conventions and for strengthening Member States’ commitments to address statelessness generally.

Additional action is also required to ensure full implementation of treaty and other standards relating to the right to a nationality and the human rights of stateless persons. This should include the issuance of authoritative guidance on interpretation of key international standards, particularly by relevant treaty bodies or other supervisory mechanisms of relevant international instruments, and UN Country Team integration of relevant recommendations from the UN human rights mechanisms (UPR, treaty bodies and special procedures) into Common Country Assessments and UN Development Assistance Frameworks.

Laura van Waas, ‘International and Regional Safeguards to Protect Children from Statelessness’

in Institute on Statelessness and Inclusion (ISI),
The World’s Stateless Children

Wolf Legal Publishers 2017, p. 345-346; 347-348; 351-352

<<http://children.worldsstateless.org/3/safeguarding-against-childhood-statelessness/international-and-regional-safeguards-to-protect-children-from-statelessness.html>>

The 1961 UN Convention on the Reduction of Statelessness (1961 Convention)

remains the most comprehensive international legal instrument to date which informs states as to the situations in which special measures are needed and outlining appropriate safeguards. This under-appreciated instrument is not a human rights treaty but provides detailed guidance on the implementation of the right to a nationality which can be readily transposed into states' domestic legislation. It offers a common approach to meeting the common interest of avoiding situations of statelessness, firmly embedded in principles of nationality attribution that are already widely recognised by states and without impinging on their overall freedom to legislate on nationality matters. For example, where birth on the territory does not generally lead to the acquisition of nationality in a particular state, Article 1 of the 1961 Convention nevertheless prescribes the adoption of a *jus soli* safeguard in situations where a child would otherwise be stateless. In the same vein, where descent from a parent who holds nationality does not generally lead to the inheritance of that nationality for a child born abroad under the laws of a particular state, the 1961 Convention prescribes a *jus sanguinis* safeguard where a child would otherwise be stateless ([Art. 1\(4\) and 4](#)). Similarly to the 1930 Hague Convention, the 1961 Convention also has a specific provision to facilitate the acquisition of nationality by foundlings, under Article 2, as well as the avoidance of statelessness in a number of other circumstances specifically affecting children, for instance, in the context of adoption or of loss of nationality by a parent, under Articles 5 and 6. [...]

3. Helping children who are ‘otherwise stateless’: key challenges

In order to protect every child's right to a nationality, international instruments such as the CRC and the 1961 Convention specify that a special route to nationality must be made available for children who would otherwise be stateless. Using such a linguistic construction is perfectly logical, and perhaps unavoidable, but not unproblematic. An exploration of how states have taken up their responsibility for “otherwise stateless” children through domestic legislation and practice uncovers three distinct problems. A common theme across these three areas is a certain fixation on “getting it right”, so as to not unduly privilege any child who may turn out not to have needed the safeguard to help them realise their right to a nationality (and may now as a consequence have two). Yet, as these examples demonstrate, this is actually [getting in the way of the effective operation of these safeguards in cases where they are needed](#).

Firstly, some states maintain safeguards that are not fully inclusive. Often, the difficulty is that the safeguard focuses on the situation of the parents rather than that of the child: nationality is granted to a child born on the territory if, for instance, the parents are stateless (e.g. [Art. 8](#)) or of undetermined citizenship (e.g. [Art. 4\(9\)](#)). This approach, once upon a time actually prescribed by the 1930 Hague Convention (Article 15), is clearly intended to prevent cases of statelessness among children, but is based on a false premise about the operation of nationality laws. The reality is that sometimes even when one or both parents hold a nationality themselves, this nationality cannot be passed on. In such circumstances, the child will be left stateless but will be unable to

benefit from the requisite safeguard. [...]

Finally, where there is an inclusive safeguard which applies to all situations in which a child is “otherwise stateless” and such cases can be effectively identified, the mechanism which is triggered and through which nationality can be conferred may still be problematic. International norms allow states a certain measure of leeway in legislating the details of the requisite safeguards, so long as these comply with general child rights principles such as non-discrimination and the best interests of the child. The 1961 Convention explicitly offers a choice of two pathways to nationality for states to adopt when dealing with children who are otherwise stateless. They may elect to grant nationality in such cases automatically, at birth ([Arts. 1\(1a\) and 4\(1a\)](#)); or they may make nationality available through a non-discretionary application procedure once the child has fulfilled certain conditions. The latter route necessitates action being undertaken by or on behalf of the child, which can present a problem where, for instance, the parents or guardians are ignorant of the child’s exposure to statelessness, of the entitlement to nationality via a specialised safeguard, of the procedure through which to invoke that entitlement or of the importance of undertaking the steps to do so.

Where the granting of nationality to otherwise stateless children is made subject to application, a waiting period may also be imposed. According to the terms of the 1961 Convention, the longest someone who is born stateless can be made to wait before being given the chance to apply for nationality is until his or her eighteenth birthday ([Art. 1\(2a\)](#)). In other words, this instrument appears to tolerate condemning a child to spend their entire childhood without a nationality — yet such a policy can be deemed highly problematic in light of subsequent developments in human rights law and contemporary child rights principles. Even if the waiting period is shorter, [statelessness can have a severely adverse effect on children from a young age](#) and leave a lasting impression on a person’s life, even once resolved. A child’s circumstances may also change between the moment of birth and the moment at which the entitlement to nationality is engaged, such that the safeguard may never be activated, for instance because the family migrates (or is expelled) and the requisite period of residence is never met. Moreover, establishing evidence of the relevant facts, such as place of birth, for the implementation of safeguards can also become a greater challenge as time passes – for instance if the child in question does not have a birth certificate and other forms of proof must be obtained.

A. Background to the 1954 Convention

2. In the aftermath of the Second World War the need for international action to protect stateless persons and refugees came to the fore. As such, the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) shares the same origins as the 1951 Convention relating to the Status of Refugees (“1951 Convention”). It was initially conceived as a draft protocol to the refugee treaty. However, when the 1951 Convention was adopted, the protocol was left in draft form and referred to a separate negotiating conference where it was transformed into a self-standing treaty concerning stateless persons. The text of the 1954 Convention and a List of States Parties can be found in Annexes I and III, respectively.
3. The 1954 Convention remains the only international treaty aimed specifically at regulating the standards of treatment for stateless persons. The Convention, therefore, is of critical importance in ensuring the protection of this vulnerable group.

Chapter 9:

Other UN and Human Rights Treaty Body Standards

The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the two UN Conventions dedicated to protecting stateless persons and reducing statelessness respectively. Of the two conventions, the 1961 Convention is particularly important, as it contains a strong safeguard against childhood statelessness.

This chapter includes key texts, which provide an overview of the 1961 Convention and, to a lesser degree, the 1954 Convention, and how they can be utilised to address childhood statelessness.

Discussion questions

1. What is the approach taken by the 1954 Convention to identifying and protecting stateless persons?
2. Does the 1954 Convention provide stateless persons with greater protection than found under international human rights law?
3. What safeguards does the 1961 Convention provide against statelessness?
4. What value does the 1961 Convention add to the CRC which protects every child's right to acquire a nationality?

Texts and Materials

Rene de Groot, 'Children, Their Right to a Nationality and Child Statelessness'

in Alice Edwards and Laura van Waas (eds),
Nationality and Statelessness Under International Law

Cambridge University Press 2014, p. 145-146; 146-147

6.1. The right of children to a nationality under international human rights law

Article 15 of the 1948 Universal Declaration of Human Rights (UDHR) guarantees 'nationality' as a human right by prescribing that 'Everyone has the right to a nationality' and 'No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'. The obvious weakness of Article 15(1) is that it does not indicate which nationality a person may have a right to, nor which state has the obligation to grant it. This principle elaborated in Article 15 is repeated in several binding international treaties. As will be seen below, the formulation of this right in successive universal and regional human rights treaties shows a particular interest in ensuring that children have access to a nationality.

Article 24(3) of the International Covenant on Civil and Political Rights (ICCPR) guarantees, for example, that '[e]very child has the right to acquire a nationality' [emphasis added]. Like the UDHR, this provision does not indicate to which state a child may claim his or her right to nationality. Additionally, Article 24(3) only guarantees a right to acquire a nationality, without any specification by which time this right has to be implemented. Nevertheless, a positive element of the ICCPR is that it articulates the right of a child to acquire a nationality. This imposes an obligation to implement the provision in a way that gives a child a meaningful opportunity to exercise their right to acquire a nationality before (s)he reaches the age of majority. Read in conjunction with Article 24(2), which requires children to be registered immediately after birth, early conferral of nationality is expected. This implies that it is not acceptable to postpone the right to acquire a nationality until a person reaches the age of eighteen years. Nor is it acceptable that children be denied access to the right to nationality on discriminatory grounds. In fact, sub-paragraph (1) of the same Article specifically provides that 'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.' The United Nations Human Rights Committee has explicitly recognized that discrimination in respect of the acquisition, deprivation or loss of nationality is prohibited. In that light the Human Rights Committee stressed in General Comment No. 17 on Article 24: While the purpose of [Article 24] is to

prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. [...]

Neither the ICCPR nor the CRC indicate which nationality a child may have a right to, nor do they guarantee that the nationality is acquired at birth. Former Chairperson of the UN Committee on the Rights of the Child (CRC Committee), Jaap Doek has observed that ‘the drafters of the ICCPR felt that a State could not accept an unqualified obligation to accord its nationality to every child born on its territory regardless the circumstances’. He also emphasized that the CRC Committee does not suggest that state parties should introduce ‘the jus soli approach’, but rather that ‘all necessary measures are taken to prevent the child from having no nationality’. His views are similar to the approach adopted by the Human Rights Committee. As such, those measures to be taken to prevent a child having no nationality fall not only on the country of birth of the child, but also on the country of the nationality of the parent(s). The obligations imposed on states by Article 7(2) of the CRC are not exclusively directed to the country of birth of a child, but to all countries with which the child has a link by way of parentage, residence or place of birth.

Furthermore, where nationality is attributed on the basis of descent, human rights law demands that states not discriminate on the basis of gender. In other words, a child should have equal access to the state’s nationality whether it is the mother or father who holds it. This obligation is explicit in Article 9(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, but also flows from the non-discrimination clauses of the ICCPR and CRC. Ensuring that women have an equal opportunity to pass on their nationality to their children plays an important part in preventing childhood statelessness, since any of a variety of reasons may preclude access to the father’s nationality.

Peggy Brett and Melanie Khanna,
‘Making Effective Use of UN Human Rights
Mechanisms to Solve Statelessness’
in Melanie Khanna and Laura Van Waas (eds),
Solving Statelessness

Wolf Legal Publishers 2016, p. 13-14

3. TREATY BODIES

The UN human rights treaty bodies are committees of international experts which monitor the implementation of the international human rights treaties. Each treaty body reviews, on a regular basis, the implementation of the relevant convention by States Parties. The treaties themselves are legally binding international agreements, but, as such, only apply to States Parties. This geographic limitation distinguishes the work of the treaty bodies from that of the UPR discussed above. A second difference is that whereas the UPR may address any human rights issue, the treaty bodies only consider the rights in that particular convention (although in light of the interrelated nature of human rights what is relevant to a particular treaty can be, and often is, interpreted broadly). On the other hand, this limitation allows the treaty bodies to address issues in far greater depth than the UPR and, as the figures below show, they are somewhat more consistent in addressing issues. The third difference between the UPR and the treaty bodies is that the recommendations of the treaty bodies are considered those of the body as whole, unlike the UPR where recommendations are made by individual States. A final difference is that the UPR occurs at fixed intervals (each State is reviewed every four and a half years), whereas the timetable of review by treaty bodies is variable and depends on the submission of reports by States Parties.

Issues of nationality and statelessness could arise in any of the human rights treaty bodies. For this chapter we have chosen to focus on three treaties: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

3.1 Committee on the Elimination of Racial Discrimination (Committee on Racial Discrimination)

Article 5 of ICERD provides that:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
[...]

- (d) Other civil rights, in particular: [...]*
- (iii) The right to nationality*

In total 67% of the relevant recommendations in this period refer specifically to statelessness and 42% of States reviewed received at least one broadly relevant recommendation. As with the UPR, the Committee on Racial Discrimination is not entirely consistent with respect to which States receive recommendations and which do

not. For example, while 20 States received recommendations to ratify the Statelessness Conventions, 26 States which are not parties to one or both Conventions did not receive such recommendations. Poland and Sweden each received no relevant recommendations.

The recommendations cover a wide range of relevant issues, including data collection, birth registration and avoiding statelessness in cases of State succession as well as both direct and indirect discrimination. The strongest recommendations are those which deal with arbitrary denial or deprivation of nationality. In 2012 Jordan's withdrawal of nationality from individuals of Palestinian origin was identified as a violation of international law, in particular Article 24 of the ICCPR and Article 7 of the CRC, despite reported safeguards in the application of the law. The fact that the provisions of other treaties were cited demonstrates the extent to which the treaty bodies are willing to make recommendations drawing on the State's other international law obligations. In this case it is clear that the Committee wished to highlight the particular problems with respect to the deprivation of nationality from children, including as a result of the automatic extension of the withdrawal of nationality to the children when the father's nationality was revoked.

In 2012 recommendations were made to several States to remove gender discrimination from their nationality law, but no recommendations on this topic were made between 2013 and 2015. On one occasion the Committee on Racial Discrimination explicitly recalled "that the scope of national sovereignty with regard to nationality is limited in terms of respect for human rights, specifically the principle of non-discrimination" and recommended that the State respect the principle of non-discrimination with regard to access to nationality.

The small number of recommendations on naturalisation makes it hard to be certain, but there may be a trend towards stronger wording of these recommendations. For instance, in 2012 the Committee on Racial Discrimination made recommendations made recommendations that States "consider naturalising", "take measures to facilitate access to citizenship", and take measures to address statelessness, whereas in 2014 Estonia received a recommendation to ease naturalisation requirements. This recommendation is particularly significant because it deals directly with the details of the language requirements for naturalisation, in contrast to previous recommendations which referred more generally to measures to facilitate naturalisation.

3.2 Committee on the Elimination of All Forms of Discrimination against Women (Committee on Discrimination against Women)

Article 9 of CEDAW provides that:

- 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.*
- 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.*

Drawing on Article 9, the Committee on Discrimination against Women has consistently recommended that States Parties amend provisions in nationality laws which discriminate on the basis of gender. In the period surveyed such recommendations were made to all of the States reviewed which maintain such discriminatory laws. Their recommendations in this respect have included recommendations to amend discriminatory provisions in State's constitutions. It is also worth noting that the Committee on Discrimination against Women consistently makes such recommendations to States which have entered reservations to Article 9.

In other respects the Committee has been less consistent. Thirty-seven States, including Poland and Kyrgyzstan which each have stateless populations in excess of 10,000, received no broadly relevant recommendations. Of these 37 States, 23 are not parties to one or both of the UN Statelessness Conventions. While a few States have received recommendations to bring nationality laws into alignment with the 1961 Statelessness Convention, such recommendations have not been made consistently to States Parties to that Convention. These variations perhaps reflect a greater caution about making recommendations outside the core content of Article 9. The same might be discerned in the recommendations on the application of *jus soli* to the children of migrant women. In 2012 the Committee expressed concern about this issue, but limited its recommendations to cases where the mother is unable to transmit her nationality. Dealing with a similar problem in the Dominican Republic the following year, CEDAW expressed concern about the broad interpretation of an exception to *jus soli* for foreigners in transit, and recommended that the State:

- (a) Review the legal provisions on nationality and their implementation in respect of women of Haitian descent and their children;
- (b) Remove all the obstacles for women of Haitian descent and women of uncertain status to obtaining birth certificates for their children, ensuring their access to all rights;
- (c) Adopt a flexible procedure for regularizing the status of women of Haitian descent and their children, taking into account the length of their presence in the State party.

