

The Institute on Statelessness and Inclusion (the Institute) is an independent, non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion globally. Participation in the Universal Periodic Review (UPR) process is central to the human rights strategy of the Institute, and this document highlights the statelessness related challenges in the countries that will be reviewed at the Human Rights Council during the 27th Session of the UPR: Algeria, Bahrain, Brazil, Ecuador, Finland, India, Indonesia, Morocco, the Netherlands, the Philippines, Poland, South Africa, Tunisia and the United Kingdom. These challenges include: the right of every child to acquire a nationality, the right of every woman to acquire, retain and transfer nationality on an equal basis with men, the prohibition of arbitrary deprivation of nationality, the prohibition of arbitrary detention and the obligation of states to identify and protect stateless persons. All states are urged to draw on this document when formulating recommendations to states under review. Besides this summary sheet the Institute has also made joint submissions on statelessness in [Bahrain](#), [the Netherlands](#), [South Africa](#) and [the United Kingdom](#).¹

Algeria

Algeria is a state party to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), but not to the 1961 Convention on the Reduction of Statelessness (1961 Convention). While Algeria's nationality law is not gender discriminatory, Algeria does maintain legislation that could easily be interpreted to bar persons with disabilities from naturalisation. It also does not contain any safeguards to ensure the right to acquire nationality for children born on the territory who would otherwise be stateless. Finally, Algeria does not have in place, a procedure to identify statelessness.

Recommendations

1. Establish a statelessness determination procedure in line with international standards and UNHCR guidance.
2. Take steps to accede to and fully implement the 1961 Statelessness Convention.
3. Ensure that naturalisation provisions are not discriminatory towards people with disabilities.
4. Ensure that all children born on the territory who would otherwise be stateless, are granted Algerian nationality, in accordance with the provisions of the Convention on the Rights of the Child.

Bahrain

Bahrain is one of 26 countries that does not guarantee equal rights of women to confer nationality on their children and has made reservations to CEDAW Article 9 in this regard. This increases risks of children becoming stateless, if the father is unknown, stateless or cannot confer his nationality onto his child. The Committee on the Rights of the Child has urged Bahrain to remove gender discriminatory provisions in law.²

Thousands of Bidoon and Ajam have remained stateless over multiple generations. Their statelessness remains unresolved and is linked to gender discrimination in the law, as the children of stateless fathers cannot obtain nationality through their mother. These statelessness communities are marginalised, discriminated against and denied access to various other fundamental human rights.

Bahrain expanded the grounds for deprivation of nationality of its citizens in 2013 and 2014. This enabled courts to revoke the citizenship of any citizen convicted of a terrorist offense. Drawing on ambiguous definitions of "terrorist acts and incitements to such acts" that include exercising freedom of expression, assembly and association, the courts have used their increased authority to denationalise activists and human rights defenders. Furthermore, the Minister of Interior has discretionary powers to denaturalise any person found guilty of a crime connected with honour and integrity within ten years of being naturalised.. Since 2013, more than 330 Bahraini men have been stripped of their Bahraini nationality. As women are not able to transfer their nationality to their children, any children born to these men are at risk of statelessness.

Recommendations

1. Conduct research and initiate clear procedures to identify and determine the number and profiles of stateless individuals in Bahrain, particularly the Bidoon and Ajam communities, and take steps to ensure access to citizenship and the full rights associated with citizenship for those who have been determined stateless in Bahrain.
2. Continue the steps that have been taken to amend the Citizenship Law to enable Bahraini women to transfer nationality to their children without restriction, on an equal basis to men. Ensure that this is completed without unnecessary delay, in accordance with international standards, and remove Bahrain's reservation to Article 9 CEDAW.
3. Accede to and fully implement the 1954 and 1961 Statelessness conventions.

¹ All submissions made by the Institute are available here: <http://www.institutesi.org/ourwork/humanrights.php>

² CRC/C/BHR/CO/2-3.

4. Amend the Citizenship Law to prevent arbitrary deprivation of and to ensure redress, the right of appeal and restitution of nationality for all persons who have been deprived of their nationality. In particular, prohibit the deprivation of nationality that results in statelessness.

Brazil

In its previous review at the UPR, Brazil received recommendations (both by Uruguay) to: 1) campaign for registering children and teenagers in the North and North-east of Brazil; 2) to raise awareness of the importance of birth registration. Brazil ratified the 1954 Convention on the Status of Stateless Persons in 1996, and the 1961 Convention on the Reduction of Statelessness in 2007. In 2007, Brazil solved the statelessness of thousands of children born abroad to Brazilian parents, who due to a constitutional provision from 1994, were denied Brazilian nationality. The constitutional amendment which solved this situation of statelessness entered into force in 2007. Brazil has made a pledge in the past to introduce a statelessness determination procedure.

