

## Children's right to a nationality

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Statelessness affects more than 12 million people around the world, among whom the most vulnerable are children. The Open Society Justice Initiative estimates that as many as 5 million may be minors. The consequences of lack of nationality are numerous and severe. Many stateless children grow up in extreme poverty and are denied basic rights and services such as access to education and health care. Stateless children's lack of identity documentation limits their freedom of movement. They are subject to arbitrary deportations and prolonged detentions, are vulnerable to social exclusion, trafficking and exploitation—including child labor. Despite its importance, children's right to a nationality rarely gets the urgent attention it needs.

### Children's right to nationality

The right to a nationality is protected under international law. The Universal Declaration of Human Rights provides a general right to nationality under article 15. The international human rights treaties—including the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR)—as well as the Convention on the Reduction of Statelessness, provide particular norms with respect to the right to nationality for children. In addition, human rights instruments in Africa, the Arab region, Europe and the Americas give additional guidance at the regional level.

The CRC is exceptionally important when it comes to the particular protection of children's right to nationality—not least because nearly every country has ratified it. Children's "right to acquire a nationality" is guaranteed under article 7 of the convention, which also obligates states parties to implement this right "in particular where the child would otherwise be stateless." Although the Committee on the Rights of the Child has not clarified precisely what the right to acquire a nationality means in practical terms, it has stressed that states have an obligation to take every appropriate measure to ensure that no children are left stateless. The committee has also stressed that states parties to the CRC must implement children's right to a nationality in such a way that the best interests of the child are observed.

At the very least, the right to acquire a nationality under the CRC should be understood to mean that children have a right to nationality in their country of birth if they do not acquire another nationality from birth—in other words, if they would otherwise be stateless. In fact, this particular principle is recognized in regional systems as well as in the Convention on the Reduction of Statelessness. Since the late 1940s experts have acknowledged that this measure is key to eventually eliminating statelessness.

### Causes of statelessness among children

Addressing statelessness and discrimination in access to nationality among children requires an understanding of the causes of child statelessness. Statelessness among children is often a direct result of their parents' stateless status, as most countries around the world observe a *jus sanguinis* nationality regime, whereby citizenship is granted only to those children whose parents are recognized citizens. Statelessness is a vicious circle in which parents hand down their own lack of legal status to their children, which severely compromises their childhood as well as their opportunities to live full, dignified lives as adults.

Statelessness among children is also directly caused by nationality regimes that discriminate against women. Many countries around the world prohibit women

married to foreign spouses from passing on their nationality to their children. While this remains a global problem, some countries have taken steps to amend discriminatory nationality laws. Over the last 15 years, Algeria, Egypt, Morocco and Tunisia, for example, have taken significant steps to end government-sanctioned gender discrimination by amending their citizenship laws to give women the ability to pass their citizenship to their children.

Situations of state succession have also contributed to the problem of statelessness among children. Children who belong to ethnic minority groups are particularly vulnerable to statelessness when states break up and new states are created. Frequently, minorities and people who are seen to belong to “the other side” end up being denied nationality in all of the new states. In some cases the motivations are racist or political, and in some cases statelessness is a consequence of unfortunate circumstances that may take years to remedy. In recent history we have seen this in places such as the Former Soviet Union, the Balkans, Eritrea and Ethiopia, and Pakistan and Bangladesh, and many of these situations are only very slowly beginning to be resolved.

### **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 pre-requisite to enroll. 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.

### **Combating statelessness among children**

The Justice Initiative is combating statelessness among children by strengthening the human right to a nationality. Some of our activities include:

- Litigation on behalf of children in Africa, the Americas, and Asia, including advocacy to enforce decisions.
- Advocacy for stronger international standards in favor of children’s right to nationality.
- Support, advice, and partnership with organizations around the world to address and challenge child statelessness and discrimination in access to nationality.

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