**Peggy Brett, 'Discrimination and Childhood Statelessness
in the Work of the UN Human Rights Treaty Bodies'**
in Institute on Statelessness and Inclusion (ISI),
The World's Stateless Children

Wolf Legal Publishers 2017, p. 169-183
<<https://files.institutesi.org/worldsstateless17.pdf>>

Each United Nations (UN) human rights treaty is overseen by a Treaty Body: an independent committee of experts mandated to review the implementation by states parties of the rights set out in the treaty, to interpret the text of the treaty and to hear individual and group complaints brought before them. Through these roles, Treaty Bodies can play an important role in addressing childhood statelessness through human rights law. Firstly, they can draw attention to particular issues by asking questions of and making recommendations to individual states in their regular reviews of the implementation of treaties. Secondly, through their interpretation of the treaties they can help to develop the understanding of childhood statelessness as a violation of the child's rights and therefore as a matter which states have an obligation to address.

The latter is particularly important in light of the extent to which the question of who is a national of a state falls within the domain of state sovereignty and as such is left to the discretion of each state, without interference from other states or the international community. One way in which international law and particularly international human rights law attempts to balance this respect for state sovereignty with the right of the individual to a nationality is by setting out general principles that states should respect in their laws and practice on granting and refusing nationality, rather than dictating to states which individuals they should consider nationals. Non-discrimination is one such principle, enshrined in Article 2 of the Universal Declaration of Human Rights (UDHR) and reiterated in every subsequent human rights treaty. One of the roles the treaty bodies can play is therefore to help define, both in general and in relation to specific situations, how this principle applies to the right to a nationality and what the acceptable parameters of state discretion are in this respect. [...]

The importance of non-discrimination as a means of balancing the demands of State sovereignty with the right of each individual to a nationality are reflected in the wording of the right to a nationality in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD). These treaties emphasise that women and persons with disabilities, respectively, should not be discriminated against in the matter of nationality rather than providing a positive right to a nationality. Where a positive right to a nationality is asserted in human rights treaties it is ascribed to children; the International Covenant on Civil and Political Rights (ICCPR) includes the right to a nationality under Article 24 (Rights of the Child) rather than as a separate right guaranteed to all persons. It is therefore unsurprising that the UN human rights Treaty

Bodies have used discrimination as an important framework in addressing the right to a nationality and particularly the right of the child to a nationality. The discrimination framework has also allowed Treaty Bodies to address access to rights by stateless children. [...]

Discrimination in access to nationality

Discrimination in access to nationality may take the form of provisions of national law that directly exclude some individuals from nationality or limit the circumstances in which individuals can acquire nationality in a discriminatory manner. However, it can also occur where apparently neutral provisions are interpreted or implemented in a discriminatory way or where the situation of particular groups makes it more difficult for them to fulfil certain conditions for access to nationality. The non-discrimination aspects of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), CEDAW and CRPD have meant that the relevant treaty bodies consistently address access to nationality as a discrimination matter. However, the broad reach and importance of non-discrimination provisions have meant that other Treaty Bodies (including those whose treaties do not contain the right to a nationality) have also raised concerns about direct or indirect discrimination in access to nationality. While the Committee on the Rights of the Child, more than any other Treaty Body, has considered access to nationality and the prevention of statelessness as positive rights, it has also regularly highlighted discriminatory factors affecting this right.

In other states, instead of defining who is eligible for nationality, the law (or the interpretation of the law), serves to exclude certain groups or individuals. Such exclusionary measures are recognised, for instance, in the Committee on the Elimination of All Forms of Racial Discrimination's (CERD) recommendation that States "ensure that legislation regarding citizenship and naturalisation does not discriminate against members of Roma communities". Other Treaty Bodies have made recommendations to particular States where they have identified problems, such as the Committee on the Rights of the Child's criticism of Israeli legislation preventing the children of Israeli citizens and individuals from the Occupied Palestinian Territories from acquiring Israeli nationality.

Sometimes the law itself is neutrally worded, but its interaction with other laws creates discrimination. In such cases, Treaty Bodies may ask states to take special measures with regard to access to nationality. For instance, the CERD did not explicitly recommend that Italy revise its national laws to give children born in Italy of foreign parents the right to Italian nationality, but did recommend "that the state party take measures to facilitate access to citizenship for stateless Roma, Sinti and non-citizens who have lived in Italy for many years, and to pay due attention to and remove existing barriers". In making this recommendation it recognised the particular discrimination faced by Roma and Sinti as well as the importance of distinguishing between foreign nationals

- whose children should be able to acquire their parents' nationality - and stateless persons. [...]

Discrimination against women in their ability to transmit nationality to their children is one of the most consistently addressed issues relating to access to nationality. The CEDAW has regularly addressed this issue in its concluding observations and stressed that making reservations to Article 9 of CEDAW cannot absolve states of their responsibilities in this respect. In its General Recommendation on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW explains how such laws can render children stateless if the father is unable to transmit nationality to the child or is unable or unwilling to take the necessary steps to ensure that the child inherits his nationality.

Other treaty bodies have made similar recommendations, stressing the gender-based discrimination inherent in such laws and, in some cases, echoing the concern that they increase the risk of statelessness. Such recommendations have, however, rarely considered the extent to which these laws discriminate against the child on the basis of the nationality of their father, as well as against the parent who is unable to transmit nationality. This is particularly striking in the work of the CERD since the question of discrimination on grounds of the parent's nationality would seem to fit naturally into its mandate.

Similarly, the Committee on the Rights of the Child has framed its recommendations on gender-based discrimination in nationality laws as a matter of prevention of statelessness and discrimination against women. When addressing a woman's ability to transmit nationality to her children, this omission is not significant, but articulating the ways in which such laws also discriminate against the child could help to draw out why other provisions of nationality laws may be problematic from the perspective of the child's right to a nationality. For instance, this approach provides a framework to talk about provisions which discriminate against fathers in the transmission of nationality to their children, or where there is no gendered aspect to the laws, but distinctions are made between citizens from birth and naturalised citizens.

Discrimination on grounds of their birth out of wedlock particularly affects children. Often the impact on the right to nationality is linked to gender-based discrimination that prevents women transmitting their nationality to children and recommendations by the Committee on the Rights of the Child and CEDAW have been made on this basis. [...]

Recommendations have also been made on removing administrative and practical measures preventing access to nationality for certain individuals or groups. In its General Comment on People of African Descent, the CERD highlights the need to address both discriminatory laws and other barriers to people of African descent accessing nationality. Naturalisation laws that impose unreasonable requirements, such as a high level of knowledge of the language of the state, have been criticised by the

CERD. The CRPD has also highlighted the discriminatory aspect of naturalisation laws that exclude persons with disabilities. Such provisions may be particularly problematic, since children with disabilities are sometimes discriminated against in nationality laws and are less likely to be registered at birth, increasing their risk of statelessness and, therefore, the need to apply for naturalisation. [...]

Naturalisation laws that impose unreasonable requirements, such as a high level of knowledge of the language of the state, have been criticised by the CERD. The CRPD has also highlighted the discriminatory aspect of naturalisation laws that exclude persons with disabilities. Such provisions may be particularly problematic, since children with disabilities are sometimes discriminated against in nationality laws and are less likely to be registered at birth, increasing their risk of statelessness and, therefore, the need to apply for naturalisation. [...]

Treaty Bodies have also addressed the intergenerational impact of statelessness arising from historic exclusion and marginalisation. In this context, they have made recommendations stressing the need for special measures to promote access to nationality for persons, particularly children, from these stateless populations. [...]

Deprivation or loss of nationality

As with access to nationality, states have a degree of freedom to define the conditions under which an individual may lose their nationality and the reasons for which the state may deprive them of their nationality. However, human rights law prohibits arbitrary deprivation of nationality. In order to not be arbitrary, a deprivation of nationality must be in accordance with national law, not for reasons incompatible with international human rights law, reasonable, and with an impact on the individual that is proportionate to the outcome the state expects from the deprivation of nationality. The CERD has highlighted that deprivation of nationality on discriminatory grounds “is a breach of States parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality”. Such deprivation would also be arbitrary, since a discriminatory measure would not be for a purpose permissible under international human rights law. [...]

In other cases, children may not be the direct subjects of laws depriving individuals of nationality on discriminatory grounds, but may be affected when a parent is deprived of nationality and this is automatically extended to his or her children. While the Treaty Bodies have expressed concern about these issues, they have tended to focus on the reasons for deprivation of nationality from the adults, including highlighting discrimination in such deprivation, without addressing it as a matter of discrimination against the child. [...]

Access to rights for stateless children

Human rights treaties generally guarantee rights to all those within the territory or jurisdiction of the State. That stateless persons are included within the scope of human rights treaties and protected from discrimination in access to rights is beyond doubt, and has been laid out in the General Comments of Treaty Bodies. For example, the Committee on Economic Social and Cultural Rights' General Comment on non-discrimination specifically mentions children born of stateless parents among those who are protected from discrimination based on birth and includes stateless children in the list of non-nationals to whom the rights set out in the Covenant also apply "regardless of legal status and documentation".

In their concluding observations Treaty Bodies have highlighted in particular the need to avoid discrimination in access to education and health care for stateless children. For instance, the Committee on Economic, Social and Cultural Rights recommended that Vietnam "recognise and register children [...] who are currently stateless, and ensure that they receive the necessary education, health care and other social services". Other recommendations have referred to the obligation to ensure all rights, or made specific reference to rights such as freedom of movement.

In addition to discrimination because of their status as stateless persons, children whose statelessness is the result of discrimination may face problems in accessing rights because of that discrimination. Such discrimination would be linked to, but not necessarily the result of, their statelessness. However, in some instances it may be hard to distinguish whether discrimination arises from the fact of statelessness, or the underlying discrimination that caused the statelessness.

Equally, stateless children may officially be in the same position as other non-nationals, but face greater difficulties in accessing rights due to their marginalisation. In particular, treaty bodies have recognised that lack of documentation may be a major barrier to accessing rights. For instance, the CERD recommended that Georgia "solve the documentation issues of stateless persons so that they can be registered, including through mobile registration centres, and have access to public services".

While emphasising the importance of guaranteeing stateless children's access to rights, the Treaty Bodies have made it clear that this does not abrogate the state's obligations with regard to the right to nationality.

2. Nationality & statelessness in the UPR

In accordance with the UN Human Rights Council Resolution which established the UPR, states shall be assessed on their promotion, protection and fulfilment of human rights obligations under the Charter of the United Nations, the Universal Declaration of Human Rights, ratified human rights treaties, voluntary pledges and commitments made and applicable international humanitarian law. This broad scope of the review allows for the consideration of issues relating to nationality and statelessness.

With two full Cycles of the UPR completed, it is possible to assess the extent to which nationality and statelessness issues have received attention in the recommendations made. The analysis presented below relates to Cycles 1 and 2.

Statelessness issues are increasingly being raised within the UPR. In total, over 57,000 recommendations were issued to states over the course of the first and second UPR Cycles. Of these, 773 were relevant to statelessness and nationality issues. This equates to 1.3% of all recommendations made. By comparison, just over 2,000 recommendations related to human trafficking and 2,600 to minority rights. 479 of the 773 relevant recommendations identified specifically address the realisation of the right to a nationality or the human rights of stateless persons. The remaining 294 were indirectly relevant, in that their implementation would contribute to preventing cases of statelessness. These include recommendations on the realisation of gender equality in all areas of law, made to a country which discriminates against women in its nationality law, or recommendations on improving birth registration coverage.

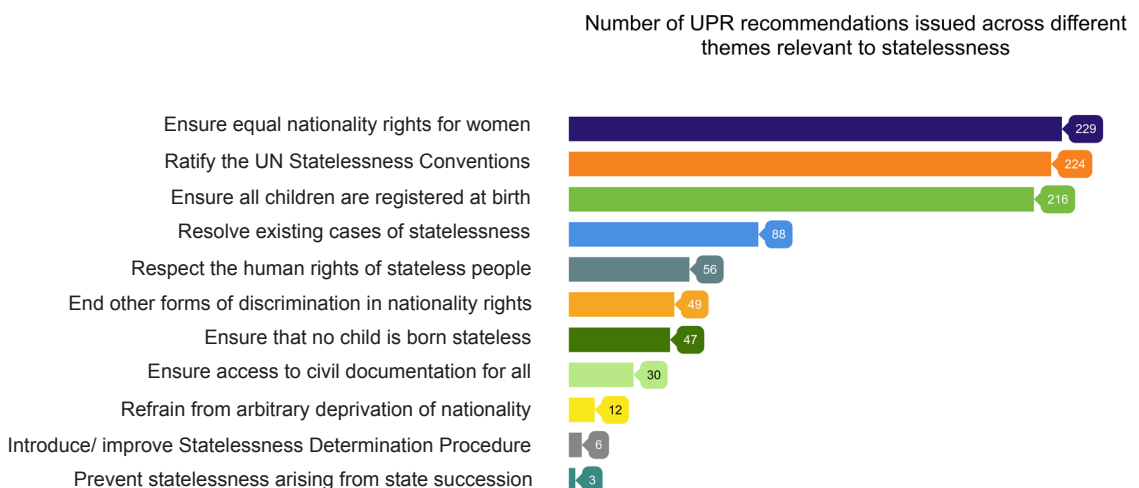
The number of recommendations made has increased over time: from a total of 21,355 in the 1st Cycle to 36,331 in the 2nd (a factor x 1.7 increase). Recommendations relevant to statelessness have grown at a higher rate: by a factor of 3.1, from 187 in the 1st Cycle to 586 in the 2nd. As a result, the percentage share of relevant recommendations also grew: from 0.9% in Cycle 1 to 1.6% in Cycle 2, reflecting a wider awareness and recognition of statelessness as a human rights issue to be addressed under the UPR.

An impressive total of **162 countries received at least one recommendation relevant to nationality and statelessness** during the 1st and 2nd UPR cycles. Of the 38 countries which have been flagged in UN statistics as having a significant stateless population, 34 have received recommendations relating to these issues, equating to close to 90%. Many of countries received multiple recommendations during the two

cycles, with Kuwait (41), the Dominican Republic (31), Latvia (27), Slovenia (24) and Lebanon (21), Myanmar (20) and Jordan (20) receiving the most overall.

Recommendations relevant to nationality and statelessness were made by **107 different countries across the 1st and 2nd UPR Cycles**. This includes countries across all regions of the world. Approximately 20% of these recommendations were made by a RS to a country in the same regional group (80% were directed to a SuR in a different region). The individual countries making the most recommendations relevant to statelessness were: Mexico (68), Slovakia (44), Uruguay (31), Turkey (30) and Brazil (29).

75% of the UPR recommendations relevant to statelessness issued in the 1st and 2nd Cycles addressed the **root causes** of statelessness. These have addressed the problems of: nationality laws that discriminate, for instance, on the grounds of race, ethnicity, gender, religion or disability; failure to ensure birth registration or civil documentation for all; lack of provision for stateless children to acquire a nationality; and statelessness resulting from state succession. States have also paid attention to the human rights impact of statelessness within the UPR. In Cycles 1 and 2, a total of 56 recommendations asked states to improve the enjoyment of human rights by stateless persons and a further 6 asked states to establish or improve Statelessness Determination Procedures – a key mechanism for ensuring the identification and protection of stateless persons, especially in a migratory context.



Chapter 10:

Regional Standards

This chapter looks at relevant standards and jurisprudence under the Inter-American, African and European regional human rights mechanisms, which protect the child's right to a nationality and can therefore be drawn on to prevent childhood statelessness. The chapter also looks at two regions – Southeast Asia and the Arab region, where relevant standards are less developed.

Discussion questions

1. What are the main regional human rights frameworks and how does the level of recognition and protection of the child's right to a nationality differ under each framework?
2. Which regional framework do you believe is the strongest and has the most to offer to other regional frameworks as well as the UN mechanisms? Why?
3. What have you learnt from the approaches of different regional courts to the child's right to a nationality?

