

*This document highlights the statelessness related challenges in the countries that will be reviewed at the Human Rights Council during the 28th Session of the Universal Periodic Review (UPR): Argentina, Benin, the Czech Republic, Gabon, Ghana, Guatemala, Japan, Pakistan, Peru, Republic of Korea, Sri Lanka, Switzerland, Ukraine and Zambia. 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 **recommending states** are urged to draw on this document when formulating **recommendations** to states under review. In addition to this summary, the Institute also made joint submissions to the 28th Session on statelessness in [Switzerland](#), [Japan](#) and [Ukraine](#).¹*

Argentina

Argentina acceded to the 1954 Convention on the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention) in 2014. Furthermore, Argentinian nationality can be acquired both through birth on the territory and through descent. However, Argentina does not have a statelessness determination procedure in place. As a result, an undetermined number of stateless persons do not receive protection. Further, due to recent reform, the previous requirement of two-year residency prior to applying to citizenship has now been changed to two years of lawful residence in the country. This poses barriers to stateless persons who – in the absence of a determination procedure - are unlawfully residing in the country. Significantly, stateless persons often lack registration documents and identity documents that are needed when applying for lawful residence in a country.

Recommendations:

1. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.
2. Review and amend the requirement of two years of lawful residence prior to applying for Argentine citizenship.

Benin

Benin acceded to the 1954 and 1961 Conventions in 2011. It is party to the Convention on the rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Benin adopted an action plan to eradicate statelessness in 2014. However, it is unclear what action has been taken under this. Benin is obligated under the CRC and ACRWC to ensure a child's right to acquire a nationality, particularly where the child would otherwise be stateless. However, while under the law the children of stateless parents will have access to nationality, the children of foreign parents who cannot transfer their nationality do not. Furthermore, children born out of wedlock do not have the same rights to acquire nationality as children born in wedlock to Beninese parents.

Moreover, while the lack of civil registration is not synonymous to statelessness, the lack of such can lead to statelessness. According to UNHCR, some 1,730 birth certificates were recently distributed to populations at risk of statelessness in the disputed area of Kourou Koualou, which is claimed by both Burkina Faso and Benin. Benin is also one of 25 countries that still denies women equal rights as men to transmit their nationality to their child and to their foreign spouses. In fact, the Nationality Code remains in place even after the Constitutional Court declared four of its provisions to be unconstitutional due to its gender discriminatory nature.²

Recommendations:

1. Ensure that all otherwise stateless children in Benin enjoy the right to acquire a nationality without discrimination.
2. Eliminate gender discrimination in nationality legislation, particularly for children born to Beninese mothers and foreign fathers and spouses married to Beninese women.
3. Continue with efforts to ensure free birth registration for all.

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

² *Décision DCC 14-172*, Benin: Cour Constitutionnelle, 16 September 2014, available at: http://www.refworld.org/cases,BEN_CC,547729054.html.

Czech Republic

The Czech Republic acceded to the 1954 Convention and the 1961 Convention in 2001. It supported the recommendation from Bulgaria at its previous UPR to 'develop and adopt legislation in the area of protection of the rights of migrants, refugees, asylum seekers and stateless persons in accordance with relevant international standards'.³ However, no laws to protect stateless persons have been adopted. Furthermore, according to UNHCR, an estimated 1,500 Roma are stateless in the country.⁴ This number may be significantly higher since naturalisation is conditional upon five years residency without a criminal conviction and providing evidence of economic means and of stable accommodation.⁵ These conditions disproportionately affect stateless Roma. The Czech Republic also does not have a statelessness determination procedure.

Recommendations:

1. Undertake and make publicly available a state-led study to map statelessness in the Czech Republic.
2. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.
3. Review and amend the Citizenship Act to introduce safeguards against statelessness and to facilitate naturalisation.
4. Protect stateless Roma from discrimination and grant them citizenship through expedited procedures.

