

*This document highlights the statelessness related challenges in the countries that will be reviewed at the Human Rights Council during the 29<sup>th</sup> Session of the Universal Periodic Review (UPR): The Bahamas, Barbados, Botswana, Burundi, France, Israel, Liechtenstein, Luxembourg, Mali, Montenegro, Romania, Serbia, Tonga and The United Arab Emirates. 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 29<sup>th</sup> Session on human rights and statelessness in [The Bahamas](#), [Barbados](#), [Botswana](#), [Burundi](#), [Serbia](#), and [The United Arab Emirates](#).<sup>1</sup>*

## The Bahamas

The Bahamas is party to the core human rights instruments, albeit with reservations to Article 2(a) and 9 of the CEDAW and Article 2 of the CRC. The Bahamas is not a State Party to the 1954 or 1961 Statelessness Conventions.

- **Gender discrimination:** The Bahamas has largely failed to follow through with related recommendations it “accepted” during the previous UPR cycle. It continues to discriminate against Bahamian women married to foreigners in their ability to confer nationality to their spouses or children born abroad, and against unmarried Bahamian men in their right to pass on their nationality to their children. At a 7 June 2016 referendum, the Bahamian public resoundingly voted against removing these gender discriminatory provisions from the Bahamian Constitution (and also voted against enshrining “sex” as a prohibited ground for discrimination). However, in 2017, Prime Minister Minnis, announced that The Bahamas Nationality Act will be amended to eradicate gender discrimination in relation to conferral of nationality on children. Despite these positive overtures, no discussion regarding the removal of the country’s reservations to Articles 2(a) and 9 of CEDAW has taken place.
- **Arbitrary detention and deportation:** The Minnis Administration gave notice to all undocumented persons resident in The Bahamas that they have until 31 December 2017 to regularise their status or face detention and deportation. There have been reports of immigration roundups taking place prior to the deadline, targeting primarily those of Haitian heritage. The Bahamas has no Statelessness Determination Procedure (SDP), and therefore, stateless persons (and those at risk of statelessness), including children are detained. They can be held for several weeks or months and are denied due process rights.
- **Infringement of human rights:** The right to a nationality of children born in The Bahamas who are detained with their undocumented parent(s) is at risk. They do not have Bahamian nationality and it is unclear whether they will be able to obtain proof of Haitian citizenship once deported to Haiti. The right to education of those not in detention was jeopardised by a 2014 immigration policy, which, in contravention of the CRC, made school access only available to children who were “legally” present in the country and had a school permit. Although the Minister of Foreign Affairs stated that school principals should admit children regardless of their “immigration” status, it is unclear if this has actually reversed the 2014 immigration policy.

### *Proposed Recommendations:*

1. Remove all reservations to CEDAW and sign the CEDAW Optional Protocol. Remove its reservation to CRC Article 2.
2. Take steps to ensure that all children and adults who have been denied access to Bahamian citizenship due to gender discriminatory nationality laws are granted nationality and, in the interim, that they fully enjoy their other human rights on a non-discriminatory and equal basis.
3. Accede to and fully implement the 1954 and 1961 Statelessness Conventions.
4. Introduce a fair and effective statelessness determination procedure in line with international standards, and ensure that it is accessible to all persons in The Bahamas regardless of their legal status.
5. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## Barbados

The Barbadian Constitution and Citizenship Act (cap. 186) allow for discrimination in the transmission of nationality from a parent to a child based on the parent’s gender, marital status and/or place of birth. Under section 10(2) of the Constitution, an unmarried Barbadian father is denied the right to confer his nationality on his children, a right reserved for unmarried mothers. Section 5(1) of the Constitution recognises the right of married Barbadian fathers to pass on their nationality, regardless of the father or child’s place of birth. However, Section 5(2) stipulates that Barbadian women may only confer their nationality on children born abroad if the mother was herself born in Barbados. Furthermore, Barbadian women are denied the right to confer their nationality on foreign spouses, a right that is constitutionally reserved for men. Finally, the Barbados Citizenship Act (Cap. 186) denies Barbadian

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

women the right to confer their nationality on children in the case of joint adoption, while Barbadian men are permitted to confer their nationality on adopted children in all circumstances.