Recommendations:

1. Redouble efforts to ensure that proposed draft legislation introducing a statelessness determination procedure is effectively adopted. Once introduced ensuring that the procedure is easy to access and that officials working on the procedure receive adequate training.
2. Strengthen birth registration services in the country, ensuring that it is free and easily accessible for everyone, prioritizing on the provision of services to particularly marginalized and hard to reach populations.

Ecuador

In the precious cycle, Ecuador received recommendations to: 1) Accede to the Convention on the Reduction of Statelessness (Iraq); 2) strengthen efforts to achieve universal birth registration through measures like automated birth registration services (Finland); 3) ensure access to registration for indigenous people, persons of African descent, and migrants in order to guarantee the right to name and nationality (Finland); 4) achieve universal birth registration (Mexico). Acting on these recommendations, in 2012, Ecuador acceded to the 1961 Convention. In 2017, Ecuador adopted a new Organic Law on Human Mobility, which grants residence status to stateless persons, and after 2 years of residence in the country, allows them to acquire Ecuadorian nationality through facilitated naturalisation procedure. The new law also requires the introduction of a statelessness determination procedure.

Recommendations:

1. Expedite the introduction of a statelessness determination procedure and ensure that it is in line with international standards and UNHCR guidance. Once introduced ensuring that the procedure is easy to access and that officials working on the procedure receive adequate training.
2. Continue strengthening universal birth registration services in the country, ensuring that it is free and accessible to all.
3. Raise awareness to ensure that persons who would benefit from protection under the new Organic Law are empowered to approach the authorities with guarantees they will not be subject to removal proceedings.

Finland

Finland's Nationality Act contains several provisions that aim to prevent and reduce statelessness and it is party to both the 1954 and 1961 Conventions. However, Finland still does not have a dedicated statelessness determination procedure in place.

Recommendations:

1. Introduce a statelessness determination procedure and ensure that it is in line with international standards and UNHCR guidance. Ensure that officials working on the procedure receive adequate training.

India

While there are likely to be large numbers of stateless persons in India, there is little statistical information on the prevalence of statelessness in the country. India is not party to the 1954 and 1961 Statelessness Conventions or the 1951 Refugee Convention. The Committee on the Rights of the Child has made several statelessness-related recommendations to India. In 2000, the Committee shared its concerns about stateless Pakistani refugee and Mohajir children residing in India (Rajasthan and Andhra Pradesh, respectively).³ In 2014, the Committee raised concern about the statelessness of children born in villages situated in border areas between the State party and Pakistan, such as children belonging to the

³ CRC/C/15/Add.228 (2000)

Kutchi community.⁴ India also hosts stateless Rohingya refugees, whose children born in India do not have access to the right to acquire a nationality.

Recommendations:

1. Accede to and fully implement the 1954 and 1961 Statelessness Conventions and the 1951 Refugee Convention.
2. Ensure children's right to acquire a nationality in accordance with Article 7 of the Convention on the Rights of the Child, regardless of the parents (legal) status or ethnicity.
3. Strengthen statistical information on statelessness in India, including through conducting a mapping study.

Indonesia

Indonesia has not acceded to the 1954 and 1961 Statelessness Conventions or the 1951 Refugee Convention. While Indonesia reformed its gender discriminatory nationality laws, concerns still exist about the absence of a mechanism to oversee the implementation of the reformed law at all levels. Furthermore, this law reform has not introduced a safeguard to provide nationality to all otherwise stateless children born in the country. While birth registration should be free under Indonesian law, there is uncertainty about the oversight at central level to ensure that local governments do not charge birth registration fees.⁵ Indonesia hosts many stateless Rohingya refugees who have fled to the country, and there remain concerns about their protection and access to nationality for otherwise stateless Rohingya children born in the country. Finally, it is important to note that Indonesia is in the process of reviewing a proposal on counter-terrorism law revision which includes a provision on deprivation of nationality in the context of terrorism, even if this would lead to statelessness.