Gabon

Gabon is party to neither the 1954 nor 1961 Conventions. It is, however, party to the CRC and ACRWC. There is very little information on statelessness in the country, which faces some challenges in birth registration of vulnerable groups. While Gabon grants nationality to children born to stateless parents, its safeguard against childhood statelessness is not comprehensive. Children born in the territory to foreign parents who cannot transmit their nationality are not protected. Further, for a child of foreign parents to acquire nationality, both parents should have been born in Gabon; and children born out of wedlock are denied the right to acquire a nationality.⁶ There are also concerns about children raised by Gabonese citizens but born in border zones between Gabon and neighbouring countries. These children can claim Gabonese citizenship if they make a declaration of residence in Gabon for the preceding ten years, pending the fulfilment of certain criteria.

Recommendations:

1. Ensure that all otherwise stateless children born in Gabon enjoy the right to acquire a nationality in accordance with the CRC and ACRWC.
2. Eliminate all forms of discrimination in granting nationality.
3. Ensure free, universal birth registration so that all children born in the territory obtain a birth certificate.
4. Accede to and take all necessary steps to fully implement the 1954 and 1961 Statelessness Conventions.
5. Conduct a mapping study on statelessness and make data on statelessness publicly available.

Ghana

Ghana is party to neither the 1954 nor the 1961 Conventions. It is however party to the CRC and ACRWC. Although Ghana pledged in 2015 to end statelessness in 2016, it is one of the few West African countries that has yet to implement a national action plan to eradicate statelessness. Furthermore, there is very little information on statelessness in the country. According to UNCHR, studies mapping statelessness in Ghana have been ongoing since December 2016.⁷ According to media reports, some ethnic Fulani and Hausa face serious difficulties in acquiring Ghanaian passports. They are deemed non-indigenous groups and are, therefore, not considered Ghanaians. This arbitrary denial of access to nationality documentation based on discriminatory grounds renders them at risk of statelessness.⁸ Undocumented migrants and refugees in protracted exile in Ghana – particularly those from Liberia and Sierra Leone - are also at risk of statelessness. Birth registration remains critically low at 63%, even though Ghana supported recommendations for achieving universal birth registration made at its second UPR by Hungary, Luxembourg and Australia.⁹

³ A/HRC/22/3 - Para. 94.

⁴ <http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>

⁵ Section 7 Para 1 of Act No. 40/1993 Coll.

⁶ Articles 10 & 13, 1988 Code de la Nationalité.

⁷ <https://data2.unhcr.org/fr/documents/download/53833>.

⁸ UNHCR, Terms of Reference, A study of Statelessness in Ghana, <http://unhcr-ghana.org/wp-content/uploads/2016/05/Terms-of-Reference-Study-on-Statelessness-in-Ghana.pdf>.

⁹ <http://unhcr-ghana.org/wp-content/uploads/2016/05/Terms-of-Reference-Study-on-Statelessness-in-Ghana.pdf>; A/HRC/22/6 - Para. 123 & 125.

Recommendations:

1. Accede to and take all necessary steps to fully implement the 1954 and 1961 Statelessness Conventions.
2. Ensure that all otherwise stateless children born in Ghana – including children born to refugees and migrants - enjoy the right to acquire a nationality in accordance with the CRC and ACRWC.
3. Conduct a mapping study on statelessness and make data on statelessness publicly available.
4. Develop and implement a national action plan to eradicate statelessness, as pledged in 2015.
5. Address discrimination and protect minority ethnic groups from statelessness.
6. Ensure free, universal birth registration so that all children born in the territory obtain a birth certificate.

Guatemala

Guatemala is party to both Statelessness Conventions as well as the CRC and the American Convention on Human Rights (ACHR), which recognises the right to nationality. During the second UPR cycle, Guatemala supported three recommendations to ensure birth registration, particularly for indigenous people.¹⁰ It is unclear what efforts have followed to ensure birth registration for all. Furthermore, there is no dedicated statelessness determination procedure to identify and protect stateless persons, which hampers the country's ability to produce any clear data on statelessness.

Recommendations:

1. Ensure free, universal birth registration and provide all children born in the territory – particularly those born in indigenous communities – with a birth certificate.
2. Undertake a mapping study on statelessness and make the outcomes publicly available.

