



**NO CHILD SHOULD BE STATELESS:**

**ENSURING THE RIGHT TO A**

**NATIONALITY FOR CHILDREN IN**

**MIGRATION IN EUROPE**

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## INTRODUCTION

A stateless person is somebody who is not considered as a national by any State under the operation of its law (so both in law and practice).<sup>1</sup> Having a nationality facilitates access to many fundamental human rights. Consequently, not having a nationality can make it difficult for children to access rights, such as healthcare, education, birth registration, social welfare and housing, and independence and livelihood opportunities as they progress towards adulthood.<sup>2</sup> Stateless children may also be at particular risk of immigration detention.<sup>3</sup> It is harder to protect children from trafficking, child labour, exploitation, early marriage and other types of abuse if they are stateless and lack identity documents, and their statelessness may even put them at greater risk of abuse.<sup>4</sup>

Despite obligations under international and regional law for all States to fulfil every child's right to acquire a nationality and have their best interests taken as a primary consideration, only half of European states have full legal safeguards in place to prevent children, who would otherwise be stateless, from growing up without a nationality.<sup>5</sup> A birth certificate is essential evidence of a child's family ties and place of birth, and therefore helps secure their acquisition of a nationality. However, children in migration can face barriers to the registration and documentation of their births (as can other groups in Europe, including Romani people and other minority groups).<sup>6</sup> Children born en route to Europe face challenges in registering their birth and acquiring a nationality.<sup>7</sup> Lack of awareness about statelessness among refugees and migrants, as well as those assisting them and decision-makers, creates a risk of statelessness being overlooked and inadequately addressed, which can expose stateless children to immigration detention and other violations of their fundamental rights. A lack of standardised, child rights-based procedures to identify and protect stateless people also increases the risk of statelessness among children in migration.

This paper provides an overview of how statelessness affects children in migration in Europe and explains what more needs to be done to prevent and reduce childhood statelessness in the migration context. It begins with a summary of the international and regional legal framework on the child's right to a nationality, then provides examples of children at risk of statelessness and why they are in this situation, before explaining current protection gaps. It proposes key actions to address and prevent statelessness and ensure that all children in Europe have their right to a nationality fulfilled, including children in migration.

# THE CHILD'S RIGHT TO A NATIONALITY – INTERNATIONAL AND REGIONAL FRAMEWORK



## UNITED NATIONS

### UN Convention on the Rights of the Child (Art 2, 3, 7 & 8)

States must ensure that every child is registered immediately after birth and respect the child's right to acquire a nationality. Enshrines the principle that the best interests of the child shall be a primary consideration in all actions concerning children. States must respect and ensure the rights of children without discrimination of any kind.

### International Covenant on Civil and Political Rights (Art 24)

Requires States to ensure that every child is registered immediately after birth and has the right to acquire a nationality.

### Convention on the Elimination of All Forms of Discrimination Against Women (Art 9(2))

States must ensure substantive equality between women and men, boys and girls. In relation to children, it requires that all girls have the same rights as boys to acquire, retain or change their nationality and are not directly or indirectly discriminated against in the enjoyment of their rights. Also establishes that women shall have equal rights than men to transmit their nationality to their children.

### 1961 Convention on the Reduction of Statelessness

Outlines concrete safeguards that States must integrate within nationality legislation to ensure that children acquire a nationality in situations where they would otherwise be stateless, including:

- Children born on the territory who do not acquire any other nationality at birth
- Foundlings
- Children born on a ship or aircraft.

Includes safeguards preventing children from being rendered stateless as a result of loss or deprivation of nationality.

### 1954 Convention Relating to the Status of Stateless Persons

Highlights the obligation of States to protect migrant stateless children and their rights as well as support them to acquire a nationality through naturalisation as soon as possible.

### UNHCR Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons

Establishes that (i) States must follow the principle of pursuing the best interests of the child when considering the nationality status and need for statelessness protection of children (ii) States should include procedural and evidentiary safeguards for children within statelessness determination procedures (iii) children should not be detained in any circumstances.

### UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness

Recommends special procedural considerations in statelessness determination procedures for unaccompanied children.

Concludes that the UN Convention on the Rights of the Child requires States to grant nationality to children born on their territory who would otherwise be stateless either automatically or upon application shortly after birth.

### International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

### Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration

Emphasises that States should devote special attention to the protection of stateless children, and that the non-discrimination principle of the Convention on the Rights of the Child applies to all children in the context of international migration, regardless of their nationality, migration status or statelessness. Recommends that continuous and periodic training of child protection, migration and related officials on the rights of children, migrants and refugees and on statelessness, including intersectional discrimination, should be part of policy and practice to fulfil the rights of all children in international migration.

### Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return

Emphasise that 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 or she is born. Highlights that nationality laws should be applied in a non-discriminatory manner including with regard to residence status, to ensure that every child's right to a nationality is respected, protected and fulfilled.