Recommendations:

1. ensure that the births of all children born in Indonesia are registered and they are issued birth certificates, regardless of their nationality, religion and status at birth, and that birth registration is facilitated and free of charge everywhere and under all circumstances.
2. Ensure children's right to acquire a nationality in accordance with Article 7 of the Convention on the Rights of the Child, regardless of the parents (legal) status or ethnicity.
3. Accede to and fully implement the 1954 and 1961 Statelessness Conventions and the 1951 Refugee Convention.
4. Ensure that persons are not arbitrarily deprived of their nationality, in particular, where this may lead to statelessness.

Morocco

Morocco is not party to either of the Statelessness Conventions. Although it has taken steps to reform gender discriminatory nationality laws, some discrimination still exists. The law has a non-discretionary registration procedure attached to its own double *jus soli* provision, requiring either that the father of the child was born in Morocco and he is descendant from an Arabic-speaking Muslim country or that both parents were born in Morocco and remain permanent residents there.⁶ Additionally, reports have shown cases where children born out of wedlock find it difficult to obtain citizenship documents, even though they are legally entitled to them. This occurs when children are refused birth certificates on the basis that the mother has no marriage certificate to show, and these certificates are subsequently required to acquire ID cards.⁷ This may often be the case when the father is both of sub-Saharan origin and in the country irregularly. Additionally, in 2007, one new ground for deprivation of nationality was introduced which was conviction for an act of terrorism.⁸

Recommendations:

1. Take steps to accede to and fully implement both the 1954 and the 1961 Statelessness Conventions.
2. Ensure full reform of the nationality law to eradicate gender discrimination all together, and remove requirement of paternal links to fulfil the *jus soli* criteria
3. Ensure that children who are born out of wedlock are not discriminated against in accessing birth certificates and citizenship documents.

The Netherlands

The Netherlands has ratified nearly all the core international and regional human rights treaties, the Statelessness Conventions and the European Convention on Nationality (ECN). Despite strong international commitments, various detailed research, mapping and consultation initiatives conducted since 2011 uncovered a number of significant gaps in the country's law and policy framework that affect the ability of stateless persons residing in the Netherlands to exercise

⁴ CRC/C/IND/CO/3-4 (2014)

⁵ CRC/C/IDN/CO/3-4

⁶ Article 9(1).

⁷ Women's Refugee Commission, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*, June 2013.

⁸ Article 22(1c).

the rights accorded to them by international law as well as the realisation of the right of every child to acquire a nationality.⁹ National and international human rights monitoring bodies have also commented on the deficiencies of the Netherlands' statelessness policy. In 2014 and 2015 respectively, the Council of Europe High Commissioner for Human Rights and the UN Committee on the Rights of the Child, issued recommendations to the Netherlands to bring its law and policy in line with its international commitments.

Despite international obligations to grant nationality to all children born on its territory who would otherwise be stateless, Dutch law requires that such children have legal residence. A proposed amendment to the law partially addresses the problem. There are still gaps. The CRC has recommended that the Netherlands ensures that *"all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions"*

The Netherlands has no formal statelessness determination procedure. A procedure has been announced, but the draft, which has been open to public consultation, falls significantly short of international standards. Significantly, those recognised as stateless will not be granted legal residency or any form of protection, and applicants can still be subject to removal proceedings. Stateless persons can be arbitrarily detained in the Netherlands when subject to removal proceedings. The state maintains that voluntary removal is almost always possible and does not identify statelessness or consider it a barrier to removal. Consequently, stateless persons risk being arbitrarily detained.¹⁰

While most stateless persons are not refugees (and vice versa), stateless persons who are also refugees face particular vulnerabilities. The Netherlands faces two realities relating to stateless refugees: the arrival of stateless refugees and asylum seekers and the birth on Dutch territory of children of refugees and asylum seekers who are stateless or at heightened risk of statelessness. Approximately 7% of all asylum applications in the Netherlands are from stateless persons, and failure to protect them can lead to significant human rights challenges.

Recommendations:

1. Expedite efforts to introduce a statelessness determination procedure and provides persons recognised as stateless with a legal status, protection and guaranteed access to basic human rights, in accordance with the international obligations of the Netherlands.
2. Align proposed amendments to the Dutch Nationality Act regarding the right of option for stateless children born in the Netherlands with the international law obligations of the Netherlands and the most recent recommendations of the Committee on the Rights of the Child.
3. Do not detain stateless persons. Ensure that detention is always used as a last resort, after all alternatives (starting with the least restrictive) are exhausted.
4. Ensure that refugee status determination procedures take into consideration the issue of statelessness, where relevant and appropriate, to allow statelessness to be assessed as a factor when determining a well-founded fear of persecution.
5. Strengthen statistical data on statelessness in the country, including in relation to stateless children born in the Netherlands, stateless persons in detention and stateless migrants, asylum seekers and refugees.

