



THE PROTECTION OF STATELESS CHILDREN UNDER THE INSTRUMENTS OF INTERNATIONAL LAW

Falah Al Ghozali¹

Fakultas Hukum, Universitas Muhammadiyah Surakarta
fag201@ums.ac.id

Aulia Ramadhani Adila²

Fakultas Hukum, Universitas Muhammadiyah Surakarta
c100200210@student.ums.ac.id

Tegar Wahyudi³

Fakultas Hukum, Universitas Muhammadiyah Surakarta
c100200396@student.ums.ac.id

Corresponding Authors Email: fag201@ums.ac.id

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Abstract

Having a clear citizenship status facilitates children in leading their lives and asserting their rights, such as gaining access to education, healthcare, engaging in political activities, and even starting families. However, Institute on Statelessness and Inclusion, located in the Netherlands, estimates that every 10 (ten) minutes, a child is born without nationality in a country in this world. Stateless children face various different challenges. Statelessness hinders their ability to realize their potential and can have adverse effects on social cohesion and stability. In some cases, it can even lead to social tensions and displacement. The researchers used a normative research method in conducting this study. Additionally, the data analysis technique applied is qualitative descriptive, which portrays phenomena and findings related to stateless children, their causes, and their protection within international instruments. In other words, this research shows how the protection of stateless children is viewed from the perspective of international law.

Keywords: *Human Rights, International Legal Instruments, Statelessness*

Abstrak

Memiliki status kewarganegaraan yang jelas akan memudahkan anak-anak dalam menjalani kehidupan mereka dan menuntut hak-haknya, seperti mendapatkan akses pendidikan, kesehatan, terlibat dalam kegiatan politik, dan bahkan membentuk keluarga. Namun, *Institute on Statelessness and Inclusion* yang berlokasi di Belanda memperkirakan bahwa setiap 10 (sepuluh) menit, seorang anak dilahirkan tanpa kewarganegaraan di suatu negara di dunia ini.

Anak-anak tanpa kewarganegaraan menghadapi berbagai tantangan yang berbeda. Keadaan tanpa kewarganegaraan menghalangi kemampuan mereka untuk mewujudkan potensi mereka dan dapat berdampak buruk pada kohesi dan stabilitas sosial. Dalam beberapa kasus, hal ini bahkan dapat menyebabkan ketegangan sosial dan pengungsian. Para peneliti menggunakan metode penelitian normatif dalam melakukan penelitian. Selain itu, teknik analisis data yang digunakan adalah deskriptif kualitatif, yang menggambarkan fenomena dan temuan terkait anak tanpa kewarganegaraan, penyebabnya, dan perlindungannya dalam instrumen internasional. Dengan kata lain, penelitian ini menunjukkan bagaimana perlindungan anak-anak tanpa kewarganegaraan ditinjau dari perspektif hukum internasional.

Kata Kunci: Hak Asasi Manusia, Instrumen Hukum Internasional, Tanpa Kewarganegaraan

INTRODUCTION

The United Nations High Commissioner for Refugees (UNHCR) reports that at least 4.3 million people globally lack citizenship status, despite being born and living their entire lives in the same country.¹ And according to the Institute on Statelessness and Inclusion, located in the Netherlands, it is estimated that every 10 (ten) minutes, a child is born without nationality in a country in this world.² This issue of statelessness requires attention from various stakeholders, including international organizations, sovereign nations, and world leaders. Having a clearly defined citizenship status makes it easier for children to lead their lives and assert their rights, including access to education, healthcare, political participation, and the ability to start families. Aristotle once remarked that nationality is a privileged status reserved for a select few, emphasizing that citizens are actively involved in the affairs of their nation.³

Children who lack nationality face a variety of unique challenges, which vary depending on their place of residence and the reasons behind their

¹ UNHCR, 2023, "2023: A Moment of Truth for Global Displacement", Accessed from the Official Website of UNHCR, <https://www.unhcr.org/spotlight/2023/01/2023-a-moment-of-truth-for-global-displacement/>, on April 11, 2023, at 1.18 p.m.

² Institute on Statelessness and Inclusion, 2018, *Childhood Statelessness*, Netherlands, Wolf Legal Publishers, p. 4.

