

Submission to the  
Committee on the Rights  
of the Child

**For the 2021  
Day of General Discussion  
On Children's Rights and  
Alternative Care**

16 –17 September 2021

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# Submission to the UN Committee on the Rights of the Child for the 2021 Day of General Discussion on Children's Rights and Alternative Care: Childhood Statelessness

## Introduction

1. The Institute on Statelessness and Inclusion welcomes the opportunity to make this submission to the Committee on the Rights of the Child for the Day of General Discussion on Children's Rights and Alternative Care.<sup>1</sup> Addressing childhood statelessness is one of the core thematic priorities of the Institute and a range of human rights and educational resources have been developed on childhood statelessness and the child's right to nationality.<sup>2</sup> This submission focuses on the impact of statelessness on children deprived of parental care and the right of every child to acquire and preserve a nationality under Article 7 and 8 of the Convention of the Rights of the Child (CRC). Specifically, it looks at:
  - the nexus between childhood statelessness and family separation
  - access to protection, rights and services for stateless children in care
  - rights to identity and nationality for children in care

## Issue 1: Childhood Statelessness and Family Separation

2. Children have the right to be cared for by their parents whenever possible.<sup>3</sup> The separation of children from their parents by State authorities should only occur when it is in the best interests of the child.<sup>4</sup> In cases of separation, the best interests of the child should be determined through a competent authority and should be subject to judicial review.<sup>5</sup> Children who are stateless or born to families affected by statelessness are more likely to be separated from their parents and less likely to be able

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<sup>1</sup> Institute on Statelessness and Inclusion is an independent non-profit organisation committed to an integrated, human rights based response to the injustices of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness.

<sup>2</sup> ISI has made 20 country [submissions](#) to the Committee, developed a range of resources on the child's right to a nationality and childhood statelessness, including a [Toolkit on Addressing the Right to a Nationality through the Convention on the Rights of the Child](#), Statelessness Essentials Booklets on [Childhood Statelessness](#), [the Convention on the Rights of the Child](#), and other related [issues](#). [The 2017 World's Stateless Report: Children](#) and a range of [resources](#) on statelessness for children and educators.

<sup>3</sup> See 1989 Convention on the Rights of the Child (hereafter CRC), Article 7.

<sup>4</sup> See CRC, Article 3.

<sup>5</sup> See CRC, Article 9.

to challenge decisions relating to their care arrangements. Further, when families are divided, children who are stateless or lack a legal identity often encounter barriers to reunification with parents and relatives. A lack of documentation combined with excessive evidentiary and bureaucratic requirements can work against the best interests of stateless children and prevent or delay family reunification.

3. There are multiple intersecting factors that leave children at heightened risk of statelessness including discriminatory laws, a lack of access to civil registration, conflict and forced migration.<sup>6</sup> Many of these factors can additionally cause and/or prolong the separation of children from their family. Discriminatory civil registration processes or nationality laws can be a causal factor in childhood statelessness as well as family separation. For example, in some countries there are multiple barriers to registering children that are born to unmarried mothers including stigma and fear of State authorities. As such, children born outside of marriage are at greater risk of statelessness.<sup>7</sup> In such situations, children are also more likely to be abandoned. In the United Arab Emirates, for example, unmarried parents have abandoned unregistered infants in order to avoid facing criminal charges. As a result, children are unable to access care within the family. They also remain unregistered, and experience social stigma for being born to unmarried parents.<sup>8</sup> In the Dominican Republic, children born to parents of Haitian descent face numerous bureaucratic obstacles and are often unable to access Dominican nationality. Many new-born infants are left abandoned in Dominican hospitals without being registered at birth.<sup>9</sup>
4. Further, in some countries discriminatory citizenship laws prevent nationality from being transmitted to a child through their mother. Over the past year, some children unable to access nationality for this reason, have not been able to return to their country of origin because they are not recognised as nationals by State authorities.<sup>10</sup> For example, in Lebanon, women cannot confer nationality to their children on an equal basis as men. When the COVID-19 pandemic hit, the Lebanese Government allowed nationals to return from abroad, but children without a claim to Lebanese nationality through their fathers, have been refused entry due to their non-citizen status. This has caused family separations leaving children at risk.<sup>11</sup>

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<sup>6</sup> Jyothi Kanics, 'Migration, forced displacement, and childhood statelessness', ISI, (2017), available at:

<http://children.worldsstateless.org/3/migration-displacement-and-childhood-statelessness/migration-forced-displacement-and-childhood-statelessness.html> (accessed 20/05/2021).