Texts and Materials

Institute on Statelessness and Inclusion (ISI), *The World's Stateless Children*

Wolf Legal Publishers 2017,
ch. 2: 23-24, ch. 3: 43; 46, ch. 4: 59-60, ch. 5: 75-78, ch. 6: 98-99
<<https://files.institutesi.org/worldsstateless17.pdf>>

Africa

Article 6(3) of the African Charter on the Rights and Welfare of the Child provides that “Every child has the right to acquire a nationality” and 6(4) requires States Parties to grant nationality to an otherwise stateless child born in their territory. These rights have been explored in detail in a General Comment of the African Committee of Experts on the Rights and Welfare of the child, adopted in April 2014. The General Comment recognizes the “profoundly negative impact on respect for and fulfilment of other human rights” of statelessness and the need not only for nationality but also proof of nationality in order to be able to access rights. It highlights the importance of access to nationality in the State with which an individual has a connection and the extent to which recognition of such connections benefits both the State and the individual. Following its jurisprudence in *The Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian Descent in Kenya) v. Kenya* the ACERWC adopts a purposive reading of Article 6(3) stressing that the best interests of the child requires that children should acquire a nationality from birth and must not be made to wait until they turn 18. The ACERWC encouraged States to adopt the ‘double *jus soli*’ approach whereby a child born in the State one of whose parents was also born in the State acquires nationality at birth and to allow children not born in the State but who have lived there for much of their childhood to acquire nationality as well as facilitating naturalisation for children born in the State. It also highlighted as a matter of good practice the granting of nationality from birth to children born in the territory whose parents are lawfully and habitually resident there.

The African Charter on Human and Peoples’ Rights does not contain a right to a nationality. However the African Commission on Human and Peoples Rights which oversees the implementation of the Charter has found that Article 5 (which provides that “[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status”) includes the right to a nationality. In 2013 a resolution of the African Commission on Human and Peoples’ Rights (ACommHPR) reaffirmed this position (originally established in the ACommHPR’s case law) in general terms. The African Commission has since undertaken a study of nationality in Africa and produced a draft protocol to the African Charter on the Right to Nationality. This draft protocol was adopted by the African Commission in

July 2015 and in July 2016 was approved by the Executive Committee of the African Union beginning the process of its adoption as a legal standard.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is more limited in its promotion of women's equal right to acquire, retain and transmit nationality than the international standards, providing only that "a woman shall have the right to retain her nationality or to acquire the nationality of her husband" and "a woman and a man shall have equal rights with respect to the nationality of their children *except where this is contrary to a provision in national legislation or is contrary to national security interests*". This clause permitting national law to override the principle of gender equality is unfortunate and runs counter to the general provisions on gender equality in this protocol. [...]

Americas

In the Americas, the established regional human rights system (the Inter-American system) is composed of two bodies: the Inter-American Commission on Human Rights (IACCommHR) and the Inter-American Court of Human Rights (IACtHR), created under the auspices of the Organisation of American States (OAS).

Article 20 of the American Convention on Human Rights protects the right to a nationality. This provision, the accompanying case law of the Inter-American Court and the work of the Inter-American Commission, provide a robust legal framework for the protection of the right to a nationality. Cases brought before the Inter-American Court of Human Rights, even if few, have reinforced guarantees against statelessness which establish limits to State discretion in this regard. Furthermore, a recent report by the by the Inter-American Commission on Human Rights—through its Special Rapporteurship on the Rights of Migrants—provides a detailed overview of regional standards for the protection of vulnerable groups in the Americas, including stateless persons. [...]

The most recent accessions to the statelessness conventions by states from the region have been Belize (1961 Convention, 14 August 2015), El Salvador (1954 Convention, 9 February 2015), Peru (1954 Convention, 23 January 2014 and 1961 Convention, 18 December 2014), Argentina (1961 Convention, 13 November 2014), Colombia (1961 Convention, 15 August 2014) and Paraguay (1954 Convention, 1 July 2014 and 1961 Convention, 6 June 2012). Out "of the 65 states currently party to the 1961 Convention, 16 are American countries". The American countries (as of 2016) that have neither signed nor ratified either convention on statelessness are the Bahamas, Chile, Cuba, Dominican Republic, the United States of America, Granada, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Suriname and Venezuela. [...]

The adoption of statelessness determination procedures (SDPs) remains to be a challenge worldwide. In the Americas, states are starting to adopt legislation to address

this gap. Currently Mexico and Costa Rica are the only two countries in the region with statelessness determination procedures. Uruguay, Brazil and Peru have made pledges to adopt SDPs.

The issue of statelessness in countries in the Americas rarely comes up within the framework of the Universal Periodic Review (UPR), with the majority of recommendations relating to accession to the Statelessness Conventions. Chile and the Dominican Republic have received concrete recommendations to address statelessness. During Chile's 2014 UPR review, the need for a comprehensive immigration policy and modification of current legislation to guarantee the right to nationality of children of migrants, was highlighted by multiple states. The DR received 15 recommendations when undergoing the UPR in 2014, directly related to the issue of statelessness. [...]

Asia and The Pacific

Unlike Africa, the Americas and Europe, the Asia and Pacific region does not have a regional human rights framework, with its own treaty, court and commission (or equivalent bodies). This lacuna means that there is a dearth of regional norms and jurisprudence which set out the rights of all persons including the stateless. In the absence of such a regional framework, the importance of the international UN framework is greater.

At sub-regional level the Association of South East Asian Nations (ASEAN) adopted its own non-binding Human Rights Declaration in 2012, which largely mirrors the Universal Declaration of Human Rights. Article 18 of the ASEAN Human Rights Declaration affirms that “Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.” Although there is no entity within ASEAN that specifically looks into nationality and statelessness matters, the mandates of two of its Commissions are relevant to statelessness. The ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) focus their work on developing strategies for the promotion and protection of human rights. ACWC is, for instance, mandated to propose and support appropriate measures relating to the elimination of all forms of violation of the rights of women and children. The ACWC can propose a wide variety of measures to end childhood statelessness, including through resolving gender discrimination in nationality legislation, and permitting all otherwise stateless children to have the right to a nationality and identity documents. However, with small budgets and non-binding force, there are significant limitations as to what can be achieved.

Next to ASEAN, the ‘Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime’ is a forum for states and international organisations to interact in policy dialogue, information sharing and practical cooperation to address challenges in the region. A total of 48 members – a combination of states and

international organisations such as IOM and UNHCR - work together to address a variety of related issues. The nexus between (irregular) migration and the risk of statelessness is gaining more recognition in the region and beyond. In March 2016 during the Sixth Bali Process Ministerial Conference, ministers and delegates of member states and organisations endorsed the ‘Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime’. This declaration confirms the core objectives and priorities of the Bali Process, including “measures to prevent and reduce statelessness, consistent with relevant international instruments” in the context of complex irregular migration. [...]

Europe

At the core of the regional human rights system in Europe are the Council of Europe (CoE) and the European Convention on Human Rights (ECHR), adopted in 1950. The CoE has 47 member states, all of which are parties to the ECHR. The ECHR enshrines basic human rights and fundamental freedoms of everyone within the jurisdiction of any member state and offers protection of these rights to everyone within the territory of Europe, including stateless persons, before the European Court of Human Rights (ECtHR) in Strasbourg, France. There are numerous cases in which stateless persons have succeeded in appealing to the Court to address a human rights violation suffered.

While the right to a nationality is not contained as a provision in the ECHR, the Court has discussed citizenship on several occasions when the circumstances for or consequences of the denial of nationality violated a separate provision under the ECHR. The Court has recognised nationality as an element of the social identity of a person, which forms part of private life as protected by Article 8 of the ECHR. This is a developing area of jurisprudence by the Court, with cases delivered to date focusing on the application of the principles of non- discrimination and of the best interests of the child in access to nationality.

In 1997, the CoE adopted the European Convention on Nationality, consolidating in a single, regional document a variety of international legal norms on nationality. This instrument contains several important safeguards directed towards the avoidance of statelessness, along similar lines to the 1961 Convention on the Reduction of Statelessness. It attracted sixteen states parties within the first decade after its adoption, but by the end of 2016, this number had only climbed by a further four ratifications. A separate CoE Convention relevant to statelessness is the Convention on the Avoidance of Statelessness in relation to State Succession. This relatively young regional Convention (from 2006) regulates the prevention of statelessness in the specific context of state succession, but has yet to attract many states parties. The Committee of Ministers of the CoE has also adopted numerous Recommendations outlining further normative guidance on issues relating to nationality and the prevention of statelessness. Although there have been no new standard-setting initiatives in recent years, the CoE continues

to maintain an interest in nationality questions. In March 2016, the Parliamentary Assembly of the Council of Europe adopted a Resolution on the need to eradicate statelessness of children.

The Council of Europe Commissioner for Human Rights, Nils Muižnieks, has been a strong advocate for addressing statelessness in Europe. Muižnieks has, in fact, made this one of the priorities of his work since taking up his post in 2012. He has spoken passionately about the need to protect children, in particular, from statelessness, participating in numerous conferences and meetings to lend his voice to the cause. Moreover, he has also devoted attention to reviewing domestic laws and practices relating to statelessness when making country visits. For instance, following his visits in 2016, he recommended to Latvia that the law be reformed to allow stateless children born in the country to automatically acquire nationality and to Croatia that it redouble its efforts to ensure access to documentation and address the risk of statelessness for members of the Roma community.

Besides the CoE, there is the European Union (EU), which currently has 28 member states. The EU has its own human rights document: the Charter of Fundamental Rights of the European Union. The Charter does not contain a provision guaranteeing the right to a nationality, but does provide a set of rights which are attached to EU citizenship, the special supra-national legal status enjoyed by everyone who is a national of an EU member state. EU member states maintain competence in the field of nationality law and can set their own rules for acquisition and loss of nationality. Due to the connection between nationality of a member state and EU citizenship, however, the Court of Justice of the European Union (based in Luxembourg), has affirmed that in relation to the loss of EU citizenship and even when setting the conditions for acquisition of nationality, “Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law”. While further jurisprudence has yet to be developed in this area, EU law may therefore have some influence on the nationality policy and practice of EU member states, including in respect of the avoidance of statelessness. The EU could potentially also play a part in ensuring adequate protection for stateless persons on the territory of its member states through the establishment of common standards for statelessness status determination or the regulation of a residence status for stateless persons. To date, concrete measures have yet to be taken in this regard, but interest in the issue of statelessness at the level of the EU has been growing.

Middle East and North Africa

There are only two countries in the region that have acceded to both the 1954 and the 1961 Statelessness Conventions: Libya and Tunisia. In addition, Algeria is party to the 1954 Convention. The level of accessions in the region has not changed for many years and with the majority of the States not having ratified the 1951 Refugee convention either, there has been little push or expectation to encourage more accessions.

It is important to note that, despite slight variations from State to State, in general, the rights of stateless persons are rarely protected in the region. There is not a single country in the region that has a statelessness determination procedure, nor a specific protection status for stateless persons. In most countries, a stateless person will remain legally invisible, which means they will be unable to access a host of various rights. Despite this, the countries in the region have a reasonably high accession rate to human rights conventions, all for example are parties to the CRC, the ICCPR and CEDAW.

Additionally, there is a weak regional human rights framework in the region. Both the Arab Charter on Human Rights and the Convention on the Rights of the Child in Islam protect the right to nationality. However, these are not binding frameworks and there is no human rights mechanism or regional court to monitor implementation or hear individual complaints under these treaties. The Arab League has recently shown some interest in statelessness-related issues, hosting a 2016 conference on access to civil registration procedures in the region, but to-date there has been no take-up of the issue more substantially. [...]

Within the framework of the Universal Periodic Review (UPR) statelessness regularly comes up in relation to MENA countries. The majority of recommendations relate to the removal of gender discrimination from nationality law, in particular granting women equal rights to transmit nationality to their children and removing reservations to article 9 of CEDAW. During the second cycle of the UPR, recommendations of this nature were made to Bahrain, Jordan, Kuwait, Lebanon, Mauritania Oman, Qatar, Saudi Arabia, Syria and the United Arab Emirates. Recommendations have also addressed discrimination in nationality rights more broadly, as well as access to human rights of specific stateless communities, and in relation to access to birth registration. For example, Paragraph 86 of the 23rd session on Lebanon specifically discussed the problems of access to birth registration, particularly for children of refugee families and of Maktoum (unregistered) fathers, which was one of the causes of statelessness in the country. Lebanon received a recommendation to ensure access to birth registration for everyone.

Citizenship Rights in Africa Initiative (CRAI), 'Acquisition by Children'

CRAI,
< <http://citizenshiprightsafrika.org/theme/acquisition-by-children/> >

Acquisition by children

National laws usually grant nationality to children at birth based on a combination of two principles: the nationality of the parent(s) and the location of birth of the child. All

African states provide for a child to acquire nationality based on descent, though some still discriminate on the basis of the [sex of the parent](#).

The laws of around half of the countries in Africa provide automatic citizenship to children born in the territory themselves, or if their parents were also born there, or give the children of non-citizen parents the right to claim nationality if they are still resident there when they reach the age of majority. However, more than 20 countries either make no provision for children born on their territory to claim nationality if they have no other claim to nationality or do so only if the child is of unknown parentage.

The minimum requirement to prevent statelessness among children, required by the [African Charter on the Rights and Welfare of the Child](#), is for national laws to grant nationality to any child born in the territory who would otherwise be stateless. In addition, national laws should provide for children of unknown parents to be presumed to have the nationality of the country where they are found, for adopted children to acquire the nationality of their adoptive parents, and for children whose parents naturalise to acquire nationality at the same time.

**Institute on Statelessness and Inclusion (ISI),
'Landmark Case Notes from Africa and Europe'**
in Institute on Statelessness and Inclusion (ISI),
The World's Stateless Children

Wolf Legal Publishers 2017, p. 430-433

<<http://children.worldsstateless.org/3/litigating-against-childhood-statelessness/landmark-case-notes-from-africa-and-europe.html>>

In the past few years, there has been a series of landmark judgments issued by the regional courts of Africa, the Americas and Europe, which confirm the well-entrenched position of the right of every child to a nationality and the duty to safeguard against childhood statelessness under the regional and international human rights frameworks. [The essay by David Baluarte](#), also in this chapter, provides a detailed analysis of the two Inter-American Court of Human Rights judgments on the right to nationality in the Dominican Republic: *The Girls Yean and Bosico v Dominican Republic* and *Expelled Dominicans and Haitians v Dominican Republic*. Below, are shorter case notes on equally important judgments from Africa and Europe.

1. Nubian Minors v Kenya

Although the Nubians have lived in Kenya for over 100 years, they have historically been regarded as 'aliens' with uncertain citizenship status. On reaching the age of 18,

all Kenyan children apply for ID cards that prove citizenship. For most Kenyan children, this is a simple process. However, Nubian children must go through a long and complex vetting procedure with an uncertain result. In this case before the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), the petitioners argued that the following rights of the Nubian children in Kenya are violated through this system:

- A violation of the child's right to acquire a nationality at birth, protected by Article 6 of the African Charter on the Rights and Welfare of the Child (ACRWC);
- Unlawful discrimination against Nubian children on grounds of their ethnic and religious origins, in violation of the prohibition of discrimination in Article 3 of the ACRWC; and
- Consequential violations in relation to denial of access to education, health care, property rights etc.

The ACERWC found Kenya's actions violated the Charter's provisions protecting children's right to nationality, observing that statelessness is the antithesis of the best interests of the child. The ACERWC also found that Kenya's vetting system unlawfully discriminates against Nubian children in violation of Article 3 of the ACRWC, leaving them stateless or at risk of statelessness, with no legitimate hope of gaining recognition of their citizenship. As a result, Nubian children lack access to adequate healthcare and education, in violation of Kenya's obligations to provide the highest attainable standard of health and education to all children (Articles 14(2)(a)-(c), (g) and Article 11(3) of the ACRWC, respectively). The ACERWC issued five detailed recommendations including legislative and administrative reforms, an obligation to consult with affected communities in developing implementation strategies and the requirement that Kenya implement a non-discriminatory birth registration system. It also established implementation monitoring mechanisms, including an obligation that Kenya report back on implementation within six months and a dedicated ACERWC member to monitor implementation.¹⁸

2. Genovese v Malta

The case of *Genovese v Malta* concerned a young man, Genovese, who was born out of wedlock and is the son of a British mother and a Maltese father. His father, whose paternity was established judicially and scientifically, had not acknowledged his son and did not want to have any relationship with him. Genovese is a British national, but also wanted to become a Maltese national (because his father is a Maltese citizen). After applying for Maltese nationality, he learned that Maltese citizenship could not be granted to a child born out of wedlock, if the child's mother is not Maltese and the father is. Litigation in Malta was unsuccessful and Genovese complained to the European Court of Human Rights (ECtHR) that the Maltese laws on the acquisition of citizenship discriminated against him contrary to Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family

life) of the European Convention on Human Rights (ECHR).