### Global Compact on Safe, Orderly and Regular Migration Objective 4

Commits 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.

### Global Compact on Refugees

Establishes that 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.

## COUNCIL OF EUROPE



### European Convention on Nationality

States must integrate concrete safeguards within nationality legislation to ensure that children acquire a nationality in situations where they would otherwise be stateless, including:

- Children born on the territory who do not acquire any other nationality at birth
- Foundlings.

Includes safeguards preventing children from being rendered stateless as a result of loss or deprivation of nationality.

### Explanatory Report to the European Convention on Nationality No. 166

Advises that States should remove any barriers to the naturalisation process through, for example, waiving fees and language requirements, reducing the required residency period, and adopting a simplified procedure.

### Parliamentary Assembly of the Council of Europe, Resolution 2099 (2016) The need to eradicate statelessness of children

Recognises the statelessness challenges raised by migration and urges Member States to ensure that refugee, asylum-seeking and migrant children and the children of refugees, asylum-seekers and migrants born on their territories are protected from statelessness, taking into account the best interests of the child and the need to prevent exclusion and discrimination.

### European Convention on Human Rights

Establishes core principles such as right to respect for private and family life (Art 8) and the prohibition of discrimination (Art 14). The ECHR must be interpreted in line with the case-law of the European Court of Human Rights, including *Genovese v Malta* (Art 8 and 14), *Mennesson v France* (the right to a legal identity) and others.

### Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)

Includes an action to examine practices related to avoiding statelessness among children in migration and identify appropriate solutions in the form of practical guidance. This has led to the establishment of an initiative by the Council of Europe's European Committee on Legal Co-Operation (CDCJ) to improve the identification and protection of stateless people. In 2019, a CDCJ working group reviewed how Member States determine the nationality of people (particularly children) on the move and resolve cases of statelessness.

## EUROPEAN UNION



### Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015

Acknowledges the importance of identifying and improving protection for stateless people. Established the European Migration Network Statelessness Platform to exchange information and good practices among Member States on statelessness, including childhood statelessness.

### European Parliament resolution of 26 November 2019 on children's rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child (2019/2876(RSP))

Calls on Member States to adopt a solution to the issue of stateless children within and outside the EU, in accordance with international law. Calls on the Commission to promote universal access to birth registration and the child's right to acquire a nationality, with a view to ending the risk of statelessness.

### European Parliament Resolution of 3 May 2018 on the protection of children in migration

Calls on the EU and its Member States to ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 of the UN Convention on the Rights of the Child.

### EU Returns Handbook

Provides guidance and advice on the treatment of stateless people under the EU Returns Directive.

### European Commission, Communication on the Global Approach to Migration and Mobility, COM (2011) 743 final

Urges the EU to encourage non-EU countries to address the issue of stateless persons, who are a particularly vulnerable group, by taking measures to reduce statelessness.

### Charter of Fundamental Rights of the European Union (Art 21 & 24)

Establishes the prohibition of discrimination, including on grounds of nationality, and requires that the child's best interests be a primary consideration.

## THE ROLE OF THE EUROPEAN INSTITUTIONS

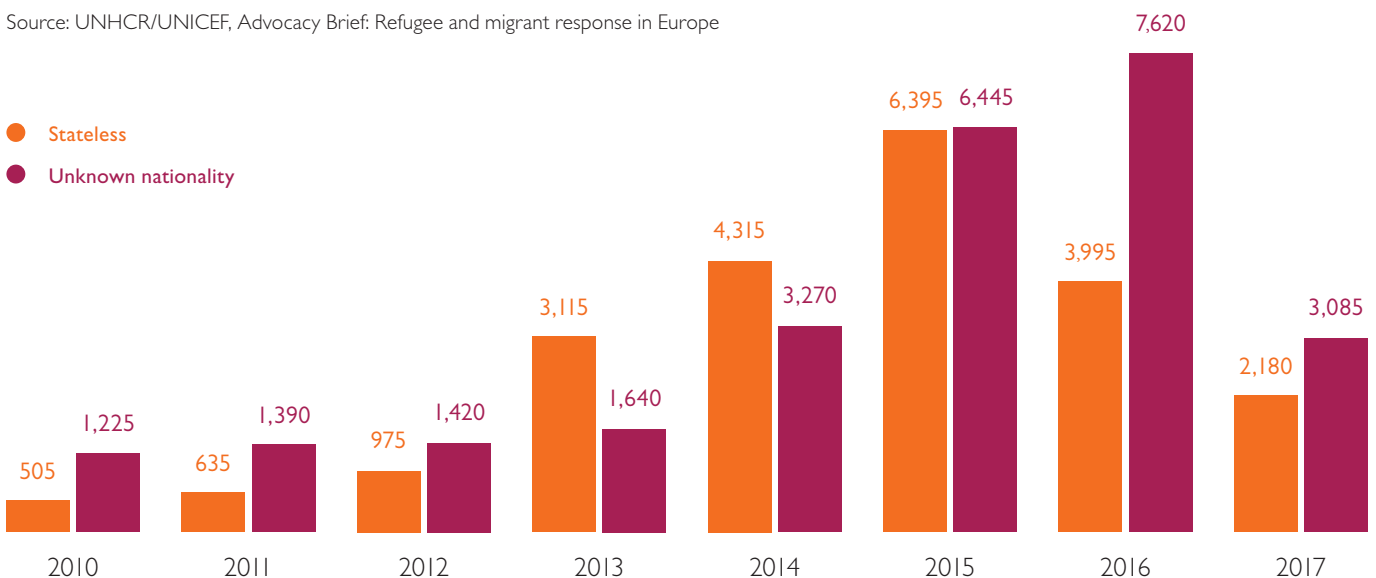
Both the European Union and the Council of Europe and their respective Member States have expressed their commitment to ending statelessness, including for children in migration, and have made some progress towards addressing childhood statelessness. Whilst the competence to decide on the conditions for acquisition and loss of nationality lies with Member States, European institutions still have an important role to play in ensuring that children in migration realise their right to acquire a nationality.