³ Agus Anjar, 2019, *Politik Hukum Sebuah Kajian Pendekatan Sosial*, Yogyakarta, CV Budi Utama, p. 16.

statelessness.⁴ Being without nationality hinders their ability to reach their full potential and can have detrimental effects on social unity and stability, and in some cases, it can lead to social tensions and displacement.⁵ In Europe, individuals without nationality typically lead a life that does not resemble that of citizens. They often face restrictions such as being unable to participate in general elections and being barred from specific job sectors. Slovenian citizens who have had their nationality revoked do not receive the same level of access to healthcare and education as their fellow citizens. In Malaysia, stateless children in Selangor and Sabah are frequently denied access to basic education. In Niger, a situation has persisted for years where more than a hundred thousand Mahamid Arabs⁶ have been under the constant threat of mass expulsion.⁷

The condition of stateless children, therefore, requires public awareness and calls for a thorough review of the protection measures in place for them. While international legal instruments generally provide for this protection, not all nations diligently prioritize safeguarding the rights of stateless children.

METHOD

This research utilizes a normative research method, which involves examining positive legal norms as its primary focus. This normative legal research involves a document analysis, using legal sources such as legislation, court rulings, contracts, legal theories, and expert opinions.⁸ The data analysis technique used is qualitative descriptive. Qualitative descriptive research aims to describe and depict existing phenomena, both natural and human-made,

⁴ Indira Goris, Julia Harrington, and Sebastian Köhn, 2009, "Statelessness: What It Is and Why It Matters", *Forced Migration Review*, No. 32, April 2009, ISSN 2722-9475, Refugee Studies Centre, Oxford Department of International Development, University of Oxford, p. 4.

⁵ UNHCR, 2010, *Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness*, UNHCR, Geneva, p. 2.

⁶ Mahamid Arabs or Diffa Arabs are the name given by the people of Niger to the Arab nomadic tribes residing in the eastern region of Niger, with the majority of them living in the Diffa area of Niger.

⁷ Indira Goris, Julia Harrington, and Sebastian Köhn, *op.cit.*, p. 4.

⁸ Muhaimin, 2020, *Metode Penelitian Hukum*, Mataram, Mataram University Press, pp. 45 - 46.

with a focus on characteristics, qualities, and the interconnection between activities.⁹ Thus, the research generates a study on the protection of stateless children under international legal instruments.

RESULTS AND DISCUSSION

A. Statelessness Meaning

Every individual globally has the inherent right to a nationality without any exceptions. It is the responsibility of the state or government to uphold, ensure, and protect these rights. Nevertheless, these tasks become challenging if a person lacks a nationality. Nationality holds significant importance and should be universally accessible to all individuals worldwide because it is an essential entitlement of a state to its citizens. However, this absolute right is subject to the overarching principles elucidated in Article 1 of The Hague Convention of 1930;¹⁰ Firstly, it should be in harmony with international conventions. Secondly, it should align with global practices. Thirdly, it should be consistent with the universally applied legal principles in nationality determination.¹¹ This differs from Article 15 of the Universal Declaration of Human Rights 1948, which states that: *“Everyone has the right to a nationality, and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”*.¹² The application of these two conflicting legal foundations in society is likely to result in a situation where rights “intersect” or “overlap” with each other.¹³

As a result of this inconsistency, the general law establishes a linkage between the two aspects. This linkage entails that the state is obligated to ensure recognition and protection for all individuals who acquire or seek

⁹ Destiani Putri Utami, et. al., “Iklim Organisasi Kelurahan dalam Perspektif Ekologi”, *Jurnal Inovasi Penelitian*, Vol. 1 No. 12, ISSN Cetak 2722-9475, ISSN Online 2722-9467, May 2021, Sekolah Tinggi Pariwisata Mataram, p. 2738.

¹⁰ The Hague Convention of 1930 is also known as The Convention on Certain Questions Relating to the Conflict of Nationality Laws. It was adopted in 1930 during the League of Nations Codification Conference in The Hague.

¹¹ See Article 1, The Hague Convention of 1930.

¹² See Article 15, The Universal Declaration of Human Rights 1948.

¹³ Isharyanto, 2015, *Hukum Kewarganegaraan Republik Indonesia: Dinamika Pengaturan Status Hukum Kewarganegaraan Dalam Perspektif Perundang-Undangan*, Bantul, CV. Absolute Media, pp. 16 - 17.

nationality. Simultaneously, the community has an obligation to actively pursue their citizenship status through the procedures established by the relevant national laws.¹⁴ The inconsistency that gives rise to these obligations, in fact, will pose challenges for certain communities, leading to a significant number of people, both adults and children, without nationality or resulting in statelessness.