The Court agreed with Genovese and found a violation of Article 14 in conjunction with Article 8 in this case, because the difference in treatment between children born in and out of wedlock could not be justified. In its judgment, the Court made two important points that relate to addressing childhood statelessness. Firstly, the Court expressly stated that nationality falls within the scope of protection of the ECHR as part of a person's social identity, which is part of the concept of private life under Article 8. Secondly, the Court clarified that countries with laws and procedures that grant a right to citizenship by descent, such as [Malta in this case, must ensure that this right is secured without discrimination](#).

3. Mennesson v France

The case of *Mennesson v France* dealt with one of the more complex issues related to childhood statelessness: surrogacy. This case concerned two French commissioning parents and their two children born abroad through a surrogacy arrangement. They tried to secure legal recognition of the parent-child relationship in France, but their claims were dismissed throughout the domestic judicial process up to the French Court of Cassation. Subsequently, the family complained of a violation of Article 8 (right to respect for private and family life) of the ECHR to the ECtHR. Their complaint was based on the inability to obtain recognition of the parent-child relationship that had been established abroad through the surrogacy arrangement, which they found to harm the children's best interests.

The government emphasised in this case that French law prohibits surrogacy as a method of assisted reproduction and therefore must refuse to register the French commissioning parents as the parents of a child, because permitting such registration would present a risk to consistent application of this prohibition. The Court, however, attached more weight to the consequences of non-recognition of the legal parent-child relationships for the children as part of their right to respect for private life. Furthermore, it questioned the compatibility of that situation with the best interests of the child. Thus, the Court found a violation of Article 8 of the ECHR with regard to the two children in this case. [The Court stated that respect for the child's best interests should guide any decision in their regard, which would include one that concerns children's right to a nationality](#).

Chapter 11:

The Sustainable Development Agenda

In 2015, the UN General Assembly adopted the Sustainable Development Goals (SDGs) that together form “a plan of action for people, planet and prosperity”. The SDGs are not just about economic growth, social development and environmental protection, but also about achieving these for all.

This chapter looks at the Sustainable Development Agenda, the Sustainable Development Goals (SDGs) and their relationship with statelessness. In particular, the texts and materials selected for this chapter look at SDGs 5, 10 and 16. They also look at indicators and question the approach to legal identity under the SDGs.

Discussion questions

1. How can the implementation of the SDGs help address statelessness and how does the existence of childhood statelessness impede the implementation of the SDGs?
2. Pick out any one of the SDGs and explore more closely how statelessness relates to this Goal and what development actors need to better understand in order to address the specific development needs of stateless children in relation to that Goal.
3. What is legal identity and what are the risks and opportunities of pursuing legal identity for all under SDG 16.9 in relation to addressing childhood statelessness?
4. How does the SDG 16.9 target of legal identity for all complement the obligations under Article 7 of the CRC to immediate birth registration and the right of every child to acquire a nationality?

Texts and Materials

Institute on Statelessness and Inclusion (ISI),
Statelessness Essentials: Childhood Statelessness

ISI 2018, p. 15-16

<<https://files.institutesi.org/childhood-statelessness.pdf>>

Childhood statelessness: a development issue

[...] In 2015, the UN General Assembly adopted the Sustainable Development Goals (SDGs) that together form “a plan of action for people, planet and prosperity”. The SDGs are not just about economic growth, social development and environmental protection, but about achieving this for all. **No one must be left behind.** This requires paying special attention to those groups most in need (including the stateless); and addressing systems and structures that engender exclusion, disadvantage and impoverishment (including those that generate childhood statelessness).

The SDGs are therefore an important instrument for action on statelessness. Indeed:

- **SDG targets will not be met unless stateless children are prioritised.** Development actors must apply specific strategies to lift stateless children out of poverty, and guarantee them equal access to education, healthcare etc., in order to meet SDGs 1 (no poverty), 3 (good health) and 4 (quality education).
- **SDG targets require structural change to prevent childhood statelessness.** Law and policy reform may be essential for the realisation of some SDGs. SDGs 5 (gender equality) and 10 (reduced inequalities) will not be met as long as children are made stateless due to discriminatory laws, policies and practices.

SDG 16.9: “Provide legal identity for all, including birth registration”

SDG Target 16.9 is highly relevant to statelessness: birth registration and the provision of other forms of legal identity documentation, on the basis of non-discriminatory laws, are essential to reduce statelessness. When a child has their birth registered, they are more easily “seen” and reached by development efforts, but birth registration also proves where a child was born and who their parents are – information which is often needed to establish a child’s nationality. However, universal birth registration is not a complete solution to childhood statelessness. Proof of birth does not always lead to a child receiving a nationality (which is an integral component of the child’s identity). As long as discriminatory and arbitrary nationality laws exist, children will be made stateless. So, it is essential that development actors move beyond the symptom of ‘lack of documentation’ to also address the root cause of ‘discriminatory law and policy’, in their attempts to ensure ‘legal identity for all’.

4. Implementation of the SDGs relevant to statelessness and limits to effective implementation

Implementation of the SDGs will largely be shaped by the nature of the yardsticks used to measure progress in achieving each goal. To ensure tangible progress and to avoid the allegation that “development promotes aspiration, not obligation”, the 2030 Agenda framework includes a set of 230 global indicators (Global Indicators) developed by IAEG-SDGs to assist in the measurement of the SDG Targets. The Global Indicators were considered at the forty-seventh session of the Statistical Commission, which convened from 8 – 11 March 2016 in New York. The Commission agreed to the IAEG-SDGs’ proposed Global Indicator framework as a practical starting point, subject to future technical refinement. In its report to the Statistical Commission, the IAEG-SDGs indicated that the Global Indicators should be grouped into three ‘tiers’, based on their level of methodological development and overall availability of data. Tier I Global Indicators are those for which an established methodology exists and where data is widely available. Tier II Global Indicators are those for which a methodology has been established, but for which data is not easily available. Tier III are those for which an internationally agreed methodology has not yet been developed.

The Global Indicator proposed to track progress in implementation of SDG 5, Target 5.1 is “whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex” (Global Indicator 5.1.1). This Global Indicator is envisaged to fall within Tier III. Accordingly, until an adequate methodology for its measurement is developed and relevant data sources are identified, there is a risk that States will not seek to implement Target 5.1. It should be noted that the goal of Action 3 of the GAP (which is the #IBelong Campaign’s correlate to Target 5.1), will be achieved when “all States have nationality laws which treat women and men equally with regard to conferral of nationality to their children and with regard to the acquisition, change and retention of nationality”. To ensure that Target 5.1 also results in the reform of nationality laws that discriminate against women and cause statelessness, it will be critical that the methodology developed to measure Global Indicator 5.1.1 includes nationality laws amongst the legal frameworks that are evaluated and asks the following questions of those laws:

- *Do women have equal rights with men to confer nationality on their children?*
- *Do women have equal rights with men to acquire, change or retain their nationality?*

The methodology developed for Global Indicator 5.1.1 should also measure the extent to which these laws are implemented. To this end it should consider, for example, whether laws and regulations require the promotion of awareness of legal and policy developments granting women equal rights with men to confer nationality on their children or with regard to the acquisition, change and retention of nationality.

The Global Indicators for SDG 10, Target 10.3 and SDG 16, Target 16.b, are substantially the same: “Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law” (Global Indicators 10.3.1 and 16.b.1). Both are envisaged to fall within Tier III. If Global Indicators 10.3.1 and 16.b.1 are the only Global Indicators used to measure progress of Targets 10.3 and 16.b respectively, it is difficult to see how they could be used to effectively address statelessness. The current formulation of these Global Indicators rests on the assumption that individuals who experience discriminatory treatment are in a position to report the mistreatment and, in fact, take the opportunity to do so. Stateless people are frequently denied any standing in society, legally or socially. This lack of any formal legal status in the countries in which they live means that they rarely come forward to complain of their mistreatment for fear of being identified, detained or deported. In the case of individuals living in a protracted situation of statelessness or whose statelessness is inherited from previous generations, the discriminatory law or policy that rendered them stateless may have been in existence for years and the discrimination that they face may be highly structural in nature. Basing measurement of Targets 10.3 and 16.b on whether an individual “personally feels” discriminated against may not help stateless persons who have been discriminated against their entire lives and who may not even know that the treatment that they are experiencing is discriminatory. Given that Targets 10.3 and 16.b are both concerned with eliminating discriminatory laws, policies and practices, it is recommended that corresponding indicators are established. Such indicators might be close in formulation to Indicator 5.1.1 (e.g. whether or not laws, policies and practices are in place to promote, enforce and monitor equality and non-discrimination). The methodology developed to measure progress against such indicators would need to include nationality laws amongst the legal frameworks to be evaluated and ask the following questions of those laws:

- *Do nationality laws permit loss, denial or deprivation of nationality on discriminatory grounds?*
- *Are there law, policy and administrative measures in place to restore nationality to those arbitrarily deprived of it?*

The sole Global Indicator proposed to measure whether Goal 16, Target 16.9 fulfils its promise of ensuring universal legal identity, including birth registration, is: “Proportion of children under 5 years of age whose births have been registered with a civil authority, by age” (Global Indicator 16.9.1). It falls within Tier I - Indicators for which an established methodology exists and where data is widely available. Attention has focused on birth registration as the most quantifiable, globally comparable measure of progress towards legal identity. Indeed, the United Nations Children’s Fund

(UNICEF) already collects data on precisely this measure, and counts nearly 230 million children under the age of five whose births have not been registered in the more than 140 countries for which data is available. As noted earlier, birth registration proves where a child was born and the identity of its parents; important information needed to establish nationality and prevent statelessness. As such, Global Indicator 16.9.1 will help to improve access to a form of legal identity (birth registration) for children under the age of five. However, Global Indicator 16.9.1 is framed as an aggregate measure and successful progress will be measured by evaluating how close a country comes to registering the births of all children under the age of five. The problem is that even in States that are able to report close to 100% birth registration coverage, stateless children are likely to fall within the small percentage that miss out. Therefore, unless the causes of failure to register births, including discrimination and exclusion are also addressed, this Global Indicator may have little meaning for stateless children under the age of five. Further, Global Indicator 16.9.1 will not help the millions of children and adults who lack legal identity and who may be left out of measures that focus on ensuring birth registration for those under the age of five. Indeed, a measure of birth registration on its own provides a limited and inaccurate picture of who has legal identity and who does not.

In countries which require a national ID in order to prove nationality and thereby access rights and services, a single measure to track implementation of Target 16.9, such as that provided in Global Indicator 16.9.1, poses a challenge. However, creating an additional Global Indicator is not the solution, because an appropriate measure in one country would not necessarily be appropriate for other national contexts. Indeed, creating a new Global Indicator that would, for example, measure the proportion of a country's population over the age of 18 that holds national identity cards, could lead to States adopting more formalised and thus potentially more restrictive systems with respect to the issuing of national IDs, making it even more difficult for certain groups to gain access to such documentation. This could inadvertently expose more people to the risk of statelessness and potentially aggravate the impact of statelessness by making those without an ID more noticeable. Strengthening nationality documentation systems without critically assessing and responding to the broader governance context can lead to a number of consequences that further entrench exclusion and thereby undermine development gains. Action 8 of the GAP (which is the #IBelong Campaign's partial correlate to Target 16.9), requires that those with an entitlement to nationality are able to acquire documentary proof of nationality. Accordingly, it may be most appropriate for supplementary country-specific indicators to be established in those countries which impose proof-of-nationality requirements and for these indicators to be administered through national censuses or other periodic population surveys such as the United States Agency for International Development supported Demographic and Health Surveys.

A number of commentators have pointed to the fact that neither Target 16.9 nor Global Indicator 16.9.1 encourage the reform of discriminatory laws and practices which may lie at the root of statelessness and lack of legal identity. For this reason, it

is critical that Target 16.9 is applied in concert with Targets 10.3 and 16.b (and appropriately framed Global Indicators – see discussion above), to ensure equality of access to nationally relevant forms of legal identity.

5. Conclusion

[...] To maximise the effectiveness of the SDGs and Targets in achieving these statelessness-related results, modifications to the existing Global Indicators associated with the relevant SDGs and Targets are likely to be needed, as these will influence the manner in which the SDGs are implemented. With respect to SDG 5, Target 5.1, the methodology being developed to measure progress against Global Indicator 5.1.1 must include nationality laws among the legal frameworks that are evaluated and specifically consider whether women are granted equal nationality rights under those laws. In relation to SDG 10, Target 10.3 and SDG 16, Target 16.b, the current Global Indicators 10.3.1 and 16.b.1 are unlikely to lead to outcomes that will effectively address statelessness. This is because they are based on the assumption that individuals who experience discriminatory treatment are in a position to report the mistreatment and, in fact, take the opportunity to do so; assumptions which do not hold water for the majority of stateless persons. It is proposed that additional Global Indicators, which seek to establish whether or not legal frameworks, policies and practices are in place to promote, enforce and monitor equality and non-discrimination, are established in relation to Targets 10.3 and 16.b. This is critical if the SDGs are to be used to address statelessness, as discrimination and exclusion lie at the root of the majority of cases of statelessness and the effectiveness of other SDGs for stateless individuals will rest on their ability to enjoy equal access to the benefits that the SDGs seek to provide. Finally, to encourage the effective implementation of Goal 16, Target 16.9, it is proposed that Global Indicator 16.9.1, which only measures one aspect of legal identity, namely birth registration of children under the age of five, be supplemented by national-level indicators designed to measure access to other nationally relevant forms of legal identity, such as documents which are considered to provide proof of nationality. The task of the international community now is to ensure that stateless persons are explicitly considered as global and country-level Indicators are refined, measurement methodologies developed and national planning systems activated, so that they too may benefit from this initiative which aims at a world that is just, right-based, equitable and inclusive.

Institute on Statelessness and Inclusion (ISI),
Statelessness Essentials: All About Statelessness:
What Development Actors Need to Know

ISI 2017, p. 9-15

<<https://files.institutesi.org/statelessness-for-development-actors.pdf>>

How can the SDGs help the stateless?

[...] The aspiration to **leave no one behind** and to **reach the furthest behind first**, requires development actors to move beyond merely quantitative approaches aimed at demonstrating aggregate gains, to also identify the specific challenges and vulnerabilities faced by disadvantaged groups, and ensure that these are addressed. This would require finding creative and sustainable ways to incentivise states to ensure that stateless persons and other similarly disadvantaged and marginalised groups are included, consulted, reached and empowered to exercise their rights in relation to development.

How can the SDGs help to prevent statelessness?

One of the most revolutionary aspects of the SDGs, is that they go beyond the ‘standard’ delivery of development aid, to require the scrutiny and reform of discriminatory and exclusionary legal and societal structures:

Notably, the SDGs mark the first time that countries have recognised the centrality of justice to sustainable development. The previous attempt to coordinate development across all nations through the MDGs failed to address structural injustice and inequality, thereby ignoring crucial root causes of persistent poverty, instability, and underdevelopment. It is axiomatic now that sustainable development can only be realised when people are able to be their own agents of development, but this is a fairly recent revelation.¹⁹

While many of the SDG targets across the different goals require (or depend upon) structural change in some form or other, there are three Goals which stand out in terms of what they set out to achieve and the relevance to statelessness. All three Goals and their targets are strongly aligned with existing human rights. As elaborated in the image on the [next] page, they address some of the root causes of statelessness and key factors which further disadvantage the stateless. Furthermore, they provide important avenues for structural and institutional change, which can create a more conducive environment to confront and effectively address statelessness, and to ensure fairer and more equal treatment of stateless people. [...]

¹⁹ B. Apple and L. Bingham, ‘The SDGs, an opportunity to leave no stateless child behind’, in Institute on Statelessness and Inclusion, *The World’s Stateless: Children*, 2017.