In the case of the European Union, in line with the European Parliament Resolution on the Protection of Children in Migration, the European Commission can and should promote every child's right to a nationality, with a view to ending the risk of statelessness.<sup>8</sup> The development of the European Commission's Comprehensive Child Rights Strategy<sup>9</sup> provides an opportunity to address statelessness among children in migration and promote every child's right to a nationality in the Commission's child rights activities. The European Migration Network's Statelessness Platform plays an important role in facilitating the sharing of information and good practices on statelessness among EU Member States,

including the prevention of statelessness among children in migration.<sup>10</sup> The EU External Action Service also supports important work to prevent child statelessness outside of the EU, including through the resourcing of projects in partner countries to strengthen civil registration systems and promote birth registration in its development cooperation activities. The development of a new Action Plan on Human Rights and Democracy (2020-2024) provides an opportunity to build on this work and the previous Action Plan, to continue addressing the issue of statelessness in relations with non-EU countries and preventing statelessness as a result of conflict, displacement and State succession.<sup>11</sup>

### FIRST TIME ASYLUM APPLICATIONS IN THE EU BY CHILDREN RECORDED AS STATELESS OR OF UNKNOWN NATIONALITY

Source: UNHCR/UNICEF, Advocacy Brief: Refugee and migrant response in Europe



## CHILDREN AFFECTED BY STATELESSNESS IN MIGRATION

In 2017, more than 2,000 children registered as stateless applied for asylum in Europe, four times the number who applied in 2010.<sup>12</sup> Two years earlier in 2015, this number had reached over 6,000 children.

Nationality is usually acquired at birth either through the parents (*jus sanguinis*) or through the place of birth (*jus soli*). A descent-based (*jus sanguinis*) approach to acquisition of nationality for children at birth is strongly favoured by most States in Europe and around the world today (with the exception of the Americas region). Most children in migration will therefore automatically acquire a nationality from one or both of their parents by descent. However, some children may not be able to inherit their parents' nationality for different reasons (including gaps or conflicts in nationality laws, practical barriers, or discrimination) and find themselves in a country where nationality is not acquired through the place of birth, leaving them stateless or at risk of statelessness. This section provides examples of children who might be particularly impacted and explains why.

### DEFINITIONS

#### Stateless person

A stateless person is defined in the 1954 Convention Relating to the Status of Stateless Persons (Article 1(1)) as someone "who is not considered as a national by any state under the operation of its law". This definition is part of customary international law and has been authoritatively interpreted by UNHCR as requiring "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." It is not always a straightforward process to identify if someone is stateless or not, and there will be people who appear to have a nationality, but are actually stateless, or whose statelessness becomes apparent over a period of time.

#### Person at risk of statelessness

Someone who either is not stateless but may become so; or whose statelessness may become evident over time. Indications that a child (or their parents) may be stateless may arise at different stages in migration or international protection procedures.

### CHILDREN BORN EN ROUTE TO EUROPE AND UNDOCUMENTED CHILDREN

Children born en route to Europe and undocumented children can face particular barriers to birth registration and acquisition of a nationality. Birth registration and certification proves where a child was born and who their parents are, which are key to establishing their nationality. Children born in transit and undocumented children in particular may come up against stringent documentation requirements for registration, weak civil registration systems in transit countries, language or geographical barriers, exclusion from essential services, or discriminatory laws or practices that make it harder for them to access birth registration and acquire a nationality, exposing them to the risk of statelessness (see Barriers to Birth Registration section).<sup>13</sup>

### CHILDREN FROM COUNTRIES WITH LARGE STATELESS POPULATIONS

Of the top ten countries of origin of asylum applicants in Europe in 2019, two have large historic stateless populations: Syria and Iraq.<sup>14</sup> Syria has a large population of Palestinian refugees and stateless Kurds,<sup>15</sup> and in Iraq the main populations affected by statelessness include Farsi Kurds, Bidoon, the Dom (Roma), Palestinian refugees and stateless refugees from Syria who fled to Iraq.<sup>16</sup> Other countries of origin such as Iran<sup>17</sup>, Myanmar<sup>18</sup> and Kuwait<sup>19</sup> also have significant known stateless populations. This means that some children arriving in Europe are already stateless or are born stateless if their country of birth does not have the necessary safeguards in place to ensure they acquire a nationality at birth if they cannot acquire one from their parents.