<sup>7</sup> Betsy Fisher, 'Why Non-Marital Children in the MENA Region Face a Risk of Statelessness', HHRJ, (2015), pages 1 and 2, available at: [https://ohchr.org/Documents/Issues/Children/BirthRegistrationMarginalized/B.Fisher\\_1.pdf](https://ohchr.org/Documents/Issues/Children/BirthRegistrationMarginalized/B.Fisher_1.pdf) (accessed 28/06/2021)

<sup>8</sup> Ibid.

<sup>9</sup> Johanna Matos, 'Cientos de niños son dejados abandonados por sus padres en hospitales y otros puntos', El Día, (January 2020), available at: <https://eldia.com.do/cientos-de-ninos-son-dejados-abandonados-por-sus-padres-en-hospitales-y-otros-puntos/> (accessed 25/05/2021). Only 41% of children born in public hospitals are registered before leaving these buildings Alfonso F. Reca, 'The Dominican Republic's invisible children', UNICEF, (July 2017), available at: <https://www.unicef.org/stories/dominican-republics-invisible-children> (accessed 25/05/2021).

<sup>10</sup> Institute on Statelessness and Inclusion (ISI), 'Together We Can: The COVID-19 Impact on Stateless People and a Roadmap for Change', (June 2021), page 32, available at: [https://files.institutesi.org/together\\_we\\_can\\_report\\_2021.pdf](https://files.institutesi.org/together_we_can_report_2021.pdf) (accessed 28/06/2021)

<sup>11</sup> Ibid.

5. Stateless persons can be subject to immigration controls both in their country of origin and abroad. The risks of children being separated from their families can be compounded in situations where stateless persons are also categorised as irregular migrants. For example, stateless Rohingya families fleeing persecution and seeking refuge in India are treated as “illegal immigrants”. They are often arrested on immigration charges. Family members are separated from one another during this process and detained in different detention and social care facilities. Their statelessness means they can neither be deported to Myanmar nor released after serving out their sentences, leaving families in situations of indefinite separation and detention.<sup>12</sup> In April 2021, Indian authorities attempted to deport a 14-year-old Rohingya girl to Myanmar. She was detained in social care facilities in India. Her parents and family, however, were living in Bangladesh as refugees. Myanmar refused to accept her back due to her lack of legal status in the country. She remains separated from her family in Bangladesh.<sup>13</sup>
6. There is a strong correlation between statelessness and forced migration. Children who are denied access to nationality also face difficulty in accessing health care, education, state support and future employment opportunities. They can also be subject to harassment, arrest and detention, causing them to seek refuge in other countries, sometimes without their parents.<sup>14</sup> When separated from their families either within their own country or by international borders, unaccompanied stateless children face barriers to accessing family reunification services. Separated children without birth registration documents may lack basic biographical information about themselves including their date of birth, age and names of relatives, increasing the barriers to family tracing and reunification. For example, in Côte d’Ivoire forced migration due to conflict separated families between 2002 and 2004.<sup>15</sup> A lack of access to birth registration meant that separated children were unable to trace relatives or prove family connections. Returning refugees and internally displaced persons (IDPs) were thus unable to be reunited.<sup>16</sup>
7. Legal obstacles can also prevent separated children from being reunited with other family members. In the UK, for example, unaccompanied children face more legal barriers than adults in applying for refugee family reunion for family members in other countries.<sup>17</sup> Further, the bureaucratic and evidentiary requirements to prove legal identity and family relationships for refugee family reunion can be insurmountable for stateless persons.<sup>18</sup>

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<sup>12</sup> Al Jazeera, ‘Supreme Court signed our death warrant’: Rohingya in India’, (9th April 2021) available at:

<https://www.aljazeera.com/news/2021/4/9/supreme-court-has-signed-our-death-warrant-rohingya-in-india> (accessed 14/06/2021).