Japan

Japan is not party to the 1954 or 1961 Statelessness Convention. It is however, party to the CRC. According to Japan's Ministry of Justice, as of 30 June 2016, there were 640 stateless persons in Japan.¹¹ However, this does not include stateless persons in Japan without residence status. Additionally, the terms 'stateless person' or 'statelessness' are not defined in Japanese law, and Japan does not have a statelessness determination procedure. Therefore, many stateless people may go unidentified. Further, if a stateless person without residence status is not granted 'Special Permission to Stay' he or she will be subject to a deportation order. In such circumstances, stateless persons are at risk of indefinite and arbitrary detention as there is no time limitation for the detention of "foreigners" pending removal.¹²

Recommendations:

1. Accede to and take all necessary steps to fully implement the 1954 and 1961 Statelessness Conventions.
2. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.
3. Ensure that all children born in Japan, who do not acquire another nationality, are automatically conferred Japanese nationality at birth, in order to ensure every child's right to acquire a nationality.
4. Ensure that statelessness is a valid ground for granting 'Special Permission to Stay' and that all stateless persons who reside irregularly in Japan are able to regularise their status and enjoy access to all human rights.
5. End Japan's practice of indefinite detention and ensure that detention is implemented as a last resort, only when necessary and proportionate, after all alternatives are exhausted. To determine if detention is necessary and proportionate, statelessness must be identified at the point of the decision to detain and on a continued basis.
6. Take adequate measures to map the scale of statelessness in Japan and assess the risk of statelessness among particularly vulnerable populations.

Pakistan

Pakistan is not party to the 1954 or the 1961 Convention. It is, however, party to the CRC. While there is no clear data on statelessness in Pakistan, it is home to an extremely large (but unquantified) Rohingya population who fled to Pakistan in the 1970s and '80s. Reportedly, over 100,000 Rohingya live in extreme poverty in the Arakanabad slum of

¹⁰ A/HRC/22/8 - Para. 99.

¹¹ Portal site for Japanese Government Statistics 'e-Stat', Statistics of foreigners residing in Japan, June 2016 「表 16-06-01-1: 国籍・地域別 在留資格 (在留目的) 別 在留外国人 (Table 16-06-01-1: Foreigners by nationality and region, and Status of Residence)

¹² Immigration Bureau, Ministry of Justice, 'Guidelines on Special Permission to Stay in Japan', Revised in July 2009.

Karachi alone. Many Rohingya have had Pakistani identity cards for years, but after authorities began cracking down, many have found it difficult to renew their IDs, and the younger generation is being denied documentation altogether. Without documentation, Rohingya cannot access work, education or healthcare, and live in a precarious situation.¹³

Recommendations:

1. Accede to and take all necessary steps to fully implement the 1954 and 1961 Statelessness Conventions.
2. Ensure that all otherwise stateless persons - especially Rohingya children born in Pakistan - enjoy the right to acquire a nationality, in accordance with the CRC.
3. Protect all stateless Rohingya in Pakistan, grant them documentation and legal status, and ensure their enjoyment of basic human rights.

Peru

Peru acceded to the 1954 and 1961 Conventions in 2014. It is also party to the CRC and ACHR. There is no clear data on statelessness in the country, and no statelessness mapping study has been undertaken. Peru does not have a procedure for the identification and protection of stateless persons. In its second UPR, Peru received four recommendations to facilitate birth registration. Since then, with support from UNICEF, the National Vital Statistics Office and the Ministry of Development and Social Inclusion of Peru have increased their efforts and resources to eliminate the birth registration gap in indigenous communities.¹⁴

Recommendations:

1. Undertake a mapping study on statelessness and make the outcomes publicly available.
2. Ensure free, universal birth registration and provide birth certificates to all children born in the territory, particularly those born in indigenous communities.
3. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.
4. Ensure that all otherwise stateless persons enjoy the right to a nationality, with special emphasis on children and the country's obligations under the CRC.