*Proposed Recommendations:*

1. Amend the Constitution, with retroactive effect, to remove all gender discriminatory provisions.
2. Amend the Citizenship Act, with retroactive effect, to remove all gender discriminatory provisions.
3. Establish comprehensive and effective safeguards to ensure that no child is born stateless in Barbados.
4. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## **Botswana**

Botswana is party to a number of the core human rights instruments including the ICCPR, CERD, CEDAW and CRC, as well as the African Charter on the Rights and Welfare of the Child (ACRWC). However, it is not a State Party to the 1954 or 1961 Statelessness Conventions. The **Botswana Children's Act** of 2009, provides in section 12 that 'every child has a right to a nationality from birth'. Importantly, this Act has transposed the CRC, thereby ensuring the domestic application of the Convention. However, there is no safeguard in Botswanan law, to ensure that (otherwise) stateless children – including foundlings - will acquire Botswana citizenship. Children born in the territory of Botswana to stateless or unknown parents are therefore not guaranteed protection against statelessness. Such a child may apply for naturalisation as a citizen of Botswana after ten years of residing in Botswana. However, Regulation 17(1) of the Botswana Citizenship Act requires that an applicant be in possession of a permanent residence permit. This requirement may be problematic, particularly in relation to child refugees who are orphaned and are unable to claim refugee status as a dependant of a refugee. This group of vulnerable children lacks documentation from their country of origin because their parents may not have registered their births with the embassy, for political reasons. They are thus precluded from applying for either a permanent residence permit or subsequent naturalisation. They are at risk of statelessness. The Children's Act also requires that every child receive a birth certificate to prove nationality. Birth registration is readily available to those born in hospitals, but not to children who are born at home or who live in remote areas.

*Proposed Recommendations:*

1. Accede to and fully implement the 1954 and 1961 Statelessness Conventions.
2. Amend the Citizenship Act and regulations in accordance with the Botswana Children's Act, the CRC and the ACRWC, to ensure every child's right to a nationality and that no child is born stateless in Botswana.
3. Take all necessary steps to ensure immediate and universal birth registration of children born in Botswana, particularly foundlings, those born to migrants and undocumented persons and those born outside of hospitals.
4. Ensure that refugees who acquire Botswanan nationality are not required to renounce their previous nationality if they are unable to.
5. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## **Burundi**

Burundi is party to a number of the core human rights instruments including the ICCPR, CERD, CEDAW and CRC, as well as the African Charter on the Rights and Welfare of the Child (ACRWC). However, it is not a State Party to the 1954 or 1961 Statelessness Conventions. According to its 2000 Nationality Code, Burundian women cannot pass nationality to children on an equal basis with Burundian men, and are denied the equal right to confer nationality on spouses. The law contradicts Article 12 of the Constitution, which enshrines the equal right of Burundian men and women to confer nationality on children, as well as the entitlement of all citizens to equal rights and legal protection. Article 2 of the Nationality Code also does not allow women to confer nationality on children except when maternal filiation is established, and the child is born out of wedlock to an unknown father, or is disowned by the father. By contrast, Burundian men have the right to confer nationality on children in all circumstances. Furthermore, a foreign woman acquires, by marriage, the nationality of her Burundian spouse by simple declaration at any time during or after the celebration of the marriage. However, the male spouse of a Burundian women must follow the normal procedures for naturalisation, though the residency requirement is reduced from ten to five years.

*Proposed Recommendations:*

1. Amend the 2000 Nationality Code to bring it into full compliance with Burundi's 2005 Constitution and relevant provisions of CEDAW and the CRC.
2. Take steps to ensure that all those denied Burundian citizenship due to gender discriminatory nationality laws are granted nationality and, in the interim, that they fully enjoy their other human rights on a non-discriminatory and equal basis.
3. Accede to and fully implement the 1954 and 1961 Statelessness Conventions.
4. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## France

France is a state party to core human rights treaties including the CRC and the 1954 Convention. Despite receiving a recommendation to do so during the previous cycle, it has signed but not ratified the 1961 Convention. It has also not ratified the European Convention on Nationality. France is one of few countries to have an SDP, for which it may be commended. However, applicants under the procedure have no legal stay or work rights while their application is being processed. Thus, they remain at risk of detention (there are no alternatives to detention, but the maximum detention period is 45 days) or removal from the country until a decision has been made. Furthermore, there is no facilitated naturalisation for recognised stateless persons.

France does not have a comprehensive safeguard against childhood statelessness, in that children born on the territory who would otherwise be stateless do not automatically acquire nationality. Instead, there is an application process, according to which the child must first be processed under the SDP to determine statelessness, before being able to apply for French nationality. In addition, the French nationality acquired by children under this procedure will be withdrawn if before the child reaches majority he or she obtains another nationality through their parents.