SDG 5.1:
end all forms of
discrimination
against all women
and girls everywhere.

Gender discriminatory laws of 25 countries (conferral on children) and close to 50 countries (conferral on spouses), which can cause statelessness, should be addressed through SDG 5.1.



SDG 10.3: ensure
equal opportunity and
reduce inequalities
of outcome... by
eliminating discriminatory
laws, policies and practices
and promoting appropriate
legislation ... and action ...

Discriminatory nationality laws on grounds of race, disability etc., should be addressed through SDG 10.3.



SDG 16.9: by
2030, provide legal
identity for all,
including
birth registration.

Universal birth registration and the provision of other forms of legal identity documentation, on the basis of non-discriminatory laws, will help reduce statelessness.

This table sets out relevant socio-economic rights under the ICESCR. Please note that there are corresponding rights set out in other treaties as well, such as the CRC, CEDAW and CRPD.

| Theme | Relevance to statelessness | Relevant SDGs | Relevant rights under the ICESCR |
|--|--|---|---|
| Ending poverty, hunger & ensuring water & sanitation for all | A growing body of research demonstrates that stateless people are likely to be poorer than their neighbours with nationality. Undocumented, disenfranchised and discriminated against, the challenge is to find ways to bring stateless people out of poverty in a sustainable and dignified manner. | SDG 1 on ending poverty, elaborates a roadmap for development actors to follow, to ensure that no one is living on less than \$ 1.25 per day, by 2030. A mixed approach of development aid, access to equal rights and resources, ownership and control over land, property and resources, the implementation of social welfare and protection is promoted. | Art 9 establishes everyone's right to social security, including social insurance; and Art 11 recognises everyone's right to an adequate standard of living, including food, clothing, housing and the continuous improvement of living conditions. |
| | | SDG 2 on ending hunger, sets out the targets for a multi-faceted approach to ensure there is no hunger or malnutrition in the world – focusing on food delivery, productive and sustainable agriculture. | Art 11 recognises everyone's right to be free from hunger and sets out a collective international obligation to avoid hunger through cooperation. |
| | | SDG 6 targets 'universal' and 'equitable' access to safe and affordable drinking water for all and the reduction of water pollution. | Art 11 and 12 guarantee the right of everyone to clean and safe water. |
| Ensuring healthy live & wellbeing | In many countries (free/subsidised) healthcare is only available to nationals. Fear of arrest for lack of status can also deter the stateless from seeking care. In addition to building more hospitals and increasing standards, the stateless must be ensured equal & safe access to healthcare. | SDG 3 on ensuring healthy lives and promoting well-being for all, at all ages, directly targets the most important, life-threatening healthcare challenges faced by humanity. It also targets universal access to healthcare and reproductive healthcare. | Art 12 sets out everyone's right to the enjoyment of the highest attainable standard of physical and mental health. States should take various steps in this regard, such as reducing infant mortality, improving hygiene and preventing and treating epidemics. |
| Ensure inclusive and equitable quality education | Stateless children face a range of challenges accessing or completing schooling. Education is of immense value as a vehicle to break the cycle of inter-generational disadvantage and can bring empowerment to stateless communities. | SDG 4 includes various targets to achieve quality education, including the pursuit of free primary and secondary education for all children by 2030, a strong focus on quality pre-school and technical and vocational training for adults. It also targets progress in relation to literacy and numeracy, and the upkeep and upgrade of education facilities. | Art 13 establishes everyone's right to education, holds that primary education shall be compulsory and free for all and that secondary and higher education is to be made available and equally accessible to all. |
| Economic growth and work for all | Without legal status, the stateless are more vulnerable to exploitative and informal work and less able to enforce labour rights. Without safe and secure work, they are more likely to be poor. | SDG 8 targets both economic growth and achieving full, productive and decent employment by 2030. It also prioritises addressing youth unemployment and eradicating forced labour, slavery, trafficking and exploitative child labour. It targets the protection of labour rights and ensuring safe and secure working conditions for all. | Art 6 recognises every person's right to work and Art 7 , the right of everyone to the enjoyment of just and favourable conditions of work. Art 8 recognises every person's right to join a trade union. |

Legal identity for all - what are the risks and opportunities?

Of all the SDGs, Target 16.9, to by 2030, provide legal identity for all, including birth registration, is probably the most obviously relevant to statelessness. This target has tremendous potential to unlock resources to enhance access to the fruits of development for vulnerable groups. However, there is a risk that it could end up being counterproductive unless a rights-based interpretation and approach is adopted.

Risks

- 1.** As the term ‘legal identity’ is not defined in SDG 16.9, its scope may be reduced only to ‘birth registration’, failing to address other important elements of legal identity such as nationality (see the CRC definition).
- 2.** The pursuit of aggregate gains (the draft indicator is “percentage of children under age 5 whose birth is registered with a civil authority”), can impact stateless and minority groups. Failure to scrutinise the actual law and policy basis upon which documentation is provided, can further entrench the discrimination faced by already excluded groups. For example, countries which arbitrarily deny entire ethnic groups the right to nationality may register such persons as foreigners. An approach which targets universal registration (good or bad) is likely to create and entrench statelessness and related disadvantage.
- 3.** As the importance of documentation grows, the cost of not having a document (or having the wrong document) will also grow. Pursuing legal identity for all, without addressing structural discrimination, can undermine access to education, healthcare, the labour market etc., thus increasing poverty and undermining the SDGs.

Opportunities

- 1.** Achieving universal birth registration can help address the risk of statelessness if it reaches those who currently face structural barriers to registration (as those without birth registration documentation can be at heightened risk of statelessness).
- 2.** The SDGs present an opportunity for a paradigm shift in how certain stumbling blocks, which historically have served as barriers to marginalised people accessing rights and services, are perceived and approached. For the stateless (and those at risk of statelessness), the lack of documentation and a ‘legal status’ are two of the most significant stumbling blocks. They are barriers to accessing the fruits of development, but they can also result in the violation of other rights. For example, an undocumented migrant seeking healthcare, may risk being detained.

But there is an alternative. Instead of seeing the lack of documentation or legal status as legitimate reasons to deny people access to development, the

emergence of this information when they attempt to access a particular good, could instead trigger a process which results in their documentation or status also being resolved. For example, the undocumented child who applies to attend school, should not be denied education, but should instead, be enrolled in school and also receive documentation.

UN High Commissioner for Refugees (UNHCR),
Good Practices Paper - Action 7:
Ensuring Birth Registration for the Prevention of Statelessness

UNHCR 2017, p. 12
<<https://www.refworld.org/docid/5a0ac8f94.html>>

Addressing statelessness through the Sustainable Development Goals

The 2030 Sustainable Development Agenda offers UNHCR, civil society and the private sector an opportunity to partner with governments to include commitments on universal birth registration in national development plans. In 2017 UNHCR produced a new guidance note on the relevance of the SDGs to its statelessness mandate and the Campaign to End Statelessness by 2024. SDG 16 focuses on justice, good governance, and the promotion of peaceful and inclusive societies, and draws attention to the situation of marginalized populations. It recognizes that sustainable development can only be achieved if all persons, including those who are stateless, have access to justice and a legal identity, including birth registration. In addition to SDG 16, the achievement of several other goals and targets will also improve birth registration rates, including among persons who are stateless or at risk of statelessness.

Target 17.18, which seeks to improve and disaggregate data, provides an opportunity to advocate for the inclusion of stateless persons and those of undetermined nationality in States' CRVS systems. Statistical data that report nationality status will help States to achieve other SDGs and related targets and measure the extent to which stateless persons benefit from public services and investment. Full implementation of the SDGs and inclusive development that 'leaves no one behind' require States to remove obstacles that stateless persons and those at risk face because they lack legal identity documents (such as birth certificates). Ultimately, they require States to grant stateless persons a nationality and equal rights and development opportunities. A recently adopted HRC resolution emphasizes that stateless children should be included in implementation of the 2030 Agenda for Sustainable Development and must enjoy unhindered access to birth registration.

Chapter 12:

Standards Related to Migrants, Displaced Children and Refugees

This chapter discusses international standards that are related to migrants, displaced and refugee children, and statelessness. In particular, this chapter looks at the Global Compact on Migration and critiques of the manner in which the Global Compact addresses statelessness.

Discussion questions

1. Does the Global Compact on Migration provide adequate safeguards to identify and protect against childhood statelessness in a migration context?
2. Are the Global Compacts on Migration and Refugees a step in the right direction or a missed opportunity to recognise and address statelessness in migration and displacement contexts?
3. How does the experience of migration or displacement impact on the child's right to immediate birth registration and to acquire a nationality under CRC Article 7 and how important is it to assert such human rights standards in relation to stateless children in a displacement or migration context?

Texts and Materials

United Nations (UN),

Global Compact for Safe, Orderly and Regular Migration

UN 2018, p. 10

< https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf >

Object 4: ensure that all migrants have proof of identity and adequate documentation

We commit to fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant's legal identity upon entry, during stay, and for return, as well as to ensure effective migration procedures, efficient service provision, and improved public safety. We further commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights. To realize this commitment, we will draw from the following actions:

a) Improve civil registry systems, with a particular focus on reaching unregistered persons and our nationals residing in other countries, including by providing relevant identity and civil registry documents, strengthening capacities, and investing in information and communication technology solutions, while upholding the right to privacy and protecting personal data

b) Harmonize travel documents in line with the specifications of the International Civil Aviation Organization to facilitate interoperable and universal recognition of travel documents, as well as to combat identity fraud and document forgery, including by investing in digitalization, and strengthening mechanisms for biometric data-sharing, while upholding the right to privacy and protecting personal data

c) Ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents, making use of information and communications technology, as well as community outreach, particularly in remote areas

d) Facilitate access to personal documentation, such as passports and visas, and ensure that relevant regulations and criteria to obtain such documentation are non-discriminatory, by undertaking a gender-responsive and age-sensitive review in order to prevent increased risk of vulnerabilities throughout the migration cycle

e) Strengthen measures to reduce statelessness, including by registering migrants' births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State's territory,

especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation

f) Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights

g) Build upon existing practices at the local level that facilitate participation in community life, such as interaction with authorities and access to relevant services, through the issuance of registration cards to all persons living in a municipality, including migrants, that contain basic personal information, while not constituting entitlements to citizenship or residency.

Amal de Chickera,

'GCM Commentary: Objective 4: Ensure That All Migrants Have Proof of Legal Identity and Adequate Documentation'

Refugee Law Initiative Blog on Refugee Law and Forced Migration,
8 November 2018

< <https://rli.blogs.sas.ac.uk/2018/11/08/gcm-commentary-objective-4/> >

Introduction

Objective 4 of the Global Compact on Migration aims to “Ensure that all migrants have proof of legal identity and adequate documentation”. The objective itself is framed slightly differently to how it was in the Zero Draft, which set out to ‘Provide all migrants with proof of legal identity, proper identification and documentation’. The difference between the two versions is subtle. However, the deeper we go into the text of the Objective, the clearer it becomes that this is a watered-down version of the Zero Draft, which has lost many of the positive features of that draft while introducing some negative ones. The overall conclusion to be drawn is that in this ‘final’ form, it is difficult to see how Objective 4 adds to existing obligations that states have towards migrants under international human rights law; whereas some of the language actually represents a softening of such obligations. Further, there is evidently a clear drive towards promoting better cooperation among states, towards what appears to be an unspoken objective of keeping ‘unwanted’ migrants out.

The Evolution

The main statement of intent under the Objective makes this clear, and therefore, it is useful to directly compare para 20 of the Final Draft with what was para 18 of the Zero Draft:

| Zero Draft, Para 18 | Final Draft, Para 20 |
|--|---|
| <p>We commit to <i>equip migrants with proof of legal identity</i> and other relevant documentation, including birth, marriage and death certificates, at all stages of migration in order to end statelessness and avoid other vulnerabilities. We further commit to ensure this documentation allows all migrants to have access to services and exercise their human rights, and States can identify a person’s nationality upon entry and for return. In this regard, the following actions are instrumental.</p> | <p>We commit to <i>fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality</i> and relevant documentation, allowing national and local authorities to ascertain a migrant’s legal identity upon entry, during stay, and for return, as well as to ensure effective migration procedures, efficient service provision, and improved public safety. We further commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights.</p> |

The first change that stands out, is that while the Zero Draft focused on all migrants at “*all stages of migration*”, the Final Draft focuses on “*nationals*” instead. This is a peculiar decision for a Compact for Migration. The rationale appears to be that if every state provides documentation to all its nationals, states will face no problem in identifying where migrants are from (and importantly, where they can be sent back to). This rationale fails to account for or address the situation of stateless persons or other vulnerable groups (including displaced persons who are not recognised as refugees, victims of trafficking and irregular migrants). This is clearly not an oversight, as the Zero Draft text set out to “*end statelessness and avoid other vulnerabilities*”, an objective that has been taken out of the Final Draft. What this is then, is a rolling back of the protection reach and ambition of the Objective. It is no longer an Objective which primarily aims to document and protect undocumented migrants who may not have a nationality, but rather, one which primarily aims to document nationals, so that migration can be controlled more effectively and unwanted migrants can be returned to their own countries. The giveaway is the phrase “*allowing national and local authorities to ascertain a migrant’s legal identity upon entry, during stay, and for return, as well as to ensure effective migration procedures, efficient service provision, and improved public safety*” which frames the Objective primarily from the perspective of state authorities and not individual migrants (as was the case with the Zero Draft). It must be acknowledged that the final sentence is still framed from a migrant rights perspective, but the priority shift that has occurred between the Zero and Final draft is clear.

The seven specific actions (sub-paragraphs A – G) under Objective 4 also deserve further scrutiny.

Paragraph A aims to “*Improve civil registry systems, with a particular focus on reaching unregistered persons and our nationals residing in other countries...*”. This continues the trend of prioritising the registration of “*our nationals*”. However, an important improvement in this text is the reference to the protection of the right to privacy and personal data, which were not included in the Zero Draft. Likewise, Paragraph B, which looks at the harmonisation of travel documents in line with International Civil Aviation Organisation specifications, also emphasises the importance of privacy and data protection.

Paragraph C relates to access to consular protection. A significant change from the Zero Draft is that this previous draft called on access to consular documentation for all “*migrants*”, whereas the Final Draft again limits the scope of this to “*nationals*”. This may appear to be a legitimate restriction, as states have a right (and obligation) to protect their nationals. However, it is important to note that many migrants become stateless when their own country fails to recognise and protect them as “*nationals*”. Migrants in such situations find themselves trapped between a failure/refusal to take responsibility of the country of origin, and a failure/refusal to identify and protect, of the country of migration. The Final Draft does not help in any way to address this difficult reality, which presents significant real life consequences on the liberty, movement and other rights of individuals, and also presents difficulties for states. By restricting this provision to “*nationals*”, individuals whose nationality is disputed will likely remain without cover or protection.

Paragraph E still retains a focus on statelessness. It aims to “*Strengthen measures to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation.*”

The first two actions of registering migrant births and ensuring gender equal nationality laws are welcome and restate existing obligations under Article 7 of the Convention on the Rights of the Child (CRC) and Article 9 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The text in relation to gender discrimination in particular is an improvement on the Zero Draft, which only focussed on women’s ability to confer nationality on their children and not men’s. It is a missed opportunity however, that the text does not go further and cover other forms of discrimination (race, disability etc.) which also cause statelessness as well as vulnerability in migration contexts.

There is another significant limitation which should be pointed out. Paragraph E as a whole appears to build on the dual assumptions that:

1. Providing migrants with documentation alone will resolve their statelessness.
2. The responsibility to address statelessness lies with the country of origin.

As such, it is largely silent on the more fundamental problem of discriminatory laws, policies and practices which create and perpetuate statelessness (regardless of documentation); and does not re-state the human rights obligation of host states to also play a role in ending statelessness.

And so, while this paragraph sets out obligations of the country of origin of the parents of a child born in a third country, it is silent on the obligations of the country of birth / migration, to grant nationality to children born on their territory who would otherwise be stateless. This obligation is clearly set out in both the CRC and the 1961 Convention on the Reduction of Statelessness, and therefore, the language in Paragraph E is unfortunately regressive.

