
THE NATIONALITY OF STATELESS CHILDREN IN INTERNATIONAL LAW

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ABSTRACT

The issue of stateless children is a pressing concern in international law. Children who are stateless are not recognized as nationals by any state, leaving them without the protections and benefits that come with citizenship. This abstract explores the legal framework surrounding the nationality of stateless children in international law. It discusses the relevant international conventions and treaties, as well as the obligations of states to prevent and reduce statelessness. The abstract also highlights the challenges that arise in determining the nationality of stateless children, particularly when their parents are also stateless or their birth is not registered. The paper concludes by emphasizing the need for greater efforts to address statelessness and to ensure that stateless children are granted nationality and the rights that come with it.

There is a deep quest for a ‘sense of belonging’ that encompasses every individual’s existence. While most have the privilege of searching for this belongingness through philosophical aspects, there is still a substantial group of people who struggle to find even a home or land to belong to. While arguments are being asserted about a future with open borders and integrated economies¹. However, these ideas are parallelly overshadowed by the enforced assertion of borders and nationalities, in reality. Therefore, rendering nationality central to the identity and sense of belonging of individuals².

Nationality refers to a specific legal association between an individual and a State. It serves to be central in establishing one’s rights and obligations within the State’s jurisdiction arising from domestic law and reaffirms one’s connection to others in the international law framework. Every person, and therefore every child, has a need for nationality for the legitimization of their existence under international law³.

The UNHCR report⁴ defines a stateless person as ‘a person who is not considered a national by any State under the operation of its law’. A ‘stateless child’ though not particularly defined in any international treaty refers to a child that has need rendered without nationality from his birth or at some point during his childhood due to the prevailing conditions at a personal or at national front. Thus, rendering their legal existence as a negated concept as they are not accounted for in any national level data or statistics.

In the following paper, I am dealing with statelessness of children that can be attributed to factors like discrimination (on account of gender, ethnicity, religion), conflict between and gaps in nationality laws, lack of documents in regard to birth and citizenship as well as situations of displacement. It does not deal with the lack of nationality of children emerging in case of refugees and illegal immigrants.

The ‘principle of non-discrimination’ under International Law fails to recognize the segregation created between those who possess nationality of a state and those lack nationality in totality (i.e. are stateless). Further, even within this characterization of ‘stateless’ citizens,

¹ Anderson J and Wever E, “Borders, Border Regions and Economic Integration: One World, Ready or Not” (2003) 18 Journal of Borderlands Studies 27

² Miscevic N, “Is National Identity Essential for the Identity of Persons?,” *Nationalism and beyond* (Central European University Press 2001)

³ Article 7 of UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

⁴ UN High Commissioner for Refugees (UNHCR), *High-Level Segment on Statelessness: Results and Highlights*, May 2020, available at: <https://www.refworld.org/docid/5ec3e91b4.html>

the situations presented and the vulnerabilities of age lead to further greater discrimination between a stateless adult and a stateless child. This discrimination though not direct, is to a greater extent due to the lack of voice of authority possessed by them. These curtailed powers have rendered them handicapped to express even this lack of acknowledgment of their existence.

A situation of lawlessness in regard to Fundamental Rights for non-citizen Children

Nationality is mostly acquired by children at birth in a feasible manner, through either of the two main principles of *jus soli* and *jus sanguinis* or a combination thereof. This acquisition of nationality is so given and, in some sense, certain for most of the individuals that understanding the magnitude of statelessness and the condition of these children seems near impossible to us.

The period of childhood serves as formative years for the development of one's identity, nevertheless, can be severely hampered in situations where a child lacks stability in terms of human rights, child protection, non-discrimination, and association to a place socially and culturally⁵. The lack of nationality has led these children to suffer extreme human rights violations, their statelessness providing legitimacy to this deprivation by the domestic law. The impact of not being a legal personality has rendered them to be outside of the ambit of access to basic human rights. They do not have access to education, health care, basic amenities, social security, future employment opportunities and moreover this leads to such a situation of alienation and elimination of a life of dignity for these children⁶.