### *Proposed Recommendations:*

1. Ratify and fully implement the 1961 Statelessness Convention and the European Convention on Nationality.
2. Ensure the right to legal stay and work of applicants whose claim for statelessness status is being processed, and ensure that no stateless persons are arbitrarily detained.
3. Ensure facilitated naturalisation to recognised stateless persons.
4. Implement a comprehensive safeguard against statelessness by ensuring that all children born on the territory who would otherwise be stateless, automatically acquire French nationality.

## Israel

Israel is party to most core human rights treaties and the 1954 and 1961 Statelessness Conventions. While the 1961 Convention allows for the revocation of nationality on limited grounds, steps taken by Israel to strip citizenship of hundreds (some argue thousands) of Bedouin born and residing in the Negev region of Southern Israel, is contrary to the Convention and basic principles of international law. Despite the Bedouin having lived in their territory prior to the establishment of the State of Israel, the Minister of Interior has claimed that they were granted nationality erroneously in 1951, when the state of Israel was established.

Children born to an Israeli father and a non-Israeli mother whose legal status in Israel is yet to be formalised, do not automatically acquire Israeli citizenship. The father has to undergo a DNA paternity test, and cover costs of the test and additional (legal) costs. Such children are at risk of statelessness, in contravention of Israel's obligations under the CRC and 1961 Convention.

### *Proposed Recommendations:*

1. Desist from revoking the nationality of citizens in contravention of the 1961 Convention on the Reduction of Statelessness and other international standards, and restore the nationality of all persons arbitrarily deprived of their nationality.
2. Ensure that all children born in the country have the right to acquire a nationality, without discrimination.
3. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## Liechtenstein

Liechtenstein is party to most relevant human rights treaties, with the exception of the European Convention on Nationality. The country also has an adequate safeguard against childhood statelessness.

### *Proposed Recommendations:*

1. Accede to and take all necessary steps to fully implement the European Convention on Nationality.

## Luxembourg

Luxembourg is party to the relevant human rights treaties and it acceded to the 1961 Convention in September 2017. However, children born out of wedlock can only acquire nationality if the child was a minor when maternity/paternity is established and the parent was a citizen at the time of establishment. This provision leaves children at risk of statelessness. Luxembourg received two relevant recommendations during the second UPR Cycle: 1) to ensure that all persons born in Luxembourg obtain a nationality if they would otherwise be stateless, (Mexico) and 2) to establish a formal procedure to improve compliance with the obligation to protect stateless persons, in line with the 1954 Convention (Guatemala). The Institute is unaware of any steps taken by Luxembourg to implement these two important recommendations.

### *Proposed Recommendations:*

1. Take all necessary measures to fully implement the 1954 and 1961 Statelessness Conventions.

2. Ensure that all children born in the country and children born abroad to nationals are protected from statelessness, and that their right to acquire a nationality without discrimination is protected.
3. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## **Mali**

Mali acceded to the Statelessness Conventions in 2016. In 2014, Mali established an inter-ministerial committee to fight statelessness and signed the Abijan declaration on the eradication of statelessness. It also adopted a National Action Plan on the Eradication of Statelessness in August 2017. The CEDAW commended Mali in 2016 for making progress in addressing gender discrimination in its nationality laws. In particular, Act No. 2011-087 of 30 December 2011 amended article 224 of the Personal and Family code providing for the equal rights of Malian women and men to confer their nationality to their children and foreign spouses.

Despite these positive steps, there remain concerns about the limited information on statelessness and affected populations in the country. Under the Persons and Family Code, there is also a risk of statelessness for children born in the territory to parents of an immigrant background who were also born in the country, but do not have nationality of another African country.<sup>2</sup>

### *Proposed Recommendations:*

1. Ensure that all children born in the country and children born abroad to nationals have the right to acquire a nationality.
2. Eradicate all forms of discrimination in relation to the conferral of nationality to children.
3. Continue efforts to realise birth registration of all children born in the territory.
4. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## **Montenegro**

Montenegro is party to the core human rights treaties (including the CRC and CERD), the 1954 and 1961 Statelessness Conventions and the European Convention on Nationality. However, Montenegro has no SDP and the definition of statelessness in the national legislation falls short of international law standards. The lack of universal birth registration in the country, increases the risk of statelessness among certain sections of the population. Particularly impacted are the children of stateless or undocumented parents, children born outside health-care institutions and minorities such as Roma. Montenegro received three recommendations on this issue under the previous cycle, but it remains a challenge today. Additionally, births may be registered, but subsequently not entered into the citizenship registries, due to complex procedures. The Roma and Egyptian communities are most affected by statelessness, as they often face difficulties in acquiring documentation, while experiencing discrimination at the hands of decision makers. This affects both displaced and non-displaced populations, with the former being most affected.