<sup>13</sup> Scroll, ‘India moves to deport 14 year-old Rohingya girl but Myanmar refuses’, (2nd April 2021) <https://scroll.in/latest/991196/myanmar-refuses-to-take-back-14-year-old-rohingya-girl-who-faces-deportation-in-india-reports> (accessed 24/06/2021).

<sup>14</sup> Amnesty International et al., Without My Family. ‘The Impact of Family Separation on Child Refugees in the UK’, (2019), page 22, available at: <http://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Without-my-family-report-AW-Jan2020-LoRes.pdf> (accessed 28/06/2021)

<sup>15</sup> Mike McGovern, ‘Making War in Côte d’Ivoire’, The University of Chicago Press and Hurst Co., (2011), 25(2): 399-401.

<sup>16</sup> Laura Parker, ‘Foundlings in Côte d’Ivoire’, ISI, (2017) available at: <http://children.worldsstateless.org/3/safeguarding-against-childhood-statelessness/foundlings-in-côte-divoire.html> (accessed 27/05/2021).

<sup>17</sup> Amnesty International et al., Without My Family. ‘The Impact of Family Separation on Child Refugees in the UK’, (2019), page 22, available at: <http://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Without-my-family-report-AW-Jan2020-LoRes.pdf> (accessed 28/06/2021)

<sup>18</sup> Ibid.

## Issue 2: Protection, rights and access to services for stateless children in care

8. Children deprived of parental care are often denied opportunities for their development and face greater barriers to accessing basic services. A child's lack of legal identity or nationality can present further barriers to securing access to appropriate alternative care that prioritises a family environment. This can also present additional barriers to accessing services such as education, health care and development opportunities. As such, stateless children separated from their parents and relatives, are often doubly disadvantaged. These limitations can also be compounded when stateless children are on the move.<sup>19</sup> States should ensure the rights of children without discrimination irrespective of their national, ethnic or social origin or their birth status.<sup>20</sup> Nonetheless, stateless children who are under the care of State authorities are disadvantaged in accessing appropriate alternative care arrangements that meet their individual needs.<sup>21</sup>
  
9. For example, according to care guidelines, foundlings in the Dominican Republic should stay in reception institutions (hogares de paso) for between three and six months before moving on to family environments.<sup>22</sup> Despite some improvements in prioritising the placement of children in families,<sup>23</sup> there are still numerous stateless children who are institutionalised for many years, sometimes until the age of 18. They do not have equal access to health and education due to bureaucratic obstacles relating to their lack of documentation. Children therefore cannot develop their full potential.<sup>24</sup> In the Philippines, many of the 1.8 million abandoned children have uncertain nationality.<sup>25</sup> The Department of Social Welfare and Development (DSWD) is responsible for guaranteeing them secure and appropriate placements. Nonetheless, stateless foundlings are disadvantaged in securing appropriate care due to the lack of nationality documentation. They suffer disproportionately from inadequate facilities in social care institutions.<sup>26</sup> In Malaysia, statelessness continues to affect those who have no proof of parentage, including foundlings and undocumented children.<sup>27</sup> Access to formal education, health care and social security is limited in Malaysia for those who lack legal status. Stateless children

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<sup>19</sup> Sara Lim Bertrand and Kristen M. Castrataro, 'Cross-border Protection of Children on the Move in East and Southern Africa: A Quick Reference Guide for Bilateral Coordination', Save the Children, (2019), page 9, available at:

[https://resourcecentre.savethechildren.net/node/15970/pdf/cross\\_border\\_protection\\_guide\\_esaro\\_rpu.pdf](https://resourcecentre.savethechildren.net/node/15970/pdf/cross_border_protection_guide_esaro_rpu.pdf) (accessed 28/06/2021)

<sup>20</sup> See CRC, Article 2.

