



UNDER THE RADAR AND UNDER PROTECTED

THE URGENT NEED TO ADDRESS
STATELESS CHILDREN'S RIGHTS



The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on 14 December 1950 by the United Nations General Assembly. The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily when conditions permit, integrate locally or to resettle in a third country. It is also the agency mandated by the United Nations General Assembly to identify, prevent, and reduce statelessness, as well as provide international protection for stateless persons worldwide.

In more than six decades, the agency has helped tens of millions of people restart their lives. Today, UNHCR works in more than 125 countries and continues to help some 25.9 million persons.

unhcr.org/statelessness



Founded 75 years ago, Plan is one of the oldest and largest children's development organisations in the world. It works in 50 developing countries across Africa, Asia and the Americas to promote child rights and lift millions of children out of poverty.

Plan is independent, with no religious, political or governmental affiliations and works with nearly 58,000 communities each year, covering a population of 56.5 million children.

Plan's vision is of a world in which all children realise their full potential in societies that respect people's rights and dignity. Our work is guided by the UN convention of the Rights of the Child. Plan aims to achieve lasting improvements in the quality of life of deprived children in developing countries, through a process that unites people across cultures and adds meaning and value to their lives, by:

- enabling deprived children, their families and their communities to meet their basic needs and to increase their ability to participate in and benefit from their societies
- building relationships to increase understanding and unity among peoples of different cultures and countries
- promoting the rights and interests of the world's children.

Plan has been working on achieving universal birth registration since 1998, launching a global campaign – Count Every Child – to focus on the issue in 2005. Since then, over 40 million people, mainly children, have been registered, with hundreds of millions more benefiting from improved policy and legislative change that Plan campaigned for.

plan-international.org/birthregistration



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A landmark ruling of the Bangladesh High Court in 2008 confirmed the Bangladeshi citizenship status of the Urdu-speaking Bihari minority of Bangladesh, who had remained in Bangladesh without nationality for almost four decades. The government has since issued national identity cards and registered Biharis to vote.
UNHCR/G.M.B. Akash

STATELESS CHILDREN – WHO ARE THEY?

There are an estimated six million stateless children around the world¹ – children without a nationality who don't belong to any country – whose lives are insecure and futures uncertain. Many stateless children are denied access to education and health care. They are particularly vulnerable to exploitation and abuse, including being trafficked, forced into hazardous labour and sexual exploitation, locked up alongside adults and deported. Addressing statelessness is a vital step towards ensuring that millions of children can escape the cycle of marginalization and claim their rights to build better futures.

Yet, despite these dangers and the risks that stateless children face, few international or national child protection systems include stateless children in their programming. This needs to change.

Birth registration and statelessness

Birth registration is fundamental for acquiring nationality because it documents *where* a person was born and *who* a person's parents are. Most children without birth registration are not stateless. But where children are born in circumstances that might cause statelessness – such as born to mixed parentage, born in a migratory setting, born to ethnic or other marginalised minorities denied citizenship, or born in border areas – lack of birth registration can result in statelessness.

WHAT IS NATIONALITY AND STATELESSNESS?

Nationality is a legal bond between an individual and a State. States normally grant nationality either through descent, whereby children acquire the nationality of their parents (*jus sanguinis*), or through a child's birth on a country's territory (*jus soli*). Most countries grant nationality by a combination of both birth and descent.

A stateless person is someone who is not considered as a national by any State under the operation of its law.

While there are pockets of stateless people throughout the world, statelessness is particularly acute in south east and central Asia, eastern Europe, the Middle East and some countries in Africa. Most countries in the Americas grant citizenship to anyone born on their territory, so the region has the lowest incidence of statelessness.



WHAT MAKES CHILDREN STATELESS?

No child chooses statelessness. It is never her or his fault. Nevertheless, for various reasons, millions of children are born or become stateless.