### *Proposed Recommendations:*

1. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines, and ensure that the definition of statelessness in national legislation is in accordance with international standards.
2. Pursue universal birth registration, prioritising access to marginalised and vulnerable groups, simplifying the procedure and addressing discrimination in the system.
3. Address the risk of statelessness and lack of documentation among the Romani population as a matter of priority, and ensure that Roma are not denied access to documentation, nationality or other rights on a discriminatory basis.
4. Grant legal status and protection to IDPs and refugees, and protect all such persons and their descendants from statelessness.
5. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## **Romania**

Romania is party to all of the core human rights treaties and the 1954 and 1961 Statelessness Conventions. Despite this good track record, there are some challenges. Significantly, Romanian citizenship law does not include any safeguard for the acquisition of nationality of otherwise stateless children born in the territory. Such children are subject to a complex naturalisation procedure, placing them at risk of statelessness. Secondly, there is no SDP in the country, which is a significant protection gap. Finally, there is no adequate data and information on statelessness in the country.

### *Proposed Recommendations:*

1. Implement a comprehensive safeguard against statelessness by ensuring that all children born on the territory who would otherwise be stateless automatically acquire Romanian nationality.
2. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.

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<sup>2</sup> Code des personnes et de la famille, 2011, article 227.

3. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## Serbia

Serbia is party to the core human rights treaties and the 1954 and 1961 Statelessness Conventions. The groups most at risk of statelessness in Serbia are those who are not registered in the birth registry (legally invisible persons), persons of undetermined nationality, and persons who were registered in the registry books that were lost or remain unavailable to the authorities of Serbia. The great majority belong to the Roma community, one of the most vulnerable and discriminated against minorities in Serbia.

- **Birth Registration:** The Constitution of the Republic of Serbia guarantees the right to legal personality and to every child the right to a name and birth registration. In August 2012, Serbia adopted the Law on Amendments to the Law on Non-Contentious Procedure, which is intended for persons who cannot be registered in the birth registry book through a standard administrative procedure. However, there are still unresolved issues regarding timely birth registration. For example, Article 23(3) of the Law on Registries allows for birth registration to be deferred to verify or ascertain missing data. A new government initiative in 2016 aimed to simplify birth registration, by allowing the registration of children whose mothers are undocumented. However, this Instruction (which is not legally binding) contradicts legally binding regulations, which stipulate that children whose parents are undocumented cannot be issued with a birth certificate upon birth with their names determined. They need to undergo a procedure to determine personal name, subsequent birth registration or date and place of birth. Each of these procedures often take several months, with complicated cases lasting over a year.
- **Safeguard against statelessness:** According to Article 13 of the Law on Citizenship, Serbian citizenship shall be acquired by a child born or found in the Serbian territory if his/her parents are unknown, stateless, of unknown citizenship, or if the child would otherwise be stateless. Citizenship should be acquired at birth, automatically, by operation of the law. The Serbian Constitution contains a similar provision. However, such children must be registered based on a document proving that the child's parents are stateless or of unknown citizenship or that a child is stateless. There are no further provisions or guidelines on what is considered to be such a document. This requirement undermines the safeguard against statelessness. Another problem is that it is only possible to acquire Serbian citizenship on the basis of birth on its territory up to 18 years of age.
- **Destroyed registries:** During the 1999 Kosovo conflict, the registry books for some places in Kosovo were destroyed, lost, or considered unavailable by the state bodies in Serbia. This problem has still not been resolved. Re-registration into citizenship registry books can be particularly difficult, requiring a citizenship certificate issued before 1999 or a birth certificate recording citizenship of Serbia. Failing this, information on citizenship must be found in the records of the Ministry of Interior. If this evidence is not available, applicants must initiate the procedure for determination of citizenship, which requires even more evidence than the re-registration procedure, including parents' documents.
- **SDP:** Serbia does not have an SDP, even though this is of key importance for individuals to access their rights. Without the determination of statelessness, stateless persons can be denied travel documents, which prevents them from registering permanent residence or accessing other rights, and leaves them vulnerable to discrimination.
- **Detention:** The lack of an SDP will have a particularly strong human rights impact if Serbia adopts the current version of its Draft Law on Foreigners. Under the Draft Law, the maximum immigration detention period is prolonged from 180 days to 12 months.