## CHILDREN WHO CANNOT INHERIT A NATIONALITY FROM THEIR PARENTS

Four of the top ten countries of origin of asylum applicants in Europe in 2019 have problematic nationality laws that mean children may not be able to inherit a nationality from their parents and can be born stateless abroad.<sup>20</sup> Gender discriminatory nationality laws in, for example, Syria, Iran and Iraq, mean that conferral of nationality outside of the country of origin is not always possible when the child cannot acquire a nationality from their father.<sup>21</sup> Some nationality laws, which take a *jus sanguinis* approach, such as Venezuela's, require children born to nationals abroad to register with State authorities in order to establish their nationality bond. This is impossible for refugees who are unable to approach the authorities of their country of origin, as this may put their safety or international protection status at risk, consequently preventing these children from inheriting their parents' nationality.<sup>22</sup> Children in migration are also more likely to be at risk of statelessness due to conflicts between nationality laws of different States, because their birth or movement across borders is usually linked to the nationality laws of at least two States.<sup>23</sup>

## CHILDREN FROM FAMILIES WITH COMPLEX HISTORIES OF DISPLACEMENT

Some countries of origin have complex histories of displacement that heighten the risk of nationality problems arising for their populations. For example, Iran has hosted a large population of Afghan refugees for the past 40 years. Up to two million Afghan refugees in Iran are undocumented and living without a formal residence status or access to assistance.<sup>24</sup> Many face significant barriers to proving either Afghan or Iranian nationality, reducing the possibility of their children acquiring any nationality. Many Afghan refugees from Iran have been forcibly displaced again to another country with many moving to Europe, heightening the risk of their children being unable to acquire any nationality.<sup>25</sup>

## UNACCOMPANIED OR SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN

Unaccompanied or separated children on the move are also at heightened risk of statelessness, as they often face additional barriers to establishing their identity and providing proof of ties to either their parents or country of origin.<sup>26</sup> Despite UNHCR guidance recommending special procedural considerations in statelessness determination procedures for unaccompanied children, this has not been widely implemented. Where countries have a statelessness determination procedure established in law, the general procedure is often applied to unaccompanied children without adaptation, the burden of proof remains with the child, and there is little evidence of unaccompanied children being provided with a guardian or granted legal aid or other specialist support.<sup>27</sup>

## OTHER CHILDREN IN MIGRATION POTENTIALLY AFFECTED BY STATELESSNESS

Other children in migration may also be at risk of statelessness in Europe, such as children of same-sex couples, children born as a result of surrogacy arrangements and abandoned children (foundlings). The enjoyment of LGBTQI\* rights varies across Europe, including the recognition of same-sex partnerships or marriages and the recognition of legal parental ties between children and their non-biological LGBTQI\* parents. As a result, LGBTQI\* families in Europe can face problems with civil documentation, birth registration, and conferral of nationality.<sup>28</sup>



## BARRIERS TO ADDRESSING STATELESSNESS AMONG CHILDREN IN MIGRATION

Having looked at which children in migration are particularly affected by (the risk of) statelessness and why, this section now sets out in more detail the legal and practical barriers faced by these children in Europe to realising their right to a nationality.

### LACK OF LEGAL SAFEGUARDS TO PREVENT CHILDHOOD STATELESSNESS

International law requires that states establish legal safeguards in their nationality laws that enable children to acquire a nationality where they would otherwise be stateless, including children born either on the territory or to nationals abroad, foundlings and adopted children.<sup>29</sup> However, only around half of European States have full safeguards in place, and even where safeguards do exist, these can only be implemented in practice if the child's statelessness is identified. In some countries, problems arise because the safeguard requires the child or a parent to have residence status. This contravenes States' obligations under the 1961 Convention to ensure that children acquire a nationality in situations where they would otherwise be stateless,<sup>30</sup> as well as the principles of non-discrimination and the best interests of the child.<sup>31</sup> Provisions are not always automatic, instead requiring an application procedure, which may create barriers to the child acquiring nationality. Unaccompanied children may face particular barriers where specialist support and information is not provided to inform them of their rights and ensure they can acquire a nationality. In some cases, provisions covering foundlings are applied to unaccompanied children found on the territory, but this can be limited to very young children or infants, meaning that older children are left at risk of growing up without a nationality.<sup>32</sup> Officials and parents are often unaware of existing legal safeguards, or they are poorly implemented and so opportunities to prevent childhood statelessness may be missed.