- Some children can be **born stateless** by falling through the cracks of citizenship laws. In cases of marriages between persons of different nationalities or migration, conflicts can arise between nationality laws, leaving children stateless.
- Many children **inherit statelessness** from their parents, for example, if they belong to a particular ethnic group. Because some states define their citizens on the basis of ethnicity, across the world there are large numbers of people who are not allowed to become citizens of the country in which they live.
- Some are stateless because **discriminatory nationality laws** deny mothers the right to pass their nationality on to their children. This is a particular problem in about 26 countries around the world and can also arise when a child is born to parents from different countries, or where the father is unknown (for example, as a result of rape) or refuses to acknowledge the child.
- Other children may lose their nationality when the territory they were born in **changes status** and is transferred to another State.
- Foundlings – children who have been **abandoned** – may be stateless if it is not known where they were born or who their parents are.
- Sometimes children are stateless because they have difficulties proving their links to a State. **Lacking birth registration and birth certificates** creates such a risk.

Left image: Chi and her daughter Lat at their house in Ho Chi Minh City, Vietnam. Chi renounced her Vietnamese citizenship when she married a man in Taiwan. But they separated, leaving Chi and her daughter without citizenship. Since 2009, the Vietnamese government has facilitated the path for women like Chi to reclaim their citizenship. UNHCR/C. Doan

WHAT IT MEANS TO BE STATELESS

All children have the right – and should have the opportunity – to survive, develop and reach their full potential without discrimination, bias or favouritism. Yet stateless children are often unfairly denied the basic resources and protection available to other children in society. This lack of equity affects every aspect of a stateless child's life.

No legal identity

Without citizenship, and with no legal identity, stateless children are less likely to be registered at birth or be otherwise recognised and protected by the State. Children with no documents proving their name, age and origins are hard to trace if they are abandoned or go missing, or if they are separated from their parents during emergencies. Children orphaned by AIDS, for example, may be prevented from claiming their inheritance if they cannot prove their identity.

Denied health care

Even before they are born, statelessness can have an impact on a child's chances of survival. If the mother is stateless, she may not have access to antenatal care or help during labour and childbirth. Once her baby is born, she may not be entitled to any postnatal care and may be denied access to health services for herself and her child. In at least 20 countries, stateless children cannot be legally vaccinated. Over 30 countries require documentation to treat a child at a health facility.²



A Galjeel boy in eastern Kenya. In the late 1980s and early 1990s, the Galjeel were stripped of their Kenyan identity documents and evicted from their land. UNHCR/G. Constantine

Excluded from education

Stateless children are often excluded from school. Even where they are able to attend primary school, they might be barred from taking State exams so rarely go on to secondary education. As well as trapping them in poverty, this makes them more vulnerable to drifting into child labour and other forms of exploitation.

Outside social welfare and child protection systems

Social welfare programmes rarely extend to stateless communities. Since it is difficult to obtain legal work and benefits, most stateless people are living in poverty. And efforts to strengthen social welfare and child protection systems have little impact for stateless children who are unable to access them.

Missing and missing out in emergencies

In disasters and emergency situations, lack of documentation can make it difficult for stateless children to get the food, shelter and other assistance they need to survive. Those displaced by long-term conflict or other disasters can be detained and remain in limbo for years, with no hope of acquiring a nationality. Families are often separated in the chaos surrounding a disaster. Without documents, children may remain in orphanages or foster care because it is difficult to trace their families.

Protection from violence and abuse

Stateless children are more vulnerable to violence, abuse and exploitation. They may be recruited or used by armed forces or groups as soldiers or 'wives'.³ They may be sold as child brides or forced into early marriage. Stateless girls in particular are targeted for trafficking, and can end up in sexual exploitation or as domestic workers in circumstances that amount to slavery. Stateless children who are victims of violence or abuse often find it harder to access support services or to seek legal remedies for harm done. Therefore they are often left unprotected, exploited and abused.

Vulnerable to exploitation by traffickers and smugglers

Generally, stateless children are unable to obtain a national passport and only some have alternative travel documents. Unable to travel legally and safely, they are open to exploitation by smugglers and traffickers. Traffickers use statelessness to intimidate children and young people, threatening that they will be arrested if they report the traffickers. If and when children do make it to another country, they are forced to remain 'hidden' or risk being detained and deported.