The Philippines

The Philippines has acceded to the 1954 Convention but not the 1961 Convention. In 2012, the country established a statelessness determination procedure which is widely regarded as a strong model. In 2016, almost 3,000 persons of the 9,000 strong seafaring stateless population of Indonesian descent in southern Mindanao were given either Philippine or Indonesian nationality. There however remain stateless persons in the country who require protection and access to nationality..

Recommendations:

1. Accede to and fully implement the 1961 Statelessness Convention
2. Ensure that all otherwise stateless persons in the country have access to facilitated naturalisation.

Poland

Poland remains one of the few EU states which is not party the 1954 and 1961 Statelessness Conventions. Although new laws on citizenship were adopted to reduce statelessness, a formal procedure to identify the stateless has not yet been introduced. This leads to protection gaps, human rights violations and exposing stateless persons to arbitrary detention.¹¹ There is a lack of statistical data on stateless persons in Poland. The data currently available is unreliable. Therefore, it is impossible to understand the severity of the problem of statelessness in the country. Nevertheless, Poland has obligations to ensure children's right to a nationality deriving from the Convention on the Rights of the Child. Although the law does not require documentation for parents to register the birth of a child, in practice the lack of documentation can impede

⁹ Among others, the 2011 [UNHCR report "Mapping Statelessness in the Netherlands"](#) and the 2013 [ACVZ report "No Country of One's Own"](#).

¹⁰ For more, see European Network on Statelessness, *Protecting stateless persons from arbitrary detention: the Netherlands*, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Netherlands_summary.pdf

¹¹ http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Poland_summary.pdf

the child's registration and right to a nationality. This is because parents without documentation are often not allowed to register the births of their children.

Recommendations:

1. State authorities should collect accurate data regarding stateless persons.
2. Accede to and fully implement the 1954 and 1961 Statelessness Conventions.
3. Ensure every child's right to acquire a nationality and to universal and free birth registration.
4. Ensure that stateless persons are not arbitrarily detained.

South Africa

Studies have revealed that the population affected by statelessness in South Africa is not homogenous, but rather that different groups are vulnerable to nationality problems, for different reasons.¹² South Africa has ratified nearly all core international and regional human rights treaties, but it is not party to the two Statelessness Conventions. Despite South Africa's international obligations, serious concerns exist relating to children's right to a nationality and the law, policy and practice of birth registration which undermines children's right to a nationality. Another significant concern relates to barriers to accessing and retaining proof of South-African Citizenship due to people's identity documents being blocked by the Home Affairs system. This can result in citizens, being categorised as 'illegal' migrants and in effect, being stripped of their citizenship. Besides this, there is no dedicated system to identify statelessness and regularise their status. These persons are extremely vulnerable to human rights violations, including arbitrary detention.

The Committee on the Rights of the Child, in 2016, urged South Africa to 'put in place regulations to grant nationality to all children in the jurisdiction of the State party who are or at risk of being stateless' and to 'systematically identify all undocumented children currently residing in Child and Youth Care Centres in all parts of the State party and ensure their access to birth certificates and nationalities'.¹³ The Committee also stressed that South Africa should take note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration by regularly monitoring and ensuring that measures adopted by legislation, regulations and guidelines guarantee birth registration of all children in the State party, including non-nationals.

Recommendations

1. Accede to and fully implement the 1954 and 1961 Statelessness Conventions.
2. Supplement the Immigration Act and other legislation to strengthen measures to regularise stateless persons including an amendment or addition of section 31(2)(b) to accommodate issuance of permanent residence permits to people who are stateless.
3. Ensure just administrative action on blocking and releasing South African identity documents by discontinuing the practice of blocking identities without consultation and resolving existing cases of blocked identities.
4. Amend legislation to remove various barriers to birth registration (among others for children of undocumented parents, children born out of wedlock where a mother is undocumented, children of parents without valid immigration permits).
5. Take steps to ensure that all South Africans who were previously undocumented under the Apartheid regime (and their children) are registered and have access to identity documents in order to access the right to nationality and the socio-economic rights which flow from nationality.
6. Ensure that all persons arrested for immigration purposes be brought before a court within 48 hours to assess the lawfulness of detention. Ensure that all persons subject to detention immediately undergo a status determination procedure in order to ensure that no citizens, refugees or stateless persons are held in detention.