<sup>21</sup> UN General Assembly, 'Guidelines for the Alternative Care of Children', (24 February 2010), A/RES/64/142, para. 23, available at:

<https://www.refworld.org/docid/4c3acd162.html> (accessed 28/06/2021)

<sup>22</sup> Wanda Méndez, 'Los Hogares de Paso del CONANI protegen 303 niños maltratados', Listin Diario, (May 2018), available at:

<https://listindiario.com/la-republica/2018/05/15/514998/los-hogares-de-paso-del-conani-protegen-303-ninos-maltratados> (accessed 25/05/2021).

<sup>23</sup> Dominican National Council for Children and Adolescents (CONANI), 'CONANI adquiere programa para registro y seguimiento de niños, niñas y adolescentes institucionalizados', CONANI, (July 2018), available at: <http://conani.gob.do/conani-adquiere-programa-para-registro-y-seguimiento-de-ninos-ninas-y-adolescentes-institucionalizados/> (accessed 25/05/2021).

<sup>24</sup> Alfonso F. Reca, 'The Dominican Republic's invisible children', UNICEF, (July 2017), available at: <https://www.unicef.org/stories/dominican-republics-invisible-children> (accessed 25/05/2021).

<sup>25</sup> Jonhatan Kaiman and Sunshine de Leon, 'The Philippines has 1.8 million abandoned children. Here's what keeps many from adoption', Los Angeles Times, (May 2016), available at: <https://www.latimes.com/world/asia/la-fg-philippines-orphans-adv-snap-story.html> (accessed 28/05/2021).

<sup>26</sup> Ibid.

<sup>27</sup> Rodziana Mohamed Razali, 'Addressing Statelessness in Malaysia: New Hope and Remaining Challenges', ISI, (2017), available at:

[https://files.institutesi.org/WP2017\\_09.pdf](https://files.institutesi.org/WP2017_09.pdf).

are therefore disadvantaged. Even children who are adopted by Malaysian parents continue to face barriers to accessing these services, since nationality cannot be transmitted through adoption arrangements. This can leave children and adoptive parents in limbo for many years.<sup>28</sup>

10. Children who lack birth certificates and legal identities can struggle to prove basic facts about themselves to state authorities including their place of birth and their age. For those deprived of parental care, this can cause barriers to accessing appropriate alternative care settings. For example, children unable to prove their age can be treated as adults and placed in adult immigration detention centres instead of appropriate social care settings, or they can be liable to deportations as adults when they should be protected by state authorities as separated children.<sup>29</sup>

### Issue 3: The right to identity and nationality for children in care

11. Safeguarding and promoting the rights of children in alternative care, including the right to identity and nationality is a core principle in guidelines to alternative care.<sup>30</sup> States should take steps to ensure that children can preserve their identities and, where a child has been deprived of elements of their identity should provide assistance and protection with a view to speedily re-establishing his/her identity.<sup>31</sup> In order to prevent and reduce statelessness, States should also ensure that foundlings born within their territory have access to nationality.<sup>32</sup> Forty-three States do not currently include nationality provision for foundlings in their laws.<sup>33</sup>
12. Tracing and establishing links with an abandoned child's parents should not result in the loss of nationality. In some States, the identification of parents as foreigners can place a child at risk of statelessness. For instance, in Romania, if either or both parents are identified before the child turns 18 years old and discovered to be foreigners, the nationality of the child can be revoked. No safeguards against statelessness are provided in such situations.<sup>34</sup> Other States have better practices in this regard. Albania, for example, provides protection against loss of nationality of the child in similar situations by granting legal guardians scope to decide in matters relating to a child's Albanian nationality when the legal status of birth parents is ascertained.<sup>35</sup> The Philippines has also taken some initial steps

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<sup>28</sup> Ibid. See further: Tini Zainudin, 'Stateless and Invisible', ISI, (2017), available at: <http://children.worldsstateless.org/3/safeguarding-against-childhood-statelessness/stateless-and-invisible.html> (accessed 31/05/2021).