Paragraph F sets out to “*Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights*”. This appears to be a positive development. However, it is a levelling down on the language of the Zero Draft, which called on states to “abolish” such requirements (and not ‘review and revise’ them). The language of the Zero Draft was more appropriate, as under international human rights law, states have an obligation to provide basic rights and services to all persons, regardless of their legal status. Hence, the call to abolish any practices which undermine such human rights obligations, was appropriate. Importantly, the Zero draft also made specific reference to “*stateless migrants*”, and it is not clear why this most vulnerable group has been erased from the final draft.

The final paragraph under Objective 4, calls for the facilitation of participation in community life through the issuance of registration cards etc. This is an important and useful action. However, it is important to note that it is limited in nature, and in the absence of obligations to provide nationality to stateless migrants and regularise their status, it only provides a stop-gap measure, which will grant some freedom and flexibility, but still limit the true potential and security of vulnerable migrants.

The Future

In conclusion, it must be reiterated that the Final Draft, when compared with the Zero Draft, is weaker on rights and protection, is more limited in scope and does not specifically address the situation of the most vulnerable of migrants (including the stateless). It is disappointing that the Zero Draft (which despite presenting some challenges was largely a more ambitious and progressive text), has been watered down in this manner. Writing from a statelessness perspective, it is also important to reflect on the wider lack of attention to statelessness in the Compact. Many of the other Objectives, including those on data (Obj 1), adverse drivers (Obj 2), pathways for

regular migration (Obj 5), combatting trafficking (Obj 10), status determination (Obj 12), detention (Obj 13), consular protection (Obj 14) and return (Obj 21) would have been strengthened through specific reference to statelessness and protecting stateless persons. The failure to address this issue head on, presents a missed opportunity, and is perhaps the biggest clue that the true motivation behind the Global Compact is not protecting the most vulnerable, but border control.

Tendayi Bloom,
'Statelessness and the Global Compact for Migration'

Refugee Law Initiative Blog on Refugee Law and Forced Migration,

11 September 2017

<<https://rli.blogs.sas.ac.uk/2017/09/11/statelessness-and-the-global-compact-for-migration/>>

Considerations for the global compact for migration:

1. Citizenship is not a privilege. It is a right. Every person has the right to a citizenship from birth, no matter their ethnicity, the migration status or marital status of their parents, their criminal history, or the circumstances of their birth. This must underpin considerations for the compact.

2. Citizenship should not be a prerequisite for rights. Human rights are for all humans, irrespective of citizenship or lack of citizenship. Where lack of citizenship may make access to rights more difficult, these difficulties need to be mitigated by the States involved.

Migration of stateless persons

3. Access to safe, orderly and regular migration is particularly important for stateless persons, who may be displaced everywhere, and lack any legal migration route. Border control measures must take the reality of statelessness into account, and not penalise stateless persons.

4. Trafficking is a particular risk for stateless persons. Anti-trafficking measures must include preventing statelessness and adding access to rights for stateless persons. Stateless victims of trafficking will also need a route to some status, ideally citizenship.

5. Migration control measures like detention may disproportionately affect stateless persons, putting them at risk of extreme deprivations. Indefinite detention of stateless persons is arbitrary and unacceptable. Where civil registration services are associated with immigration control, there is a risk that births to irregular immigrants are not registered and that the children will not have a clear route to citizenship anywhere.

6. Discrimination can cause statelessness, forcing people to move, and to do so irregularly. Discrimination on the basis of their irregular movement or their statelessness in the receiving country is continuous with this and should be addressed.

7. Stateless persons should not be forgotten when a State is in crisis. International mechanisms are needed to ensure the protection of stateless persons when the State in which they live (whether their country of usual residence or not) is in crisis.

Migration and the risk of statelessness

8. Registration of births and life events is crucial, but it is insufficient to avoid the risk of statelessness. States must ensure all births, adoptions, marriages and deaths, including those of and to migrants, on their territory are registered, and that all persons have a route to citizenship. Marriage and divorce must not affect an individual's citizenship status.

9. Short term migration programmes need to include mechanisms for allocating citizenship in the event of a birth. Parents should not be prevented from moving because of the statelessness of their children.

10. International cooperation is needed to ensure that every child born in a situation of large-scale displacement has access to a citizenship from birth.

11. Denationalisation where this would make people stateless is unacceptable, both for individual human rights, and for international cooperation that assumes that every State will take responsibility for its citizens. Persons should not be denationalised into statelessness, either at home or abroad. This is the same, whether that person is a citizen by naturalisation or by birth.

Statelessness as a push factor

12. Gender discrimination can cause statelessness and can exacerbate the problems associated with statelessness. States should not discriminate against women in their nationality laws and special measures should be taken to address gendered migration of stateless persons, and where gendered migration may create additional risk of statelessness.

13. Stateless persons are often excluded from sustainable development (e.g. when unable to work, to be educated, to own property, to access legal protections, etc.). If this is not addressed, it is impossible for the work towards the Sustainable Development Agenda to leave no one behind and it is likely that people will try to move to seek better opportunities, whether there are legal routes or not.

14. It is not always obvious how particular policies will affect stateless persons, or those at risk of statelessness. As such, it is crucial that the process towards the Compact proceeds with input from stateless persons and from their advocates.

A final thought

When individuals have no formal citizenship and no route to a formal citizenship, and when access to human rights including the right to move are contingent on being a citizen somewhere, this is in effect a denial of this basic truth: that each of us must live somewhere and must satisfy our basic needs somewhere on earth.

UN High Commissioner for Refugees (UNHCR), *Global Compact on Refugees (General Assembly)*,

Official Records, Seventy-third Session,
Supplement No. 12 (A/73/12 (Part II)),
UN 2018, p. 11; 16

Part 1.4 – Article 58: Registration and documentation of refugees

Registration and identification of refugees is key for people concerned, as well as for States to know who has arrived, and facilitates access to basic assistance and protection, including for those with specific needs. It is also an important tool in ensuring the integrity of refugee protection systems and preventing and combating fraud, corruption and crime, including trafficking in persons. Registration is no less important for solutions. In support of concerned countries, UNHCR, in conjunction with States and relevant stakeholders, will contribute resources and expertise to strengthen national capacity for individual registration and documentation, including for women and girls, regardless of marital status, upon request. This will include support for digitalization, biometrics and other relevant technology, as well as the collection, use and sharing of quality registration data, disaggregated by age, gender, disability, and diversity, in line with relevant data protection and privacy principles. [...]

Part 2.9 – Article 83: Statelessness - recognizing that stateless may both be a cause and consequence of refugee movements

Recognizing that statelessness may be both a cause and consequence of refugee movements, 35 States, UNHCR and other relevant stakeholders will contribute resources and expertise to support the sharing of good, gender-sensitive practices for the prevention and reduction of statelessness, and the development of, as appropriate, national and regional and international action plans to end statelessness, in line with relevant standards and initiatives, including UNHCR's Campaign to End Statelessness. States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are encouraged to consider doing so.

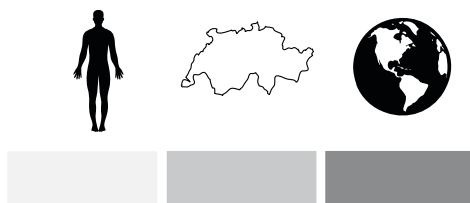
PART 3:

Responding to the Denial of Nationality and Childhood Statelessness

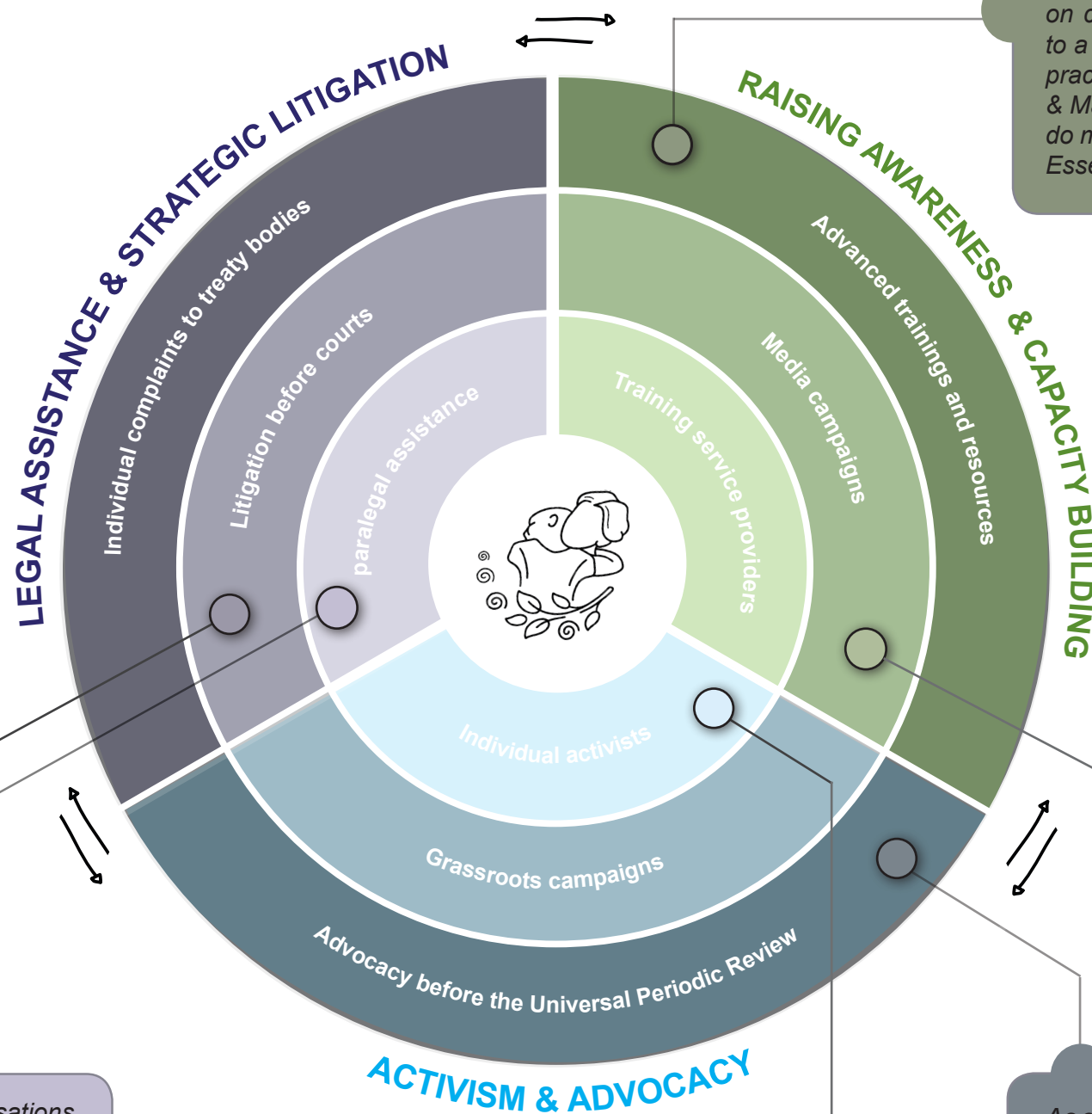
In **Part 3** of this book, we focus on **Responding to the denial of nationality and childhood statelessness**. This final part deviates from the ‘texts and materials’ approach of Parts 1 & 2, in that it presents the views of key actors working to address childhood statelessness around the world, in addition to drawing on existing texts and materials. The purpose of Part 3 is to inspire reflection and localised action to identify, understand and respond to challenges in relation to the child’s right to a nationality and childhood statelessness.

Chapter 13: Checklists to identify challenges and problems to be remedied serves as a tool to guide child rights actors in the assessment of issues, legal gaps and conditions in which the right to a nationality may be denied or deprived – in violation of Articles 7 and 8 of the CRC - thus creating (a risk of) statelessness among children. This checklist is organised in relation to the four provisions contained in CRC Articles 7 & 8. It also has one final section, which focuses on stateless children’s enjoyment of other human rights.

Chapter 14: Good practices to build on features good practices adopted by those working to address childhood statelessness on a daily basis. This chapter complements the six-part ISI podcast series ‘[What’s Best for Children’s Nationality](#)’, in which longer interviews of the featured persons/organisations and their practices can be found.



National litigation can be a very effective means, through which to secure the right to a nationality and protect the rights of stateless persons. Significant court victories have been achieved in many countries including Bangladesh, Kenya, the USA and Sudan. However, the courts can also play a negative role, as in the Dominican Republic and India.



The UNICEF and ISI Advanced intensive training on childhood statelessness & the child's right to a nationality, aims to train professionals and practitioners from around the world. This Cases & Materials book complements the training, as do many other ISI resources, including reports, Essentials booklets and databases.

Photography, films, podcasts, animations, illustrations and the written word are all important modes of communicating and raising awareness; creating spaces for stateless persons to directly speak to the general public. It is paramount that such materials protect the dignity and security of stateless persons, while promoting their individuality and agency.

NGOs and community-based organisations around the world provide direct paralegal support to individuals at risk of statelessness, helping them access documentation, establish their status and secure nationality. Paralegal work also helps shed light on wider patterns of structural discrimination, while strengthening communities.

Inspirational activists from around the world are at the heart of the global statelessness movement. They include human rights defenders stripped of their citizenship, mothers who cannot pass their nationality to their children and members of stateless minorities groups like the Rohingya. More needs to be done to empower and connect these courageous activists.

As of November 2019, ISI and its partners have made 58 country submissions, made 58 country submissions to the UPR, and produced overviews and summary recommendations on 149 countries. Over the course of this period, more than 466 relevant recommendations have been made to 109 countries reviewed. Sustained engagement with UN treaty bodies (including the CRC) has also made a positive impact.

Chapter 13:

Checklists to Identify Challenges and Problems to be Remedied

The following checklist serves as a tool to guide child rights actors in the assessment of issues, legal gaps, and conditions in which the right to a nationality may be denied or deprived – in violation of Articles 7 and 8 of the CRC - thus creating (a risk of) statelessness among children.

This checklist is organised in relation to the four provisions contained in CRC Articles 7 & 8. It also has one final section, which focuses on stateless children's enjoyment of other human rights.

Article 7.1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

A. Registered immediately after birth

The majority of countries have not achieved universal birth registration. Minority, rural, migrant and refugee communities are likely to be disproportionately impacted. The lack of birth registration and documentation is not the same as statelessness, but it heightens the risk of statelessness, in particular in a context of forced displacement, irregular migration or where a minority community's belonging is challenged.²⁰ Questions to be mindful of include:

1. What is the existing statistical data on birth registration in the country? Is this data available on a disaggregated basis – by sex, ethnicity/race, religion, migration/protection status, socio-economic disadvantage, disability, geographical region etc.?
2. Are there legal, political, social, geographic or economic challenges pertaining to access to birth registration in the state, which particularly disadvantage certain groups? E.g.:
 - i.* minority or indigenous groups
 - ii.* undocumented persons
 - iii.* (irregular) migrants, asylum seekers, refugees
 - iv.* stateless persons
 - v.* rural communities
 - vi.* children born out of wedlock or children born out of hospitals
 - vii.* girl children
 - viii.* disabled children
3. Does intersectional multiple discrimination create further barriers to accessing birth registration?
4. Are there any directly or indirectly discriminatory laws/codes which penalise having children out of wedlock, limit the number of children per family, impose (penalty) fees for (late) registration etc., which can serve to discourage registration?
5. What role does birth registration and documentation play in the law, policy and practice related to acquisition of nationality? I.e. Is birth registration and documentation required in any situation for a child to acquire a nationality? Are there any circumstances in which a child who should enjoy nationality under the law is not recognised as a national due to lack of birth registration?
6. Is a federal/national or local authority responsible for birth registration? Are there

different practices depending on the region where the child is born or where the family tries to register the birth, and to what extent do local authorities have discretion in setting the rules and process for registration?

7. Is the nationality of both parents mentioned on the birth certificate? Is the presumed nationality of the child mentioned? If yes, is this in all cases or just some (e.g. if born to a national)? What happens if nationality is unclear?