Tunisia

Tunisia is a state party to both the 1954 and 1961 Statelessness Conventions. In 2012, Tunisia fully reformed gender discriminatory nationality laws which denied mothers the equal right to transfer their nationality to children. However, Tunisia retains rules on access to nationality for a person born in the territory where two generations of paternal descent are required for the *jus soli* acquisition of nationality. Accordingly, a person's *father* and *paternal grandfather* must both have been born in the country- a gendered triple *jus soli*. This clause is also problematic as an additional residence requirement for the parents further restricts the effect that this provision will have in preventing statelessness. The naturalisation procedure in Tunisia is discriminatory against persons with disabilities.¹⁴ Tunisia also allows for the deprivation of nationality in response to a serious non-political crime, even if this would result in statelessness.¹⁵

¹² <http://www.institutesi.org/worldsstateless17.pdf>.

¹³ CRC/C/ZAF/CO/2

¹⁴ Article 23(4).

¹⁵ Article 33

Recommendations:

1. Ensure that Tunisian nationality law effectively safeguards against childhood statelessness by eradicating the triple *jus soli* requirement, or at the least, by making triple *jus soli* effective through the maternal and paternal lines.
2. Reform its law to ensure that no-one will be left stateless as a result of the deprivation of nationality.
3. Ensure that naturalisation provisions are not discriminatory towards people with disabilities.

The United Kingdom

The UK has ratified nearly all the core international and regional human rights treaties, the Statelessness Conventions. Various detailed research and mapping studies have uncovered gaps in the UK's law, policy and practice which undermine the protection of stateless persons and their access to nationality.¹⁶

- Unlike the international definition of statelessness, the UK Immigration Rules contain an exclusionary provision in its definition of statelessness, determining that some stateless persons do not fall under the national definition of stateless persons.¹⁷ This is inconsistent with international law and undermines the exercise of other human rights including the principle of non-discrimination and the right to liberty for these people.
- While the UK has a statelessness determination procedure which is designed to offer a pathway to protection for stateless persons, in practice problems remain. Between the introduction of the procedure and April 2016, almost 1600 persons had submitted application under the Immigration Rules in relation to statelessness. Only 5.2% of decisions (39 decisions) were positive, and 715 applications were refused. There are problems particularly with the practical implementation of the criteria to grant stateless people lawful permission to stay including lack of legal aid, legal errors by UK Home Office staff, slow decision-making by the Home Office, and the lack of right of appeal in case an application gets refused.¹⁸
- Statelessness in the UK often means hardship, with high vulnerability to destitution, depression, exploitation and homelessness. It even may lead to repeated and/or extended periods of detention. Recent research shows that at least 108 stateless persons were detained at the end of 2015. Without their stateless status properly determined, stateless persons remain in migration detention for extended periods, without the prospect of removal.¹⁹ This is exacerbated by the lack of a time limit for detention.
- Children born stateless or at risk of statelessness in the UK face barriers in acquiring British nationality. Application fees are one of the main impediments which prevents them from becoming British nationals. In addition, gathering the necessary evidence to complete the application can be challenging and costly. Also, poor guidance, decision making and application of discretionary power by the Home Office contribute to the challenges for children to acquire British Nationality.

Recommendations

1. Fully incorporate and comply with the 1954 Convention, including the definition of statelessness.
2. Ensure that stateless persons have adequate procedural safeguards during the statelessness determination procedure on a non-discriminatory basis
3. Prevent arbitrary immigration detention among stateless persons, including stateless children.
4. Ensure that persons granted leave to remain based on statelessness have access to socio-economic rights guaranteed under the 1954 Convention and international human rights law.
5. Amend laws to Ensure that persons who are (at risk of) statelessness have expedited and affordable access to British nationality.

¹⁶ The 2011 United Nations High Commissioner for Refugees (UNHCR) and Asylum Aid report Mapping Statelessness in the United Kingdom and ENS Report, Protecting Stateless Persons from Arbitrary detention, http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_UK.pdf.

¹⁷ Para 402.

¹⁸ World's stateless, <http://www.institutesi.org/worldsstateless17.pdf>.

¹⁹ Civil society in the UK continues to undertake efforts to secure better protection for stateless persons in the country. For instance, on 2 November 2016, the Immigration Law Practitioner's Association and Liverpool Law Clinic jointly published a tool for legal practitioners to help with offering the highest qualitative legal representation by pressing for the best possible implementation of the statelessness determination procedure.