In Kuwait, Bidoon has been identified as one of the largest groups of stateless people, they are descendants of a nomadic tribe from across the Arabian Peninsula⁷. There is an intergenerational problem of statelessness created within this group due to lack of documentation facilities available for them and their non-recognition during formation of new public policies. Thus, the Bidoon children are born into statelessness, where a child is not a national if the father is Bidoon irrespective of whether he is born of a Kuwait citizen mother or

⁵"The Committee on the Rights of the Child - Statelessness.eu"

⁶ Boyden J, "Childhood and the Policy Makers: A Comparative Perspective on the Globalization of Childhood" [2003] Constructing and Reconstructing Childhood 203

⁷ Lynch M and Barbieri P, "Kuwait: State of Exclusion (Washington, DC: Refugees International)" (<http://www.refugeesinternational.org>)

not⁸. These children have no access to even the basic amenities of life⁹.

Malaysian laws have been extremely discriminatory in context of education rights of stateless children. Children of Indian, Filipino or Indonesian descent in Selangor and Sabah who have been registered as ‘foreigner’ on their birth certificate or lack birth certificate have been denied basic access to the state education system¹⁰. Further, even if these stateless children somehow avail the opportunity of education, they cannot be part of the State’s policies like ‘Textbook Loan Scheme’ and ‘National Higher Education Fund Corporation Loan’¹¹.

Conundrum Over a Stateless Child’s Right to Nationality; International Law Standards

Article 15 of the **Universal Declaration of Human Rights**¹² recognizes that “everyone has a right to a nationality”, this provision has served as the foundational framework for further international treaties and conventions to work with the objective of reduction of statelessness. These treaties and Conventions have focused on reduction of statelessness particularly in children, as mostly all cases of childhood statelessness translate into stateless adults.

The **Committee on the Rights of Children (CRC)** states that the rights set out in CRC are to enjoyed by all children “irrespective of their nationality, immigration status and statelessness”¹³. Whereas **Article 7**¹⁴ regards that statelessness cannot ever be in the best interest of a child and nationality is an integral right of every child. While CRC recognizes that the states just cannot give out the right to nationality as a form of prescribed universal jus soli, however in situations where a child would be rendered stateless, there ought to be other safeguards in place within the legislation and in practice.

The Committee has used its general principles mentioned in different provisions apart from Article 7 to bring forward the problems of childhood statelessness and the protection of

⁸ ““Citizens without Citizenship”” (*Human Rights Watch* February 23, 2021) <<https://www.hrw.org/report/1995/08/01/bedoons-kuwait-citizens-without-citizenship>>

⁹ “Prisoners of the Past” (*Human Rights Watch* April 29, 2015) <<https://www.hrw.org/report/2011/06/13/prisoners-past/kuwaiti-bidun-and-burden-statelessness>>

¹⁰ “Prisoners of the Past” (*Human Rights Watch* April 29, 2015) <<https://www.hrw.org/report/2011/06/13/prisoners-past/kuwaiti-bidun-and-burden-statelessness>>

¹¹ “Who Are Malaysia’s Stateless Children? - Blog” (*Dignity For Children Foundation*) <<https://dignityforchildren.org/blog/who-are-malaysias-stateless-children>> accessed October 10, 2022

¹² Article 15, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>

¹³ General Comment 6, UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

¹⁴ Article 7, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>

children's right to a nationality.

Article 2 of CRC¹⁵ encompassing the principle of non-discrimination, emphasized the right of a child to acquire nationality, irrespective of child's or his parent's race, color, religion, sex, ethnicity, national or social origin and other factors. Further substantiating this with **Article 9(2) of the CEDAW**¹⁶ that requires States to grant women equal rights as men regarding transmission of their nationality to their children. Thus, asserting the established obligation of the State as present in Article 2 and 7 of the CRC.

Article 3 of CRC¹⁷ states the principle of the best interest of the child, which asserts the nations must take into account the best interest of the children in their state legislative and administrative acts by implementation of safeguards for avoidance of statelessness among children. Further, right to life, survival and development as per Article 6 emphasizes that such rights of life and development are even extended to stateless children and importance should be paid to ensuring that the child acquires nationality as soon as possible after birth.