It is important to note that SDG 16.9 aims to “By 2030, provide legal identity for all, including birth registration”. It is therefore also important to understand how national action plans aim to implement SDG 16.9 in the country concerned.

B. Right to acquire a nationality

While states exercise their sovereignty and decide on their nationality law, international human rights law does impose a few key limitations. These include basic human rights norms pertaining to non-discrimination, arbitrariness, the best interest of the child and every person's right to a nationality. States are obliged to ensure that their nationality laws are implemented in a manner that respects every person's right to acquire a nationality. The law and policy framework of a particular state as well as its implementation, provide useful insight into whether states respect every child's right to acquire a nationality. Questions to be mindful of include:

1. Does the country's legal framework contain discriminatory provisions which arbitrarily deny the child's right to acquire a nationality?

I. Discrimination against minorities: (on basis of race, ethnicity, religion, language, etc.) Is the country home to a minority that is stateless or at risk of statelessness, that is subject to discriminatory law, policy and/or practice, that can undermine their enjoyment of the right to acquire a nationality? Denial of the right to a nationality as a result of such discrimination can be intentional; or due to a historical accident; can arise out of state succession or de-colonisation; ; can be the result of poor administrative practices such as the lack of birth registration which disproportionately impacts minorities who for reasons of exclusion, language, poverty or other factors cannot access registries; can result in intergenerational statelessness due to inadequate political will to rectify the statelessness of minority communities; and in a forced migration context can also particularly impact stateless minorities.

II. Gender discrimination: At present approximately 50 countries have nationality laws which directly discriminate against women in the ability to acquire, change or retain their nationality, or confer nationality on their children or spouse (of which 25 discriminate in terms of conferral to children).

These countries include the Bahamas, Cameroon, Kuwait, Lesotho, Malaysia, Morocco, Nepal, Qatar and Saudi Arabia. Where a mother is prevented from passing her nationality to her child, that child may be at risk of statelessness if they are also unable to acquire nationality from their father. Indirect gender discrimination can also cause statelessness, for example, in situations where single mothers cannot register the births of their children due to social stigma.

III. Discrimination on basis of social origin: Covert discrimination against socio-economically disadvantaged groups – most often the rural poor who cannot acquire documentation – can play a significant role in causing statelessness. Unseen barriers to accessing centralised administrative offices e.g. language, literacy, the cost and time of travel and lack of access to (information about) simplified documentation processes, are acutely felt by the socio-economically disadvantaged. The resulting lack of documentation – while not akin to statelessness (many citizens do not have documentation) – can result in statelessness for those who cannot prove their place or date of birth, parentage etc. This is particularly so if the disadvantaged group is a minority or lives in a border area, whose ‘belonging’ is more likely to be questioned.

IV. Discrimination on basis of birth: The inheritance of statelessness is the biggest cause of statelessness in the world. The failure of States to find solutions for statelessness means that new generations are born into statelessness every day. The lack of will to address statelessness is often linked to discriminatory attitudes and perceptions about belonging, including of children born out of wedlock.

V. Disability discrimination: Many countries discriminate against people with psychosocial or intellectual disabilities, including those who lack mental capacity, in naturalisation proceedings, increasing their risk of statelessness. Prejudicial social attitudes which may result in the failure of parents to register the births of disabled children – or barriers they face in doing so – can also cause statelessness.

2. Are there other law and policy gaps undermining the child’s right to acquire a nationality?

I. Children born abroad: In some countries, children born abroad to nationals do not have access to nationality.

II. International Adoption: International adoptions, if not carried out according to the law, can result in the child being denied the right to acquire a nationality.

III. International Surrogacy Arrangements: The law may also lack protection against statelessness in the context of surrogacy.

Article 7.2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

A. In accordance with their national law and their obligations under the relevant international instruments

In some countries the national law may be internally inconsistent, with the Constitution protecting basic principles which are undermined or violated by laws, policies, rules and practices. Further, it is important to assess the wider international law obligations of states, in terms of their treaty obligations, reservations and declarations under treaties, as well as other regional and international obligations and commitments. Therefore, when assessing state parties' implementation of article 7.1., it is important to, in addition to obligations under the CRC, assess other national and international treaty obligations, taking into consideration the hierarchy of norms under the country's legal framework. Questions and considerations include:

1. Is the State party to the most relevant treaties and has it removed any reservations that it made to these treaties?
2. Is there any internal inconsistency between the relevant constitutional provisions (e.g. on right to nationality, equality, non-discrimination etc.) laws, rules, procedures, policies and practices in the country?

B. In particular where the child would otherwise be stateless.

This provision under article 7.2, is of crucial importance to the protection against statelessness. There are both contextual and legal questions to be considered in relation to this question. Below are some key questions to be considered:

1. Is there a large habitually resident stateless population in the country?
2. If there is a large community in the country that is already stateless or at risk of statelessness, there are more likely to be children who are denied the right to a nationality even if they would otherwise be stateless. The following questions are also relevant in assessing such situations:

- I.** Is this situation recognised/acknowledged by the government?
- II.** What is the government position on this situation?
- III.** Has the government made any commitments to address it?
- IV.** Has the government taken any measures/steps to address it?
- V.** Has the government sought international cooperation / technical assistance from international organisations in order to address any aspects of this situation?

3. Is the country host to a large refugee or irregular migrant population that is stateless or at risk of statelessness? While many if not most countries of the world are likely to host some stateless refugees, countries which host large stateless refugee populations and which do not have adequate safeguards against childhood statelessness in place in their legal frameworks, are of most concern in this regard.

4. Does the State maintain systematic and disaggregated data on children's acquisition of nationality, birth registration, statelessness and as relevant, the questions highlighted above? The lack of credible data and statistics related to statelessness is a significant concern in most countries around the world. Some of the key challenges and gaps related to statelessness data around the world include:

I. Definitional issues: Failure to understand, interpret and apply the right definition of statelessness can result in stateless persons wrongly being excluded from statistical information, or those who have a nationality wrongly being included.

II. Gaps in data collection tools: States may give insufficient priority to the implementation of measures to identify statelessness or accurately quantify it. Sometimes, there is even a deliberate strategy to deny the prevalence of statelessness by asserting that such persons are nationals of another country.

III. Lack of adequate or comprehensive data collection: Even where data on statelessness is collected, this does not always yield comprehensive or reliable results, due to poor methodology, limitations in scope etc.

IV. Unwillingness or lack of awareness to self-identify as stateless: Many stateless persons do not see themselves as being stateless. Even if they do, there is often reluctance to draw attention to this. Thus, data collection which relies on self-identification may not be entirely accurate.

V. Not all countries in the world are able to report data on statelessness: Today, UNHCR has reliable data on the number of stateless persons in 75 countries. This means that statelessness remains unmapped in over 50% of the world's states.

5. Does the country's legal framework have adequate safeguards to protect all children

born in the territory (including foundlings) from statelessness? Some countries have no safeguards to protect against childhood statelessness. Others have only partial safeguards, conditional on the fulfilling of additional criteria, including residence requirements imposed on the child and/or parents. Further, with regard to foundlings, some countries have safeguards that are limiting. Finally, some countries may have full or partial safeguards in the law which are not implemented or implemented in a discriminatory and/or ineffective manner. Some questions to consider in assessing the nationality framework of different countries:

I. Is the acquisition of nationality by otherwise stateless children born on the territory automatic (at birth) or subject to an application procedure? If an application procedure is at place, is there a time limit? Are there additional requirements (legal residence, domicile, language, etc.)? Is there any discretion (i.e. can the authorities decide not to grant nationality, even if the conditions have been met)? Are there any other barriers such as high fees?

II. Do the normative provisions related to the right to nationality of children born in the territory, and their effective implementation, create exceptions based on the parents' legal status, including residency? The parents' gender, sexual orientation, race, religion or ethnicity, social origin, marital or other status? The parents' past opinions or activities (e.g. former military personnel)? The child belonging to a(n) (ethnic) minority group? The child being born to (former) refugees?

III. Are safeguards designed to grant nationality to children who are otherwise stateless implemented in practice?

Article 8.1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

A. Right of the child to preserve his or her identity, including nationality

In some countries, the law may allow for the deprivation or loss of nationality of children (including as a result of deprivation or loss of their parent's nationality). This can happen in a number of circumstances, such as the family living outside of the country of nationality for a number of years, resulting in automatic loss of nationality under certain legal regimes; or a parent being deprived of their nationality, resulting in the derivative loss of nationality of the child. Questions to be mindful of include:

1. Does the national legal framework allow for loss or deprivation of nationality of citizens, on any grounds?

2. Does the loss or deprivation of nationality of a parent, result in the derivative loss or deprivation of nationality of the child?

Article 8.2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

A. States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Access to justice is a matter of significant importance, both in relation to remedying denials of the right to a nationality and other human rights violations faced by stateless children. In this regard, the full implementation of Article 12.2 of the CRC Is extremely important. Questions to be mindful of include:

1. Do children who have been arbitrarily denied or deprived of a nationality have access to legal recourse and a fair remedy?
2. In such legal proceedings are all procedural and substantive guarantees under international law in place? In particular, are the Guiding Principles of the CRC adhered to?
3. Does this remedy include the retro-active granting of nationality?
4. Does it include the provision of fair and adequate compensation?
5. Do stateless children who are denied access to other human rights, also have access to legal recourse and a fair remedy, with all procedural and substantive guarantees in place?
6. Is access to justice prevented by high legal costs? Are legal practitioners trained to assist such children?

Do stateless children in the country benefit from the protection and enjoyment of other human rights enshrined in the CRC?

While this checklist focuses on the child's right to a nationality and the protection from statelessness, it is also important, to where relevant, look into other human rights challenges faced by children who are stateless (as a consequence of them being denied

their right to a nationality). Significantly, while under international law, statelessness should not result in denial of enjoyment of basic human rights, in reality this is often the case. It is important to ascertain therefore, if access to any other rights under the CRC and services related to the enjoyment of such rights is being barred or limited either in law or practice because of not holding the nationality of the State? These include, but are not limited to:

1. Non-discrimination and the best interests of the child: The guiding principles of non-discrimination (Article 2) and the best interests of the child (Article 3) are relevant both to the prevention of statelessness and the protection of stateless children. Furthermore, the child's right to not be discriminated against is likely to be undermined by statelessness, which can be the basis for further discrimination.

2. The right to an identity: The Article 8 right to the preservation of the child's identity is undermined by the child being denied a nationality; nationality being a core element of the child's identity.

3. The right to education: Article 28 which protects every child's right to an education is often violated through the denial of education to stateless children.

4. The right to the highest attainable standard of health: Similarly, the Article 24 right to healthcare is often denied to stateless children.

5. The right to family life is upheld by various provisions of the Convention (7, 9, 10, 16 and 18). Childhood statelessness can have an impact on the enjoyment of these rights, particularly in the context of migration and the deportation of persons.

6. Freedom of movement: The lack of documentation (including passports) and, in extreme cases, travel restrictions imposed within countries, undermine the freedom of movement of stateless children.

7. The right to an adequate standard of living: While this right is enshrined in Article 27, stateless persons are routinely denied the right to work, making it impossible for stateless parents to adequately provide for their children.

8. Protection from economic exploitation: Article 32 obligates states to protect all children from economic exploitation and hazardous work. However, due to poverty (see above) and lack of documentation, stateless children often have no choice but to undertake such work.

9. Child trafficking: While prohibited under Article 35, stateless children can be easy targets for traffickers due to lack of documentation, legal status and poverty.

10. Freedom from torture and freedom from arbitrary deprivation of liberty: Articles 37 (a) and (b) respectively protect children from these two violations. Similarly, Article

19 protects children from all forms of abuse, violence, and exploitation, and Article 34 protects children from sexual abuse. However, stateless children in a migratory context are more vulnerable to arbitrary and lengthy immigration detention, which can be in violation of these rights.

Chapter 14:

Good Practices to Build on

In this final chapter, we look at four good practices in relation to raising awareness about, promoting, protecting and fulfilling every child's right to a nationality, and avoiding childhood statelessness. These good practices are drawn from field practices in Nepal, Lebanon and South Africa, which feature in ISI's [‘What's Best for Children's Nationality’](#) podcast series. Readers are encouraged to listen to all six episodes of the podcast series. The final good practice case study looks at ISI's own efforts to raise awareness about childhood statelessness through a child-centred approach.

A. Good practice in activism and awareness raising: Combatting gender discrimination in nationality laws in Nepal

Gender discrimination in nationality laws is one of the primary root causes of childhood statelessness globally. Today there are 25 countries with nationality laws that deny women the same right as men to pass nationality to their children. There are roughly 50 countries that have some form of gender discrimination in their nationality laws, including denying women equal rights to pass their nationality to a foreign spouse and even, in some instances, to acquire, change and retain their own citizenship.

Gender discrimination in nationality laws is often a reflection of a deeply rooted patriarchy within society. Sustainable change can only come from within, with a clear leadership role being played by those affected. The activism and awareness raising of those directly impacted by statelessness can be an effective way to shift the paradigm and bring about change needed to combat childhood statelessness.

Deepti Gurung from Nepal spent years knocking on doors of various government offices to fight for the right to nationality for her two daughters who were stateless, because Deepti, as a single mother was denied the right to pass her citizenship to them.

Nepal's nationality laws discriminate against women. A child born to a Nepali father is granted Nepali nationality in all circumstances. However, the situation is much more complex when it comes to children born to a Nepali mother. A mother can pass her nationality to a child only in the presence of, or with proof of the identity of the father. In addition, a child born to a Nepali mother and a foreign father can obtain Nepali citizenship only through a process of naturalisation. According to UNHCR, as of 2017, there had not been a single known case of a child obtaining Nepali citizenship through this naturalisation procedure.²¹ As a result of this discriminatory law and its discriminatory implementation, countless children in Nepal are stateless.

In Nepal, the idea that a mother could and should be able to pass on her nationality to her children is often met with condemnation and is even ridiculed by government officials. When change requires a fundamental paradigm shift, grassroots activism, protesting and organising rallies might be the only option for those affected to fight for their rights and make themselves heard. The Citizenship for Affected People's Network is doing just that. Started as a group on Facebook by Deepti, the network grew and soon began organising rallies and peaceful protests, collecting signatures and advocating for law reform. Now, the group consists of thousands of people and is a force to be reckoned with. The network's biggest successes came during the drafting of the new constitution in the country. Deepti and her fellow protesters demanded that a provision should be included saying the father or mother can pass on citizenship to their child. The original draft stated that both the father and mother together could pass on their citizenship – and would have led to an even greater problem. The fight

²¹ Background Note. Gender Equality, Nationality Laws and Statelessness 2017, (UNHCR, 2017) <https://www.refworld.org/pdfid/58aff4d94.pdf>

was long and challenging. It was creative too. Deepti says that highly visible demonstrations are key to drawing attention to the issue and advocating for change. “Simply marching up the street and chanting slogans with the placards is no longer enough”- she says. The network organised whistle rallies, sleep in the street protests, a human chain protest and hunger strikes. Creativity and perseverance paid off to some extent. The new constitution states that the father or mother can pass citizenship onto their children. In addition, a special provision has been put in place allowing single mothers to pass on citizenship to their children. However, due to political gamesmanship during the final negotiating stages, the Constitutional text remains internally contradictory and the nationality act and rules are clearly discriminatory against women. Therefore, this has been a partial victory at best, with a lot more work to be done.

The Citizenship for Affected People’s Network continues to find creative and innovative ways to challenge the entrenched ways of thinking in a male-dominated society like Nepal. As well as the street protests, Deepti and her fellow activists are now also going to schools to talk about the devastating effects of childhood statelessness and the role that gender discrimination plays. The hope is to help raise a new generation of future citizens and leaders free of gender biases and ready to bring change.

***B. Good practice in paralegal services, counselling and assistance:
Securing documentation for Syrian refugees at risk of statelessness in
Lebanon***

Lack of documentation, particularly in a context of displacement, creates a barrier to obtaining nationality or recognition as a citizen and significantly heightens the risk of statelessness. Refugees, forced to flee their home countries often in haste and amidst the chaos of conflict, are particularly vulnerable to the challenges associated with either the total lack of documentation, or documentation which has been lost, stolen or forgotten amidst their journey.