Republic of Korea

The Republic of Korea is party to the 1954 Convention, but not the 1961 Convention. Furthermore, it has not transposed many of the 1954 convention's provisions into national law.¹⁵ There are no comprehensive statistics on statelessness in the country, nor is there a procedure for the identification and protection of stateless persons. At greatest risk of statelessness are the children of undocumented North Korean escapees and children born in the Republic who were later adopted internationally.¹⁶ During its second UPR, several countries recommended that the Republic of Korea improve its system of birth registration, especially with regard to the gap in protection that arises when a child is born to foreign parents. A child born in such circumstances must be registered with the diplomatic mission of the parents' nationality, which does not always occur, increasing the risk of statelessness of such children.

Recommendations:

1. Accede to the 1961 Convention on the Reduction of Statelessness.
2. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.
3. Allow for automatic birth registration of all children born on the territory regardless of parent(s)' nationality
4. Ensure that all otherwise stateless persons enjoy the right to a nationality, with special emphasis on children and the country's obligations under the CRC.
5. Close the loopholes in national law that are not in conformity with the 1954 Statelessness Convention.

¹³ See Mehreen Zahra Malik, *Far from Myanmar violence, Rohingya in Pakistan are seething*, New York Times, 12 September 2017, available at: <https://www.nytimes.com/2017/09/12/world/asia/rohingya-pakistan-myanmar-violence.html>

¹⁴ <https://www.unicef-irc.org/publications/860/>.

¹⁵ For a comprehensive overview of the legislative gaps in relation to statelessness, refer to Seop Chung et al. (2015) 'The Treatment of Stateless Persons and the Reduction of Statelessness: Policy Suggestions for the Republic of Korea,' *Korea Review of International Studies* 13.1: 7-30.

¹⁶ In the United States alone, more than 15,000 adoptees from the Republic of Korea are estimated to be stateless. See Claire Lee (2015), 'Almost 10% of Korean adoptees may be stateless.' <http://www.koreaherald.com/view.php?ud=20151011000437>. These individuals run the risk of deportation from the only country they have even known upon reaching adulthood.

Sri Lanka

Sri Lanka is not party to the 1954 or the 1961 Statelessness Convention. Sri Lanka is considered to have 'resolved' a large-scale situation of statelessness among its hill country Tamil population, through the adoption in 2003 of a dedicated law offering recognition as Sri Lankan citizens and the subsequent implementation of this law through a citizenship campaign. However, this formerly stateless ethnic Tamil's community remains to-date economically and socially excluded and marginalised, with little improvement to show after 2003. Furthermore, 31 stateless Rohingya refugees who lived in a UNHCR safe house in Sri Lanka were the target of protests by extremists groups in September 2017. Following this, the authorities moved these refugees to a high security prison, ostensibly for their own safety. The detention of this mixed group of refugees (men, women and children) is arbitrary and in violation of international law.

Recommendations:

1. Accede to the 1954 and 1961 Statelessness Conventions.
2. Ensure the socio-economic growth and address the marginalisation faced by the formally stateless Tamils of Indian origin in the country.
3. Release all stateless Rohingya refugees from detention and provide them with protection and basic human rights.

Switzerland

Switzerland has acceded to nearly all the core international and regional human rights treaties, which collectively protect the rights of stateless persons. Switzerland has also ratified 1954 Convention, but it has not acceded to the 1961 Convention or the European Convention on Nationality (ECN). Despite Switzerland's international treaty obligations, there are deficiencies in the national law and policy framework that affect the ability of stateless persons living in Switzerland to exercise their rights. Gaps exist in particular with regard to the identification and the human rights protection of stateless persons, children's right to a nationality, access to nationality for stateless persons and the protection of stateless persons from arbitrary detention in Switzerland. Switzerland currently lacks a statelessness determination procedure and persons at risk of statelessness who are not granted a temporary status to remain are placed at risk of arbitrary detention, destitution and possibly attempted removal during a pending decision on the recognition of statelessness. Furthermore, the stateless population has not been mapped in Switzerland and Swiss nationality law does not fully protect against statelessness at birth. Stateless children only have the opportunity to acquire Swiss citizenship through a 'simplified' naturalisation process. But there is a five year residence requirement, and the authorities maintain a certain degree of discretion.