<sup>29</sup> Coram Children's Legal Centre, 'Immigration policy on assessing the age of young asylum seekers found to be unlawful', available at: <https://www.childrenslegalcentre.com/immigration-policy-on-assessing-age-of-young-asylum-seekers-found-to-be-unlawful/> (accessed 24/06/2021).

<sup>30</sup> UN General Assembly, 'Guidelines for the Alternative Care of Children', (24 February 2010), A/RES/64/142, para. 23, available at: <https://www.refworld.org/docid/4c3acd162.html>. See also 'Child Identity Protection' available at: <https://www.child-identity.org/index.php/en/> (accessed 25/06/2021).

<sup>31</sup> See CRC, Article 8.

<sup>32</sup> 1961 Convention on the Reduction of Statelessness, Article 2.

<sup>33</sup> GLOBALCIT, Global Database on Modes of Acquisition of Citizenship, available at: <https://globalcit.eu/acquisition-citizenship/> (accessed 28/06/2021).

<sup>34</sup> European Network on Statelessness (ENS), 'No Child Should Be Stateless', (2015), page 23, available at: [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_NoChildStateless\\_final.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf) (accessed 28/06/2021).

<sup>35</sup> Ibid.

towards providing foundlings with access to nationality. In 2020 the Foundling Welfare Act was approved by the House of Representatives, which enables foundlings to access Filipino nationality.<sup>36</sup> In May 2021, the Philippines' Senate also presented a bill, the Foundling Recognition Act, to grant abandoned children Filipino nationality.<sup>37</sup>

13. Some States provide better systems of preserving the identity of children in care. South Africa and Zimbabwe use cross-border Standard Operating Procedures (SOPs), which help to ensure that migrant children receive adequate support. These SOPs are designed to facilitate the identification and determination of vulnerable children within the shortest time possible. Among other mechanisms, the SOPs cover family tracing, alternative care placement and documentation management.<sup>38</sup>
14. In providing children deprived of parental care with access to care in a family environment, international adoption can also be arranged. This option can only be considered when unaccompanied or separated children have no established family relations and efforts to determine their identity and parentage have been exhausted.<sup>39</sup> Further, other suitable in-country placements should be identified in the first instance. International adoption can lead to complications where there are conflicts between the nationality provisions in different States. To safeguard against statelessness, sending countries must preserve a child's original nationality until the child acquires another nationality. In some countries this is not the case. For example, in Romania international adoption can result in loss of Romanian nationality for the child, even if he or she becomes stateless as a result.<sup>40</sup> Other States have better safeguards against statelessness in cases of international adoption. For example, in Macedonia, adoptees can preserve their Macedonian nationality until adoptive parents and children request otherwise.<sup>41</sup>
15. Receiving countries must also respect the rights of internationally adopted children by offering them appropriate protection and making sure that children have the right to acquire a nationality upon adoption.<sup>42</sup> In practice, however, international adoption can result in statelessness. For example, in the United States, the Child Citizenship Act states that all children adopted from a foreign country can become US nationals if at least one of their parents is a US citizen, they live (lived) in the custody of the US parent, they have been admitted as immigrants by the US authorities, and the adoption is a

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<sup>36</sup> Rappler, 'House approves bill recognizing foundlings as natural-born Filipinos', (October 2020), available at: <https://www.rappler.com/nation/house-approves-foundling-welfare-act-final-reading> (accessed 31/05/2021).

<sup>37</sup> Hana Bordey, 'Bill recognizing foundlings as natural-born Filipinos sponsored in Senate', GMA News, (May 2021), available at: <https://www.gmanetwork.com/news/news/nation/788830/bill-recognizing-foundlings-as-natural-born-filipinos-sponsored-in-senate/story/> (accessed 31/05/2021).