### BARRIERS TO BIRTH REGISTRATION

Birth registration involves the State making an official recording of the child's birth.<sup>33</sup> In most cases, it results in the issuance of a birth certificate and provides an official record of the child's existence, including their name, date and place of birth, as well as details of the parents. These are key aspects of identity and can be critical to establishing the child's nationality. Not having a birth registered or proof of registration can contribute to difficulties establishing these links, and consequently expose children to the risk of statelessness.<sup>34</sup>

Barriers to the registration and documentation of birth exist in Europe for children in migration.<sup>35</sup> There is no standardised procedure nor regional harmonisation of birth registration. The evidence required to register a birth and the legal document given to parents as proof of birth registration vary within and across different European States. In the case of children in migration, it can be very difficult for parents to meet the evidential requirements for birth registration.<sup>36</sup> For example, they might not have proof of the exact time and place of birth if the child was born in transit, or they may not have proof of their own identities if they are stateless, undocumented or do not have key documents in their possession.

In some countries, births to refugees and migrants who cannot meet evidentiary or residence requirements are not being included in the ordinary civil registry; or refugee and migrant parents are given extracts from the registry or alternative documents that do not have the same legal effect as a birth certificate.<sup>37</sup> For example, in some parts of Germany, children born to refugee parents receive a 'provisional certificate' indicating that the occurrence of the child's birth was communicated but not registered. This does not have the same value as a birth certificate and can prevent access to different social security entitlements, and preventative healthcare. Punitive fines and complicated court procedures for late birth registration and a legal duty

on registry and health officials to report people without residence status to immigration authorities, can also prevent parents from registering their children's birth.<sup>38</sup>

Children may routinely be registered as having the same nationality as their parents without any examination of whether a parent can actually confer their nationality to the child, which may hide (a risk of) statelessness among some children in migration born in Europe (or in transit). In some cases, only the mother's details are recorded on the birth certificate if evidence of the father's identity or a marriage certificate is missing, or if the parents are unmarried, which can be problematic where the mother's country of nationality (such as Syria, Iran or Iraq) does not permit women to confer nationality to their children born abroad. The failure of authorities to accurately identify and register the nationality status of parents can mean that States are unaware or do not accept that a child born on their territory may be stateless.

### LACK OF PROVISION FOR CHILDREN BORN EN ROUTE TO EUROPE

As highlighted above, children born in transit can face specific barriers to birth registration and documentation, establishing their identity and acquiring a nationality. Under international law, children born on a ship or in an aircraft that is respectively flagged or registered in a State are considered to have been born in that State's territory.<sup>39</sup> Birth registration procedures and nationality laws in the relevant State should therefore apply to the child. However, this prompts questions as to the nationality status of children born or found in international waters, on an unregistered vessel and there is little information available about how States deal with children born in transit.<sup>40</sup> According to available information, some countries have no provisions to provide a birth certificate to children born in transit who reach their country of arrival without one, or existing provisions may depend on the residence status of the child or their parents, contravening the principle of non-discrimination.<sup>41</sup>

### LACK OF AWARENESS AND POOR IDENTIFICATION OF STATELESSNESS

Children in migration often encounter discrimination because there is no standard procedure in place in Europe to identify statelessness during nationality screening and registration procedures on arrival. In any nationality screening procedure, it is essential that competent authorities are trained and have the legal and language knowledge necessary to identify and record nationality status, including where someone indicates that they are stateless, and where further investigation is required by a competent authority. Determination of statelessness should only be conducted through a dedicated procedure established in law with procedural safeguards and by specialist officials trained for this purpose. Officials responsible for identifying and recording nationality status on arrival often lack awareness about statelessness and who might be affected, including children. Very little training or information resources are available to registration officials, which can lead to misconceptions about nationality status and statelessness.<sup>42</sup> There may not even be an option for officials to record a person as stateless in registration recording systems and databases. There is also a lack of awareness among civil society actors about statelessness and nationality issues, including among child protection actors.<sup>43</sup> Parents may also not be aware that their child is stateless or at risk.

Where a child's nationality is recorded as 'undetermined' or 'unknown', States should have an established and timely procedure for determining the child's nationality and whether they would otherwise be stateless as soon as possible.<sup>44</sup> Some States lack formal procedures altogether for determining the child's nationality, whilst others make determination procedures dependent on the parents' documentation or residence status or automatically assign children with their parents' nationality without verification.<sup>45</sup> These practices heighten the risk of children born in Europe or en route being unable to acquire or have their nationality confirmed for long periods of time, which can impact on subsequent treatment and perceived credibility in the status determination process, as well as in other procedures such as family reunification, resettlement, integration, or naturalisation.