### *Proposed Recommendations:*

1. Carry out necessary measures, including legislative amendments, to ensure that *all* children born in Serbia have access to birth registration *immediately* after birth without discrimination and regardless of the legal or documentation status of their parents.
2. Ensure the correct interpretation and implementation of Article 13 of the Law on Citizenship (regulating the right to Serbian citizenship on the basis of the *jus soli* principle) in line with the 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child. Specifically, ensure that young adults over 18 years who would otherwise be stateless, can access their right to acquire Serbian citizenship.
3. Reconstruct destroyed, missing or unavailable registries and alleviate the unreasonably strict standards regarding the evidence required for re-registration in citizenship registries.
4. Collect reliable, disaggregated data on stateless persons and persons at risk of statelessness in Serbia and make this data publicly available.
5. Introduce a fair and effective statelessness determination procedure in line with international standards, and ensure that it is accessible to all persons in Serbia regardless of their legal status.
6. Ensure that stateless persons are protected from arbitrary detention in Serbia, including by improving the identification of statelessness during decisions to detain, ongoing reviews of detention, and vulnerability assessments.

## Tonga

Tonga is not party to most of the core international and regional human rights treaties, which collectively protect the rights of stateless persons. This includes the ICCPR, ICESCR, CEDAW and the 1954 and 1961 Statelessness Conventions. It is, however, party to the CRC. There is very limited data or information about statelessness in the country, and no SDP.

*Proposed Recommendations:*

1. Accede to and fully implement the 1954 and 1961 Statelessness Conventions, the ICCPR, ICESCR, CEDAW and other core human rights treaties.
2. Establish a statelessness determination procedure, in line with international law and UNHCR Guidelines.
3. Strengthen statistical data on statelessness in the country, undertake a mapping study on statelessness and make the outcomes publicly available.

## **The United Arab Emirates (UAE)**

The UAE is not party to most of the core international and regional human rights treaties, which collectively protect the rights of stateless persons. This includes the ICCPR, ICESCR and the 1954 and 1961 Statelessness Conventions. It is, however, party to the CRC and CEDAW, albeit with a reservation to Article 9.

- **Gender discrimination:** While there are no restrictions on a father's right to pass on nationality to his children, a mother is able to pass on her nationality only in exceptional circumstances, such as when the father is unknown or is stateless. In the former situation, the mother has to actively demonstrate that the father is unknown or does not accept paternity, which can be very difficult to do, especially in a culture where having children outside of wedlock may lead to stigmatisation. A 2011 Decree enabled the children of Emirati women married to foreigners to apply for Emirati citizenship. This is not an automatic process, children can only apply for citizenship when they reach the age of 18 and, even then, it is a discretionary procedure.
- **Arbitrary deprivation of nationality:** Emirati authorities have arbitrarily stripped the nationality of dozens of political dissidents. Although this is allegedly to combat terrorism, it appears to be politically motivated. At least 60 political opponents were stripped of nationality in 2016 alone. Spouses and children have also lost their Emirati nationality as a result.
- **Lack of an SDP and safeguards:** The lack of an SDP leaves people at heightened risk of statelessness and all the ramifications associated with this status. Furthermore, Emirati nationality law does not have a provision that would entitle children born on its territory to Emirati nationality if they would otherwise be stateless. This position is in contravention of the CRC.
- **Human rights consequences:** Those rendered stateless in the UAE may be unable to access various employment opportunities, or, in violation of Article 7 of the CRC, to register a new-born baby. The Emirati authorities have also stated that those who have been deprived of their nationality may be at risk of arrest for being illegally resident in the country.

*Proposed Recommendations:*

1. Remove the UAE's reservation to and ensure full compliance with Article 9 CEDAW.
2. Amend the Citizenship Law to enable Emirati women to transfer nationality to their children without restriction, on an equal basis to men. Ensure that this is completed without delay, in accordance with international standards.
3. Accede to and fully implement the 1954 and 1961 Statelessness Conventions, the ICCPR and the ICESCR.
4. Withdraw the Ministry of Interior's authority to deprive persons of their nationality through the issuance of orders under decree, and in particular, prohibit any deprivation of nationality that is disproportionate, discriminatory, indiscriminate and arbitrary, including by resulting in statelessness.
5. Ensure equality before the law, access to justice, redress and the right of appeal for all persons who have been deprived of their nationality.
6. Reinstate the nationality of all persons whose nationality was arbitrarily deprived, prioritising those who have consequentially been left stateless, reinstate immediately the nationality of spouses and children who have been stripped of their nationality.
7. Ensure that stateless individuals living in the UAE enjoy full access to their fundamental human rights, including the right to education, travel, healthcare, own property, liberty and security of the person and access social services.