An estimated 10,000 to 20,000 children of Filipino and Indonesian descent in Malaysia's Sabah state are stateless or at risk of statelessness. Many live on the street. They have little access to social services or to the school system. As a result, many children begin work at an early age in places such as the fish market in the capital, Kota Kinabalu.

© Greg Constantine

At risk in the workforce and as child labourers

Laws prohibiting child labour afford stateless children little protection. Because their parents are often poor and unable to obtain legal employment themselves, and because many stateless children are unable to go to school, many end up working in hazardous and exploitative conditions. Without the documents to prove that a child is underage, it is difficult to prosecute unscrupulous employers.

"Without citizenship, we were disadvantaged in the workforce and made less money. All my family members had to work, including children. However, our combined income was still not enough for our expenses each day." Loryo, Thailand.

Not seen as children when in contact with the law

Similarly, when stateless children come into contact with the law and cannot prove their age, they may be prosecuted as adults and locked up in adult prisons and detention centres.

Although many international or national actors are undertaking programmes to address these child protection needs, only a few include stateless children in their programming.

"It is the worst possible thing to happen to a human being. It means you are a non-entity, you don't exist, you're not provided for, you count for nothing. In Kenya if you don't have an ID card you don't exist. I have children and grandchildren and I want them to be able to manage their future. Everybody should feel that they can realize their dreams in the future."
Nubian elder, Kibera, Kenya.

STATELESS CHILDREN'S RIGHTS – THE LEGAL FRAMEWORK

There are various international legal instruments that establish children's rights, the most important being the **UN Convention on the Rights of the Child (CRC)**, which applies to every child within the State's jurisdiction, without discrimination.

The CRC states that every child has the right to acquire a nationality and to be registered immediately after birth. Every child has the right to preserve his or her identity, including nationality. States must ensure that children enjoy these rights in practice. Where a child is denied his or her identity, States Parties must provide 'appropriate assistance and protection'.

Other important legal instruments include the:

- **1948 Universal Declaration of Human Rights**, which establishes that 'everyone has the right to a nationality' and prohibits the arbitrary deprivation of nationality.
- **1954 Convention Relating to the Status of Stateless Persons**, which provides an internationally recognised status for stateless people and a framework for States to protect stateless people, including children.
- **1961 Convention on the Reduction of Statelessness**, which contains rules implemented through nationality laws to ensure that everyone enjoys the right to nationality in practice. A key provision requires States to confer nationality to children born on their soil who would otherwise be stateless.
- **1966 International Covenant on Civil and Political Rights**, which sets out legally binding obligations for States to prevent statelessness by requiring the registration of the birth of every child and reaffirmation of a child's right to acquire a nationality.
- **2009 Convention on the Rights of Persons with Disabilities**, which specifies that no one may be denied the right to acquire and change a nationality or be deprived of their nationality on the basis of disability. The Convention also prohibits denial 'on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification'.

A number of additional international and regional treaties also establish a child's right to acquire a nationality and birth registration, and help to prevent and reduce statelessness.⁴

BIRTH REGISTRATION – AN ESSENTIAL CHILD PROTECTION TOOL

Birth registration is crucial to reducing statelessness. It is the first official record of a child's existence and, although it generally does not confer nationality, it establishes a child's legal identity. All children are entitled to the full range of fundamental rights regardless of their nationality status. But citizenship ensures that every child has a legal bond establishing a State's responsibility for that child.

Without birth records and formal documentation linking them to a particular country, children are legally invisible and denied their basic rights. Unable to prove who they are, or even that they exist, they are significantly more at risk of becoming stateless.

Despite the importance of birth registration, each year 51 million newborn babies remain unregistered.⁵ This may be for one or several reasons that can include:

- the high cost, complexity and excessive documentation requirements of registration;
- social barriers preventing the registration of particular groups of children (such as children with disabilities, migrants, orphans, pastoralists, children from minority ethnic groups and marginalised populations, children living and working on the streets);⁶
- laws discriminating against and excluding girls;
- laws and practices excluding non-nationals (such as refugees, migrants, stateless persons);
- time limits coupled with restrictions on late birth registration;
- geographical distance from registration centres;
- birth registration having a low priority because of cultural and historic traditions or lack of awareness of its importance.