## LACK OF (CHILD RIGHTS-BASED) STATELESSNESS DETERMINATION PROCEDURES (SDPS)

To be able to provide the protection and rights enshrined in the 1954 Convention relating to the Status of Stateless Persons, State parties need to be able to identify stateless people on their territory.<sup>46</sup> UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure (SDP),<sup>47</sup> which acts as an established formal mechanism to identify stateless people among migrant populations and ensure that the rights they are entitled to are upheld until they acquire a nationality.<sup>48</sup>

Stateless children or children at risk of statelessness should be referred to a statelessness determination procedure so that their statelessness is formally identified and recognised, and they receive full protection and enjoyment of their rights. UNHCR's Handbook on the Protection of Stateless Persons states the need for additional procedural, substantive and evidentiary safeguards for children in any statelessness determination procedures, including timelines, non-discrimination with regards to residency status, child-sensitive procedures and shared burden of proof.<sup>49</sup> The principle of upholding the best interests of the child must be adhered to in any decision-making relating to their nationality status and stateless protection status.<sup>50</sup>

Even if a child is identified as stateless in a migratory context in Europe, officials may not know how to proceed because the systems are not in place to refer people to an SDP. Legal frameworks to implement the rights and protection that stateless people are entitled to under the 1954 Convention do not exist in many countries. This means that if someone is refused refugee or subsidiary protection, they may be left in a legal limbo with no route to protection on the one hand, but no country to return to on the other. Only ten Council of Europe countries (including six EU countries) and Kosovo have SDPs in place, bringing the total to eleven across the region.<sup>51</sup> Where countries do have a statelessness determination procedure, they are applied to children without adaptation from the general procedure, and the burden of proof remains with the child.<sup>52</sup> It is unclear whether unaccompanied children are provided with a guardian or granted legal aid in any of these countries that have a dedicated SDP.

## HEIGHTENED RISK OF IMMIGRATION DETENTION

Lack of awareness of and identification of statelessness can expose children in migration to immigration detention. The very nature of statelessness means that a stateless person usually has no country to which they can return. If a child's statelessness is not identified, and they find themselves with no route to residence in Europe, they can end up subject to repeated, unsuccessful removal attempts. In many countries, this could mean enduring repeated or prolonged periods of detention, which may be arbitrary.<sup>53</sup> EU guidance on respecting children's rights in return policies and practices urges States to consider the nationality status or statelessness of a child, as it can affect the prospect of return, rendering it likely impossible if they are stateless.<sup>54</sup> Current practice often means that protection for children in migration (based on their rights as children) ends when they turn 18, particularly where they are residing irregularly, have been granted temporary protection until the age of 18, or still have an application for international protection pending.<sup>55</sup> As well as losing access to various rights, young people in this situation may be subject to detention and attempted removal. In some cases, statelessness or nationality problems are only identified at this stage, where removal is attempted unsuccessfully.

Return proceedings can also put children at risk of statelessness, for example, where children are removed without birth certificates or other documents.<sup>56</sup> This may make it difficult for the child to prove their links to a country that may enable them to acquire a nationality. If they are unable to register or acquire nationality in the country of return, they may be treated as non-nationals and excluded from accessing rights and services, such as education and healthcare.

## KEY ACTIONS

This paper has identified some of the different groups of children affected by statelessness and the key barriers to preventing and reducing statelessness among children in migration in Europe. Statelessness is a solvable problem. There are key actions that States and regional institutions can take to address childhood statelessness and ensure that all children in Europe realise their right to a nationality, regardless of their migration status or that of their parents.



### INTRODUCE, IMPROVE AND IMPLEMENT SAFEGUARDS TO PREVENT CHILDHOOD STATELESSNESS



**STATES** should introduce safeguards in their nationality laws (in line with the 1961 Convention and the European Convention on Nationality) to ensure that any child who would otherwise be stateless can acquire a nationality, including those born on the territory, born to nationals abroad, foundlings and adopted children.<sup>57</sup> Provisions should cover all children who would otherwise be stateless, regardless of the residence status of the child or their parents, they should be accessible to children in detention or in care, and should ideally be automatic so that no additional procedure nor action on the part of the parents or a representative are required.



**THE COUNCIL OF EUROPE** should promote the accession of all Member States to the 1997 European Convention on Nationality and the comprehensive implementation in national law and practice of Convention standards, including through the identification of good practice and facilitation of awareness-raising and information exchange among parliamentarians and policy-makers.



**THE EUROPEAN UNION** should implement the pledge it made in 2012 for all EU Members States yet to accede to the 1961 Convention to explore doing so, and periodically report on progress towards this goal. Attention should be increased on the causes and impact of – as well as solutions to – childhood statelessness in Europe across all relevant EU institutions and policy areas, including Child Rights, Roma Inclusion, Migration and Asylum, and the External Action Service.