CRC understands the cruciality attached to nationality thus advocates for the state to provide nationality to these children and further safeguards for their protection as soon as possible. The CRC thus asks the nations to move beyond the concept of prioritizing its own citizens and taking a more empathetic and 'non-othering' view towards other stateless people, specifically children who are the more vulnerable ones amongst them¹⁸.

The UN Statelessness Convention refers to the 1954¹⁹ and the 1961²⁰ convention, where the 1961 Convention on the Reduction of Statelessness particularly focuses on the safeguards against childhood statelessness. The 1961 Convention through the safeguards it provides ensures that the State does not gatekeeps the rights it provides merely to its nationals but also extends such rights to the stateless individuals and thus stateless children as well.

¹⁵ Article 2, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>

¹⁶ Article 9(2) UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

¹⁷ Article 3 of UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

¹⁸ Aird S, Harnett H and Shah P, "Stateless Children: Youth Who Are without Citizenship" <<https://www.amazon.com/Stateless-Children-Youth-Without-Citizenship/dp/0966370988>

¹⁹ United Nations General Assembly (1954) "Convention Relating to the Status of Stateless Persons", (United Nations) Treaty Series (360) 117, September 28. Available at: <http://www.unhcr.org/refworld/docid/3ae6b3840.html>.

The 1961 Convention recognizes that most nations provide safeguards to the parents rather than the children on the presumption that the nationality obtained by the parents would pass on to the children, as has also been prescribed by **Article 15 of the 1930 Hague Convention**. However, this is not the case with situations even when one or both the parents hold nationality even then the nationality is not passed on to the child.

The 1961 Convention refers to two ways that can be adopted by states when dealing with nationality of children through Article 1(1a) and 4(1a) they may elect to grant nationality by birth or grant of nationality through a non-discretionary application process once the child has fulfilled certain conditions²¹.

Article 24(3) of the ICCPR²² guarantees that every child has the right to acquire a nationality, however this provision lacks any specification in regards to which state the child may claim his nationality to or at which time this right has to be implemented.

These various laws and provisions provided in the International Treaties and conventions are absolutely essential for establishing their existence and getting them equal rights in terms of access to education, healthcare, documentation, movement and even right to a sense of belongingness to certain ethnic, social and cultural communities²³. At a time when the global history is being greatly dominated with scenarios of nationalism, racism, xenophobia and characterization of individuals into groups of ‘us’ versus ‘them’, nationality and the ability to prove it has reached its peak of essentiality. The International as well as the domestic law framework thus has the duty to take decisions in the best interest of children by understanding the risks of irreversible harm caused from the violation of rights and deprivation on these stateless children²⁴.

Issues with the Legal framework concerning Child’s right to Nationality

Article 15 of the Universal Declaration of Human Rights (UDHR)²⁵ which guarantees

²¹ Article 1(1a) and 4(1a), UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>

²² Article 24 (3), UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.htm>

²³ Ibid (n.11)

²⁴ “No Child Should Be Stateless: Ensuring the Right to a Nationality for ...”

<https://www.statelessness.eu/sites/default/files/2020-09/ENS_Right-to-a-nationality-for-children-in-migration.pdf>

²⁵ Ibid (n.15)

nationality to every individual is not aloof from weakness with regard to not indicating which nationality a person may have a right to nor which state has the obligation to grant the nationality to the person. Thus, essentially missing out on two primary questions for establishment of nationality of stateless children. The principle elaborated in Article 15 which functions as the foundational clause for successive universal and regional human rights treaties regarding allocation of nationality to stateless children thus proves to be a shaky foundation.

While **Article 7.1 of CRC** states that a child must immediately be registered after birth. This registration at birth is essential for the functioning of the principle of *jus soli* in reduction of statelessness of children²⁶. However, the enforcement of universal birth registration seems extremely utopian essentially when the majority of countries are already failing to bring about equality between minorities, rural, migrant and refugee communities. Whereas having a birth registration does not mean an assumed sense of nationality in that nation for the stateless child, but it definitely does reduce the risk of statelessness. This increased probability of nationality status helps the child in mitigating situations like forced displacement, irregular migration, or challenges around the belongingness of the minority communities²⁷.