Recommendations

1. Accede to and fully implement the 1961 Convention and the European Convention on Nationality.
2. Ensure that the definition of 'stateless person' is fully consistent with the 1954 Convention definition and that no stateless persons are excluded from this definition on extraneous criteria.
3. Ensure that the statelessness determination procedure is formalised in law and is fair, effective and accessible to all persons in Switzerland regardless of their legal status and is fully in line with international law and UNHCR Guidelines.
4. Put in place safeguards to ensure that all children born in Switzerland who would otherwise be stateless acquire Swiss nationality automatically at birth in accordance with Switzerland's international obligations.
5. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

Ukraine

Ukraine is party to both the 1954 and 1961 Statelessness Conventions. Although no reliable data exists on the size of Ukraine's stateless population, UNHCR estimates of 35,000 and 46,000 make it one of Europe's largest stateless populations. The Roma minority, individuals affected by the 1991 dissolution of the USSR, those who live in the occupied territories, in addition to children born to undocumented parents, are especially at risk of statelessness in Ukraine. Furthermore, Ukraine does not have a statelessness determination procedure. Without such a procedure, stateless persons do not have access to facilitated naturalisation or to any other fundamental human rights. Stateless persons who lack documentation or legal status can be subject to immigration detention and removal proceedings in which their stateless status is of no consideration. In some cases, the stateless are subject to arbitrary and prolonged

detention. The Ukrainian Parliament is, however, currently considering a draft law that would introduce a statelessness determination procedure that may rectify some of these deficiencies.

Access to birth registration continues to be a problem in Ukraine as prerequisite documents such as medical birth certificates and evidence of a parent's legal status are difficult for some populations to obtain (for example, the Roma who often give birth at home and who remain one of the most heavily discriminated against populations in the country). Furthermore, fees are imposed for late birth registration, which leaves a child vulnerable to having her or his right to birth registration unfulfilled if the parents are not in a financial position to pay the fee. Birth registration for children born in the occupied territories of Ukraine is also problematic as the birth registration procedure is only possible through a lengthy and costly procedure in a Ukrainian court of law.

Recommendations

1. Promote, respect, protect and fulfil its obligations towards stateless persons under international law.
2. Ensure the right to acquire a nationality for all otherwise stateless children in Ukraine in accordance with Article 7 of the CRC.
3. Ensure that all children have equal and free access to birth registration, regardless of their parent's (legal) status or documentation. Fully implement the recommendation of the UN Committee on the Rights of the Child in this regard.
4. Ensure that the draft law is enacted as a matter of priority, after being improved to bring it in line with international law standards and UNHCR Guidance.
5. Ensure that the definition of 'stateless person' under Ukrainian law is fully consistent with the definition provided in the 1954 Convention and that no stateless persons are excluded from this definition.
6. Ensure that stateless persons are not subject to arbitrary detention.
7. Take all necessary steps to address historical and structural discrimination against the Roma community, which heightens their lack of documentation and risk of statelessness. Fully implement the recommendations of the UN CERD and CRC in this regard.
8. Take adequate measures to map the scale of statelessness in Ukraine and assess the risk of statelessness among particularly vulnerable populations.

Zambia

Zambia is party to the 1954 Convention, with reservations to Articles 22 (education) and 26 (freedom of movement). It is also party to the CRC and ACRWC. Zambia is not party to the 1961 Convention. There is no clear statistical information on statelessness in the country. Despite its international obligations under the CRC and ACRWC to protect every child's right to acquire a nationality, particularly where they would otherwise be stateless, the 2016 Constitution and Citizenship Act of Zambia do not grant nationality to children who would otherwise be stateless. While the 2016 law provides citizenship to foundlings, it is unclear how this is being implemented. Zambia is also home to former refugees from Rwanda and Angola, who have been offered permanent residence, but no pathway to citizenship as of yet.

Recommendations

1. Promote, respect, protect and fulfil its obligations towards stateless persons under international law.
2. Engage in necessary law reform to ensure the right to acquire a nationality for all otherwise stateless children in Zambia, in accordance with Article 7 of the CRC.
3. Remove its reservations to Articles 22 and 26 of the 1954 Convention and accede to the 1961 Convention.
4. Grant pathways to citizenship through facilitated naturalisation to former refugee permanent residents from Rwanda and Angola.
5. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.