2

## ADDRESS BARRIERS TO IMMEDIATE FREE BIRTH REGISTRATION



**STATES** should introduce flexibility in documentation requirements and birth registration processes, and build the capacity of frontline registry officials, to ensure that stateless, undocumented or other refugees and migrants who cannot provide certain documents are able to access the right to immediate birth registration and reduce the risk of childhood statelessness. This should include removing any requirements for public officials to report people without residence status to the immigration authorities, introducing a “firewall” to prohibit information sharing for the purpose of immigration control to ensure access to birth registration for migrants.<sup>58</sup>



**THE COUNCIL OF EUROPE** should work with Member States to implement the pledge it made at UNHCR’s High-Level Segment on Statelessness in Geneva in October 2019 to promote the right of all stateless children to have access to their birth certificate and any civil status documents concerning them.<sup>59</sup> This should include periodic monitoring and reporting on progress towards this goal.



**THE EUROPEAN UNION** should promote universal access to birth registration among Member States in line with the European Parliament Resolution on Children’s Rights.<sup>60</sup> This should include the European External Action Service continuing to support and fund efforts to strengthen civil registration systems and issuance of birth certificates in partner countries and promote the realisation of SDG 16.9 in development cooperation.<sup>61</sup>

3

## BUILD CAPACITY AND RAISE AWARENESS AMONG OFFICIALS, CIVIL SOCIETY, REFUGEES AND MIGRANTS



**STATES** should work in cooperation with civil society to build the capacity of frontline officials, service providers and support organisations in the migration context to facilitate an improved response to statelessness and nationality problems among children in migration, prevent new cases of statelessness arising, and ensure that statelessness is accurately identified, recorded and the rights of children respected. Create and distribute clear and accessible information at the national and local level for stateless individuals (on their rights, services, and specialist lawyers), those assisting them (on the relevant legal frameworks, caselaw, and signposting information), and decision-makers (on the causes and consequences of statelessness, country of origin information, and common profiles of stateless people in Europe).



**THE EUROPEAN UNION** should invest in and promote the integration of statelessness-specific resources, information and capacity across agencies involved in migration responses, including the European Asylum Support Office (EASO) and the European Border Agency (Frontex). EASO should incorporate relevant information on childhood statelessness across the work of its Information and Analysis Unit, in its Country of Origin Information, in its training development and delivery, and in its operations. Frontex should mainstream statelessness-specific knowledge and resources in its training and handbooks (for example, the VEGA Handbook on Children at Airports)<sup>62</sup> to ensure that border guards identify stateless children or children at risk of statelessness in border procedures, and refer them to the appropriate authorities and services. Stateless children should be included in the agency’s definition of children at risk/vulnerable to abuse and exploitation in line with UNHCR and EASO guidance.<sup>63</sup>

4

## IMPROVE IDENTIFICATION AND RECORDING OF STATELESSNESS



**STATES, WORKING TOGETHER WITH RELEVANT EU AGENCIES**, should improve and standardise procedures for identifying and recording statelessness and nationality problems during registration procedures for refugees and migrants on arrival, and throughout migration and international protection procedures. The administrative category of 'unknown nationality' should be clearly defined, and States should have an established and timely procedure for determining the child's nationality and whether they would otherwise be stateless, with the child able to acquire a nationality as early as possible.<sup>64</sup>



**THE EUROPEAN UNION** should prioritise the accurate identification and recording of statelessness and nationality status in the implementation of the Eurodac Regulation and any work towards establishing common EU registration procedures.

5

## INTRODUCE DEDICATED, CHILD RIGHTS-BASED STATELESSNESS DETERMINATION PROCEDURES, AND ENSURE APPROPRIATE REFERRAL



**STATES** should introduce dedicated child rights-based statelessness determination procedures and stateless protection status in line with the 1954 Convention on the Status of Stateless Persons and UNHCR guidance, to allow them to identify and protect stateless children on their territory until they acquire nationality (as soon as possible). Where indications that a child (or their parents) may be stateless arise in migration or international protection procedures, a referral should be made at an appropriate point in proceedings to a procedure to determine their statelessness. The child and/or their guardian should be provided with information and quality legal assistance throughout relevant procedures.

Where statelessness determination procedures already exist, these should be adapted to be child-rights based, taking into consideration the best interests of the child. Procedural and evidentiary safeguards should be put in place including timelines, ensuring that the child is able to acquire a nationality as soon as possible.<sup>65</sup> Principles of non-discrimination (including with regard to the residence status of the child or the parents), shared burden of proof and child-sensitive procedures should be implemented, including through the provision of quality legal assistance, as well as a guardian for unaccompanied children.<sup>66</sup> Making sure affected children can share their views in procedures and decision-making is an important part of ensuring decisions are made in the best interests of the child and in line with international law establishing the child's right to be heard. The relevant safeguards for ensuring effective child participation should be followed in any procedure.<sup>67</sup>