<sup>38</sup> Sara Lim Bertrand and Kristen M. Castrataro, 'Cross-border Protection of Children on the Move in East and Southern Africa: A Quick Reference Guide for Bilateral Coordination', Save the Children, (2019), page 13, available at: [https://resourcecentre.savethechildren.net/node/15970/pdf/cross\\_border\\_protection\\_guide\\_esaro\\_rpu.pdf](https://resourcecentre.savethechildren.net/node/15970/pdf/cross_border_protection_guide_esaro_rpu.pdf) (accessed 28/06/2021)

<sup>39</sup> UN General Assembly, 'Guidelines for the Alternative Care of Children', (24 February 2010), A/RES/64/142, para. 5, available at: <https://www.refworld.org/docid/4c3acd162.html> (accessed 28/06/2021)

<sup>40</sup> European Network on Statelessness (ENS), 'No Child Should Be Stateless', (2015), page 23 and 24, available at: [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_NoChildStateless\\_final.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf) (accessed 28/06/2021)

<sup>41</sup> Law on Citizenship of the Republic of Macedonia, Article 20.

<sup>42</sup> Jay Milbrandt, 'Adopting the Stateless', *Brook. J. Int'l L.*, (2014), 39: 696-742.

conclusive action.<sup>43</sup> However, a significant number of legally adopted children have never received US citizenship. This places them at increased risk of statelessness if policies in the country of origin do not enable them to preserve their nationality after adoption. The Adoptee Rights Campaign (ARC) estimated in 2018 that adoptees who entered adulthood without being a US citizen numbered between 7,321 and 14,643 from 1999 to 2016. It also added that children adopted after 2016 without US citizenship were estimated to be between 32,000 to 64,000 by 2033.<sup>44</sup> Barriers to applying for US citizenship are greater when international adoptions are arranged informally. Children who were adopted outside of State procedures may become and remain stateless after their arrival in the United States.<sup>45</sup>

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<sup>43</sup> Donald Kerwin and others, 'Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population', JMHS, (2020), 8(2): 150-213.

<sup>44</sup> Stephen Stock and others, 'Adopted Abroad as Infants, Raised in US, and Now – They May Face Deportation', NBC, (February 2019), available at: <https://www.nbcbayarea.com/news/local/adopted-abroad-as-infants-raised-in-us-and-now-they-may-face-deportation/5888/> (accessed 31/05/2021).

<sup>45</sup> Donald Kerwin and others, 'Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population', JMHS, (2020), 8(2): 150-213.



## Recommendations

Based on the content of this submission, the following recommendations are made:

- I. States should ensure every child's right to an identity and a nationality. Children in care can be particularly vulnerable to loss and deprivation of nationality. As such, special provisions should be put in place for children in care in order to uphold these rights.
- II. States should ensure that birth registration is available and accessible to all, regardless of the legal or marital status of parents. This will help to protect children's right to an identity, including nationality, and can reduce the likelihood of abandonment.
- III. Discriminatory nationality laws, including those that prevent women from passing their nationality to their children, should be amended. They directly impact the child's right to acquire a nationality and can lead to statelessness and the separation of children from their families.
- IV. Families affected by statelessness should not be subject to arbitrary arrest, indefinite detention or family separation. Statelessness determination procedures, better access to refugee protection where appropriate, and alternatives to detention can help to prevent stateless families from being separated.
- V. Family tracing and reunification procedures should include provision for children who are stateless or lack a legal identity. In such cases, evidentiary, documentary and bureaucratic requirements should be relaxed to ensure that stateless and undocumented children are not disadvantaged in accessing care in a family environment.
- VI. States should ensure that children in care can receive equal access to rights, services and opportunities regardless of their nationality or legal status so they can develop to their full potential.
- VII. All States should incorporate legal provisions that enable foundlings to acquire nationality.
- VIII. All States should provide safeguards against statelessness in the context of international adoption.