Additionally, refugees often find themselves in an unfamiliar environment and may be unable to speak the language of the host country. In many cases, they know little about the host country’s laws, legal procedures or registration requirements and are unable to register themselves or their children, thus putting their families at risk of statelessness.

These challenges are confronted by practitioners around the world and there are several groups doing invaluable work, including the provision of paralegal services, legal assistance and counselling, to mitigate the risk of childhood statelessness resulting from the lack of birth registration and legal documentation.

UNHCR estimates that there were almost 1 million Syrian refugees living in Lebanon as of 2018.²² According to the Norwegian Refugee Council (NRC) roughly 200,000 Syrian children are born in Lebanon every year and more than 80% do not have their births registered, leaving them at heightened risk of statelessness. While having a birth certificate is not the same as having a nationality, birth registration plays a key role in establishing a child’s nationality, thereby safeguarding them from statelessness.

For children born in a situation of displacement, as for example is the case with Syrian refugee families, birth registration is critical to ensuring that their connection to the home country is recognised or that the link to citizenship through their parents is documented. If that link cannot be established, they may not be recognised as nationals and may not be able to return to Syria if and when it becomes safe to do so.

The complexity of birth registration procedures in Lebanon is one of the reasons why so many Syrian children go unregistered. Birth registration in Lebanon is a four-stage process requiring refugee parents to register their children with four different authorities. Additionally, children are required to be registered with the Syrian authorities as well.

| |
|---|
| Lebanese birth registration procedure for foreigners/refugees |
| Step 1: The birth notification from the hospital or the midwife |
| Step 2: A stamp from the Mukhtar - the local official |
| Step 3: Registry with the Civil Registry Office |
| Step 4: Registry with the Foreigners Registry |

To help navigate this process, international humanitarian NGO the [Norwegian Refugee Council](#) (NRC) works with Syrian refugees in Lebanon, providing them with detailed information and guiding them through the procedure step by step. This approach has proven effective and has already helped thousands of Syrian refugees. In 2018 alone, the legal assistance programme run by NRC provided procedural informational and guidance to 275,000 Syrian refugees.

The Syrian nationality laws which are gender discriminatory, add another layer of complexity. Under Syrian law, women cannot pass on their nationality to children born outside the country. A child born outside the country can only obtain Syrian nationality through their link to a Syrian father. This means that it is very difficult to register Syrian child in Lebanon if the father is dead, missing or the link to the father cannot be easily established, for example because the parents did not register their marriage. Children born out of child marriages are particularly vulnerable, because in the majority of cases such marriages are informal and not registered. In complex

²² According to the UNHCR Global Trends Report 2018 there were 944,200 Syrian refugees living in Lebanon in 2018.

cases like this, information counselling might not be enough and personalised legal assistance may be necessary to avoid statelessness.

This type of individualised approach is core to the NRC strategy of tackling childhood statelessness. At the same time, the organisation is also able to zoom out and engage at a policy level by bundling data in a bid to promote new good practices. Through this process NRC has been able to collect data and map out the issues and problems that refugees most commonly face. For example, NRC found that while 98% of the refugee population registers the birth of their child with the midwife, i.e. they complete the first stage of the Lebanese birth registration procedure, this number drops dramatically to about 40% of people who are able to follow through and get birth certificates registered with the Civil registry office. Finally, only 20% complete the Lebanese birth registration procedure and register their children with the Foreign registry office. Information like this can be very valuable and be used to better target programming overall. But also, to advocate for legislative and procedural change with the authorities, or more effectively target educational and awareness raising efforts.

***Case study: Kholod Daoud Agha.
How one woman's story represents a generation'***

Kholod Daoud Agha's story is typical for those who fled Syria. She and her family have been living in Lebanon since 2013. Kholod gave birth to her oldest daughter Leila in Syria, 20 days before her house was bombed and the family had to flee to Lebanon. Leila's birth was never registered. Lack of registration meant that Leila could not attend school, access health care or humanitarian aid and was at a very high risk of becoming stateless. The family could not travel even within Lebanon as they had no papers establishing that Leila was in fact Kholod's daughter. To help Kholod, a lawyer working with the NRC's information counselling and legal assistance programme took her through the process of first registering her marriage, thus paving the way to register her children. "Because I have proof they're registered - they are my children and no one can take them away from me," Kholod says. "I can enrol them in school, and I take them to a hospital. Thank God. This is such a relief!"

Malaysian practices

The paralegal approach is also being used in Malaysia, where nationality laws are notoriously complex, with numerous rules and timelines to follow. The [Development of Human Resources for Rural Areas](#) (DHRRA) in Malaysia employs a community-based paralegal model to combat statelessness. The organisation focuses on identifying stateless persons, helping them to collect documents and preparing them for interviews. All of the information is then gathered in a database to monitor the situation over time.

Through that process the organisation is able to identify patterns of discrimination or gaps in the procedures practiced by the government.

Malaysia is one of those countries where legal safeguards against statelessness are not adequately implemented in practice. The main focus of DHRRA is to ensure that processes employed by the government in practice do not exclude anyone. In particular, the organisation uses strategic litigation and aims at ensuring that cases that cannot be resolved at the National Registration Department are actually brought to court.

C. Good practice in litigation and advocacy: Advancing the child's right to a nationality in South Africa

This chapter has provided various examples of good practices to address childhood statelessness. While one approach is not necessarily better than another, some approaches may be better suited to specific contexts. Further, sometimes a combination of approaches is required, to cohesively see through advocacy strategies at national, regional and international levels. To maximise effectiveness South African national NGO Lawyers for Human Rights (LHR) combines a variety of practices, taking a holistic approach to secure the right to acquire a nationality of every child born in the country.

There is no official figure available on the number of stateless children in South Africa. What is known, is that lack of birth registration lies at the core of the challenge of childhood statelessness. At the same time birth registration in the country is strictly regulated by law, formulated on the basis of recognising and protecting the traditional family. For children whose families are not traditional (i.e., families with a mother and father who are married to each other, are both alive and together register their child), registration is extremely difficult, placing them at heightened risk of statelessness.

LHR works to help children in such situations. Their main approach is to provide direct legal assistance on a case by case basis. These individual cases directly help people in need, but also provide a certain level of legitimacy for LHR's advocacy on the topic. LHR also works to raise awareness through short films, stories about clients, and interviews for the media that tell the stories of people who are stateless. It is the telling of stories that assists with the difficult job of trying to convince people that statelessness is a problem. People tend to believe that there is a sense of family and belonging for everyone. It is through story telling that the history of migration, slavery and forced migration in the region is shown, which are all factors that make people stateless in Africa. Another way in which LHR engages with childhood statelessness and is able to support children and families to get their births registered is through strategic litigation. Through such litigation they are able to help the individual whose case is brought before court, but also work towards achieving the necessary change to a policy, practice or law.

What has particularly helped move the issue in South Africa forward is pressure from

the international community towards the national situation. LHR, in collaboration with the Institute on Statelessness and Inclusion, has effectively secured recommendations from international bodies, such as the Committee on the Rights of the Child and the Universal Periodic Review, as well as regional bodies such as the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights. South African courts and the legislature do take these recommendations and concluding observations into account, thus bolstering LHR's efforts in litigation and advocacy before parliament.

Case study: Hope for Love

Love was born an orphan in South Africa in 1992. Without her parents there to register her, Love's birth was never registered, and she did not obtain identity documentation nor a nationality. Growing up Love, unlike her classmates, could not take her final school exam in the last year of high school. She could not work like her friends, and she lived without the security of belonging to a place and a country. At age 26, in 2018, Love had a child of her own. However, as she herself had never been registered, she was unable to register his birth either. Without a nationality, now both of their lives were put on hold. It was with help from LHR in taking her case to court that Love in June 2019 finally heard the High Court declare both her and her son to be South African citizens by birth. This was when Love felt true hope. Hope that with her newfound nationality she would be able to get her child's and her own life in order. The first thing Love did was immunize her young child and get all of their identity documents in order. The immediate next step? For Love to take the final year school exam so that she can finally move on with life after having been in limbo for so long.

Strategic litigation to address childhood statelessness

Strategic litigation refers to the use of litigation in a tactical manner. It is a means towards achieving important change on a particular practice, law or policy by taking an exemplary case to court. The key to making a case strategic is to build a theory of change rooted in the behaviour changes of the would-be defendants. Such change tends to be something that the defendants and those like them were previously incapable of even imagining and that has major impact also outside the courtroom.

Strategic litigation can be done before national courts, as for example the European Roma Rights Centre (ERRC) has done on behalf of Romani children from Albania who are unable to register their births. Problems with childhood statelessness in the Western Balkans are closely linked to birth registration, with many Romani families in particular not being able to register the births of their children, leaving them at risk of statelessness. The ERRC believes that the struggle against childhood statelessness

and discrimination has to unfold, at least to some extent, in the courtroom as a way to enable people to use their rights.

Further to national litigation, the ERRC made the conscious decision to turn their attention to the Human Rights Committee (HRC) in Geneva with the aim of setting a precedent at the international level. While litigation before the HRC is also a long-term process that takes place over the course of several years, taking strategic cases to the Committee allows the ERRC to aim for decisions that have potential global implications. And also, to use strategic litigation at the international level towards securing universally relevant jurisprudence on the obligation to register births immediately.

D. Good practice in teaching and building capacity:

A child centred approach to educating on childhood statelessness by the Institute on Statelessness and Inclusion

The lack of awareness and knowledge about nationality and statelessness poses a significant challenge across all levels – from policy makers to professionals working in the child rights, migration, development and other sectors, to the general public. Parents who are unaware about the complexities of birth registration (in some country contexts) or structural discrimination, may not be prepared to secure nationality for their children. Policy makers and officials unaware of their state's international legal obligations may not understand that the right to a nationality exists free from discrimination, including on grounds of sex, skin colour, religious belief and other grounds. Further, those working in the child rights, development, migration, humanitarian and other relevant sectors, may not have adequate knowledge to identify and address the risk of statelessness among the populations they serve.

Childhood statelessness has always been a central pillar of ISI's work and ISI has developed a variety of resources specifically on children's right to a nationality in order to educate and raise awareness on this issue. One such resource is ISI's analytical database on recommendations and concluding observations of the Committee on the Rights of the Child (CRC Committee) in relation to Article 7 of the Convention, which protects every child's right to acquire a nationality. Drawing on the information in this Database an accompanying Toolkit was created to strengthen engagement on every child's right to a nationality before the CRC Committee. ISI's submissions to the Committee, in collaboration with other civil society organisations, further highlight country-specific issues relating to every child's right to a nationality. The information in these submissions can also be utilised to serve different, complementary purposes. For example, in 2015, ISI and South African NGO Lawyers for Human Rights drew on the contents of a joint CRC submission to create a short publication on childhood statelessness in South Africa. This booklet, accessible to younger and non-professional readers, set out the experiences of 9 children who have been let down by the system, denied their right to acquire a nationality and rendered stateless in South Africa. The many issues elaborated through their stories and the proposed solutions were all based

on the issues addressed in the CRC submission. ISI has also provided input on the child's right to a nationality to the CRC and CMW Committees, towards General Comments. 'Children' moreover was the topic of the 2017 edition of ISI's 'World's Stateless Report'. This report is available in hard copy as well as in the form of a dedicated website available at www.worldsstateless.org.

| Resources | Where to find them |
|--|--|
| The World's Stateless: Children | Website: http://children.worldsstateless.org/ Report: http://files.institutesi.org/worldsstateless17.pdf |
| The Girl Who Lost Her Country | Online version: https://files.institutesi.org/the_girl_who_lost_her_country.pdf Purchase book online: https://www.amazon.com/Girl-Who-Lost-Her-Country/dp/9082836602 |
| Learning about statelessness with Neha: website | http://kids.worldsstateless.org/ |
| Teaching about statelessness with Neha: Teacher's Guide | https://www.institutesi.org/resources/teaching-with-Neha |
| Analytical Database of recommendations on the right to a nationality made by the Committee on the Rights of the Child in its Concluding Observations | http://crc.statelessnessandhumanrights.org/tools/analytical-database |
| Addressing the Right to a Nationality through the Convention on the Rights of the Child: A Toolkit for Civil Society | http://crc.statelessnessandhumanrights.org https://files.institutesi.org/CRC_Toolkit_Final.pdf |
| Childhood Statelessness in South Africa | https://www.lhr.org.za/sites/lhr.org.za/files/childhood_statelessness_in_south_africa.pdf |
| Statelessness Essentials: Childhood Statelessness | https://files.institutesi.org/childhood-statelessness.pdf |
| Statelessness Essentials: Statelessness & Human Rights. The Convention on the Rights of the Child | https://files.institutesi.org/statelessness-and-CRC.pdf |
| Civil Society submissions to and analysis reports of the Committee on the Rights of the Child Concluding Observations | https://www.institutesi.org/core-activities/human-rights-advocacy-crc |

ISI has also developed its 'Statelessness Essentials' series, the goal of which is to introduce a variety of audiences otherwise not necessarily engaged with statelessness to how the issue intersects with their own area of expertise. Two of these booklets focuses on childhood statelessness and the Convention on the Rights of the child respectively, providing an overview to the phenomenon of childhood statelessness for child rights actors, statelessness actors, or anyone working more generally in the human rights and development fields.

Through research and advocacy on statelessness, ISI has come in direct contact with Neha and other stateless children around the world. In order to reach them and not only the adults working statelessness we decided to create a resource inspired by children, and for children. In order to promote a genuine dialogue with and among children, ISI developed a children's publication about nationality and statelessness. The book, 'The Girl Who Lost Her Country' and the accompanying website 'Learning about statelessness with Neha' (www.kids.worldsstateless.org), are resources meant to bring about a discussion with children – both those who are stateless and those with citizenship – about the right to a nationality and what it means. Besides being available in English, the book has been translated into Spanish, French and Dutch. In the future more translations will be produced.

Neha became the main inspiration behind the book and website. Further inspiration and understanding of children's ideas around nationality, belonging and statelessness came from the answers to our survey from over two hundred children from around the world. The children, from countries including Pakistan, the Netherlands, Serbia, Sri Lanka, the USA, Thailand, Ireland and the United Kingdom, answered questions such as what a nationality is, whether they thought that it is important to have one, the reasons for someone not to have a nationality and what they would say to a stateless child. All this information then fed into the story, with four children who answered the questionnaire also featured as characters in the book.

Case study: Not only about, but with and for children

“As a kid I always thought what would I do if my family falls sick and I wouldn’t be able to do anything about it. And this question led me to decide that I wanted to be a doctor and look after my mother and family when they fall sick. So, I studied hard and got good grades in high schools. Yet when the time came to sit in my medical examination, I was barred from sitting in exam just because I didn’t have a citizenship certificate. And I did not have a citizenship certificate because I did not have a father which is a very important prerequisite for getting a citizenship certificate. That was the saddest day of my life. So, when the life kicked in, I decided that I wanted to be a law student. And I thought what if I cannot wear a white coat, I can wear a black coat and be a doctor to the sick society that we live in. And that is how I joined my mother in her activism for citizenship.” – Neha Gurung from Nepal

We hope the book and website will help children and adults alike to start a conversation that can make a difference. One aspect of working towards this goal is to actively promote these resources to schools. To that purpose ISI developed a teachers’ guide linking the children’s book to different lesson plans and activities (available on <https://www.institutesi.org/resources/teaching-with-Neha>). In the Netherlands this resulted in several larger scale presentations and lectures for groups of around 150 children at a time. In Nepal, Neha, her sister Nikita and their mother took the book to schools in Kathmandu to engage with children there on statelessness and how gender discriminatory nationality laws in the country keep children from acquiring Nepali citizenship. Further, a New York high school student, after having been introduced to statelessness through a presentation on the children’s book, wanted to do more: he organised a basketball tournament to raise money with which 500 books were printed and taken to distribute among students in the Dominican Republic. This student chose the Dominican Republic, due to a family link as well as the fact that the book explores the statelessness faced by Dominicans of Haitian descent in the country.



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