**THE COUNCIL OF EUROPE** should implement the pledge it made at UNHCR's High Level Segment on Statelessness in Geneva in October 2019 to support activities for its 47 Member States aimed at introducing or improving the functioning of statelessness determination procedures. This should include the implementation of future activities by the European Committee on Legal Co-operation (CDCJ) initiative on statelessness, as outlined in its adopted report,<sup>68</sup> allowing governments to share experiences and good practices in improving procedures for determining and resolving statelessness, promoting the need for such procedures to be child rights-based.<sup>69</sup>



**THE EUROPEAN UNION** should, including through the European Migration Network Statelessness Platform, support activities aimed at introducing or improving statelessness determination procedures. This should include sharing information and good practices on child rights-based procedures, and how referral mechanisms between international protection and statelessness determination procedures should operate, building the capacity of its Members States to better meet their international obligations under the 1954 Convention.

## RESOURCES

### EUROPEAN NETWORK ON STATELESSNESS & OTHER REGIONAL RESOURCES

- ENS & the Institute on Statelessness and Inclusion, #StatelessJourneys knowledge hub (<https://statelessjourneys.org/>) – Hosts new information and tools about how statelessness affects people's journeys, including country of origin information, information about relevant stakeholders, case studies outlining the main issues, country briefings and more.
- ENS' Statelessness Index (<https://index.statelessness.eu/>) – an online database assessing how countries in Europe protect stateless people and what they are doing to prevent and reduce statelessness
- ENS' None of Europe's Children Should Be Stateless resources:
  - No Child Should Be Stateless (2015) report (<https://www.statelessness.eu/statelesskids-no-child-should-be-stateless>) - draws on comparative research conducted in eight countries, supplemented with analysis of how all 47 Member States of the Council of Europe are performing with regard to their international obligation to ensure every child's right to acquire a nationality.
  - Ending Childhood Statelessness: Country Studies (<https://www.statelessness.eu/capacity-building/training/conference-none-europes-children-should-be-stateless>) - in-depth country studies conducted by ENS members in Albania, Estonia, Italy, Latvia, Macedonia, Poland, Romania and Slovenia.
  - What does it mean to be stateless? Infographic (<https://www.statelessness.eu/resources/what-does-it-mean-be-stateless>) – available in English, German, Italian, French, Serbian, Macedonian, Albanian Polish and Slovenian
  - Why do children become stateless? Infographic (<https://www.statelessness.eu/resources/why-do-children-become-stateless>)
  - Birth registration and statelessness – infographic (<https://www.statelessness.eu/resources/birth-registration-and-statelessness>)
- UNHCR and UNICEF (2019) Advocacy brief: Ending Childhood Statelessness in Europe (<https://www.unicef.org/eca/media/8086/file>)
- UNHCR's Recommendations for the Croatian and German Presidencies of the Council of the EU (<https://www.refworld.org/docid/5dee08387.html>)

### GLOBAL RESOURCES

- UNHCR & UNICEF – Campaign on Every Child's Right to a Nationality (<https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/>)
- The Institute on Statelessness and Inclusion (<https://www.institutesi.org/>):
  - Addressing the Right to a Nationality Through the Convention on the Rights of the Child: A Toolkit for Civil Society ([https://files.institutesi.org/CRC\\_Toolkit\\_Final.pdf](https://files.institutesi.org/CRC_Toolkit_Final.pdf))
  - (UNICEF & The Institute on Statelessness and Inclusion) What's Best for the Child's Nationality Podcast Series (<https://www.institutesi.org/resources/whats-best-for-childrens-nationality-podcast>)
  - (Norwegian Refugee Council and the Institute on Statelessness and Inclusion) Toolkit: Understanding Statelessness in the Syria Refugee Context (<http://syrianationality.org/>)
  - The World's Stateless Children website and report (<http://children.worldsstateless.org/>)
- The Global Campaign for Equal Nationality Rights (<https://equalnationalityrights.org>) – campaign mobilising action to end gender discrimination in nationality laws
- UNHCR & Inter-Parliamentary Union Handbooks:
  - Good Practices in Nationality Laws for the Prevention and Reduction of Statelessness: Handbook for Parliamentarians No 29 (<https://www.refworld.org/docid/5be41d524.html>)
  - Nationality and Statelessness: Handbook for Parliamentarians No 22: (<https://www.refworld.org/docid/53d0a0974.html>)

## ENDNOTES

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- <sup>7</sup> EMN (2020) Statelessness in the EU: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00\\_eu\\_inform\\_statelessness\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_inform_statelessness_en.pdf)
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- <sup>10</sup> For more information on the EMN Statelessness Platform, visit: [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/expert-groups\\_en/platform-statelessness\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/expert-groups_en/platform-statelessness_en)
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- <sup>19</sup> For more information on populations affected by statelessness in Myanmar, see ENS & ISI (2019), Statelessness in Kuwait Country Position Paper: <https://statelessjourneys.org/resources/statelessness-in-kuwait/>
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