Guinea-Bissau: Mother and her baby with Personal Record Book.
© Plan / Elber Nosolini

WHAT CAN BE DONE

The situation of stateless children is not hopeless. Important progress in combating child statelessness is already underway. Several governments have taken steps to provide citizenship to stateless children. Others have introduced measures to prevent statelessness. Large-scale birth registration campaigns are improving the situation for many stateless children. These are welcome steps, but much remains to be done.

States, with the support of UN agencies, donors, NGOs and civil society organizations can undertake a number of concrete measures to prevent and reduce statelessness and protect stateless children, such as:

- Increase accessions to the two statelessness conventions.
- Include stateless children in the development and implementation of international and national policies, advocacy campaigns, programme work and research on children's health, education, protection, labour, trafficking, migration, poverty reduction and development.
- Strengthen national child protection systems to ensure non-discriminatory access for stateless children.
- Implement campaigns for free, accessible and non-discriminatory birth registration.
- Raise awareness and conduct advocacy for stateless children at the local and national level.
- Undertake qualitative and quantitative research to better understand the scope and situation of stateless children. Girls and boys of all ages and backgrounds should be meaningfully engaged in conducting this research.
- Assist stateless children to enjoy basic rights, including those to housing, health and education, regardless of their sex, age or background.
- Make long-term funding and resources available to prevent and reduce statelessness and protect stateless children.

Birth registration should record the child's:

- Name
- Sex
- Date and place of birth
- Name, address and nationality of both parents

Where some data is unavailable, the birth should be registered with the information which can be provided and any gaps filled subsequently.

Endnotes

- 1 Statelessness is estimated to have affected up to 12 million people by the end of 2011, 55% of them children. Available from: <http://www.unhcr.org/4fd6f87f9.html>
- 2 UNICEF (1998) *Birth Registration: The "first" right*. Available from: <http://www.unicef.org/pon98/06-13.pdf>
- 3 UNICEF (2007: 7) *Birth Registration and Armed Conflict*. Available from: http://www.unicef.at/fileadmin/medien/pdf/birth_registration_and_armed_conflict.pdf
- 4 These include Article 6 of the African Charter on the Rights and Welfare of the Child, Article 20 of the American Convention on Human Rights, Article 7 of the Covenant on the Rights of the Child in Islam and a series of provisions in the European Convention on Nationality.
- 5 UNICEF (2007) *Child Protection from Violence, Exploitation and Abuse*. Available from: http://www.unicef.org/media/media_45451.html
- 6 Plan (2009) *Count every child - the right to birth registration*. Available from: <http://plan-international.org/birthregistration/files/count-every-child-2009>

Front cover image:

13-year-old Sur is the stateless child of immigrants in Chiang Rai Province in northern Thailand. She performs agricultural labour for a daily wage of 120-150 baht (about USD 4) as well as going to school. Whether she will be able to continue with school in the future is a cause for concern. "I don't know if I can complete grade 12. It seems impossible. Without Thai citizenship, I might end up spending my life working in an orange orchard as my parents do. I don't want that."

Sur has since learnt about her right to birth registration, which is the first step toward acquiring citizenship and all the rights this status entails, including the right to employment in the formal sector. She is entitled to an official Thai birth certificate under Thailand's Civil Registration Act of 2008.

Vanessa Whyte / MJ Delaney

Back cover image:

Sadakhon's infant son (middle) suffers from epilepsy. She is from Kyrgyzstan, but is stateless. This means she cannot work or claim benefits and cannot afford to take the three-year old to see the doctor or pay for medicine. "When an attack starts and I have no medicine, I just hold my son tight in my arms. It does not help to treat his condition, but at least I am with him . . . I need citizenship to get treatment and medicine for him."

UNHCR / A. Zhorobaev



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