Article 7.2 of CRC states that the State parties should ensure a consistency between national laws and obligations and the relevant international instruments dealing with the status of stateless children. This article leads one to question various aspects regarding the situations where the domestic laws might internally be inconsistent with the Constitution and the rights ensuring equality and non-discrimination. Further, for implementation of Article 7.2 there needs to be a systematic record/data with the State in regard to child's acquisition of nationality, birth registration, statelessness and other aspects.

Further, International Law in specificity to CRC holds that statelessness ought not to function as a cause for the denial of enjoyment of basic human rights, however this concept in implementation has had near to no effect at the stage of domestic law.

Whereas **Article 8 of CRC**²⁸ guarantees a right to identity, while referencing that much recognition of a child's identity is primarily associated with his nationality at such a young age,

²⁶ Ibid (n.17)

²⁷ Bhugra D and Becker MA, "Migration, Cultural Bereavement and Cultural Identity" (*World psychiatry : official journal of the World Psychiatric Association (WPA)* February 2005)
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1414713/>> accessed October 10, 2022

²⁸ Article 8 of UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

this provision however lacks clarity on how to achieve such nationality. **Article 32 of CRC**²⁹ which provides protection from economic exploitation significantly fails as stateless children are easy targets for labor extortion due to poverty faced by them and lack of documentation there. These children are vulnerable targets for child trafficking, harassment, and sexual abuse due to the lack of any documentation about their very existence itself and the extreme situations of poverty they might be subjected to.

The assertion of a right of a stateless child to his nationality is emerging from a patchwork of human rights treaties and various conventions, however it still to this day lacks a definite treaty dealing singularly with the concerning phenomenon of statelessness of children. While CRC being the convention that comments the most on the need to allocate nationality to stateless children is bundled with loopholes and gaps particularly regarding Article 7 and 8 leaving its practical application flawed. Further, while the UNHCR has been aggressively promoting 1961 Statelessness Conventions to bring resolution to the problem, however both these conventions are still far from universal application. Though mostly all states between the international and regional treaties are covered by some instrument dealing with granting of nationality to otherwise stateless children, these treaties have not culminated into substantial dismantling of the situation and the dramatic consequences statelessness have brought upon these children.

Sketching the path forward in regards to protection of Stateless Children

The United Nations Children's Fund (UNICEF) aptly described the situation of stateless children by stating that “they are born, live and unless they can resolve their situation, they die as almost invisible people’. There is already a great ordeal of discrimination that targeted towards the stateless people, but within the section, the position that has been rendered to stateless children in international law is truly disheartening and inhumane. The lack of voice and their capacity to assert their resistance against the state's lack of recognition directed towards them leads them to be vulnerable targets in multiple situations.

The State though is under no compulsion to grant nationality to stateless children, however, still is mandated to make policies and provide governance in the best benefit of these children. This decision in ‘the best benefit of these children’ ought to include various safeguards and the safeguard of nationality still lies at the top of the hierarchy that a state can provide. An

²⁹ Article 32 of UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

empathetic understanding is needed by the state to understand the conditions of these stateless children where they have been regarded as non-existent for no fault of theirs.

The State should recognize the need of nationality for stateless children, whether born to parents who are both nationals or married or not, ought to be provided registration at birth. Further, provide these children with a greater future by ensuring access to education and health care.

Where writers like Hannah Arendt³⁰ have asserted that guaranteed citizenship is a necessity for supposed universalism of human rights, thus stating that nationality provides “the right to have rights”. These rights are essential for the survival of the stateless and it is even more crucial to ensure that stateless children get these rights guaranteed by nations to live a fulfilled future that is not hampered by the politics of and within states regarding nationality principles.

³⁰ Gessen M, “‘The Right to Have Rights’ and the Plight of the Stateless” (*The New Yorker* May 3, 2018) <<https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless>> accessed October 10, 2022