As seen at the close of 2021 when UNHCR reported that the global population of stateless individuals had reached 4.3 million, this issue remains uncertain, and the actual figure might exceed 10 million due to underreporting.¹⁵ Consequently, the present circumstances represent a significant and challenging problem, marked by the growing number of stateless individuals and inadequate efforts to address the issue.

Statelessness is a status in which an individual, either by birth or due to a change in their country of origin, finds themselves without a nationality.¹⁶ Some individuals who encounter this situation can be classified as “*de jure* stateless” or “legally stateless” - meaning these individuals are not officially acknowledged as citizens according to the laws of any nation,¹⁷ and additionally, there are individuals who are “*de facto* stateless” or “practically stateless” - they are not acknowledged as citizens by any state, even if they have a legitimate right to citizenship under the laws of one or more states.¹⁸ Individuals lacking a nationality means they are unrecognized by any state, making it challenging for them to access their rights and fulfill their responsibilities as both a human being and as a member of a society that typically possesses nationality.

¹⁴ *ibid.*

¹⁵ U.S. Department of State, 2023, “Statelessness”, Accessed from the Official Website of U.S. Department of State, <https://www.state.gov/other-policy-issues/statelessness/>, on July 30, 2023, at 3.43 p.m.

¹⁶ Indra Marliyanto, Antikowati, and Rosita Indrayati, 2013, “Analisis Yuridis Status Kewarganegaraan Terhadap Orang Yang Tidak Memiliki Kewarganegaraan (Stateless) Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia”, *Repository Universitas Jember: Artikel Ilmiah Hasil Penelitian Mahasiswa*, I (1): 1 - 8, p. 3.

¹⁷ U.S. Department of State, *op.cit.*

¹⁸ U.S. Department of State, *op.cit.*

B. Causes of a Child Being Born Stateless

The matter of an individual's nationality is relevant not only to adults but also to newborn children. This arises from citizenship-related matters concerning the child's parents. In general terms, there are three reasons why children are born stateless. These include children born into situations where their parents are entangled in legal conflicts or are refugees, children born under conditions of administrative deficiencies, and children born to parents who do not possess nationality or are themselves stateless.

1) Children born into situations where their parents are entangled in legal conflicts

The legal dilemma at hand is intricately linked to the revocation or deprivation of an individual's nationality. Discriminatory reasons, often rooted in ethnicity or race, can lead a country to revoke or deprive an individual of their nationality. An example of this situation is evident among the Rohingya ethnic group, where their nationality status was revoked by the Myanmar government, which did not consider the Rohingya as one of the 135 recognized ethnicities within the Myanmar Union.¹⁹ This enduring conflict persists and has even escalated to attacks amounting to acts of genocide, with the intent of ethnically cleansing Rohingya Muslims.²⁰ As a result, people of Rohingya ethnicity have been forced to flee or find refuge in different countries, facing uncertain citizenship prospects.

This is where a significant issue arises. When children are born to stateless parents, acquiring nationality from birth becomes challenging since the citizenship status of both parents lacks certainty. Consequently, there is no birth certificate for the child, rendering it impossible for the child to access legal rights pertaining to them.²¹ Furthermore, in the context described earlier, when

¹⁹ Oktinardo Mandira Dulage Kansil, Hedwig Adiando Mau, and Mardi Candra, 2022, "Tinjauan Yuridis Persyaratan Permohonan Penerbitan Paspor Terhadap Anak Yang Lahir dari Orangtua *Stateless* di Indonesia", *Syntax Idea*, Vol. 4 No. 10, 2022), p. 1540.

²⁰ Rahmawati Novia Sigit, and Novianti, 2020, "Perlindungan Terhadap Orang Tanpa Kewarganegaraan (*Stateless People*) dalam Hukum Internasional (Studi Kasus Etnis Rohingya di Myanmar)", *Uti Possidetis: Journal of International Law*, Vol. 1 No. 1, 2020, p. 138.

²¹ Shaila Tieken, 2013, "Ketiadaan Kewarganegaraan Pada Anak-Anak Rohingya sebagai Bentuk Kekerasan Struktural Berbasis Etnis (Studi Kasus Anak-Anak Pengungsi Rohingya di Community Housing Wisma YPAP Medan)", *Jurnal Kriminologi Indonesia*, Vol. 9 No. 1, 2013, p. 52.

the child is involved, they often have to undergo an irregular migration process.²² Therefore, if both parents are entangled in legal conflicts leading to the revocation or deprivation of their nationality, it can also result in the child becoming stateless.

2) Children born under conditions of administrative deficiencies

The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child state that every child, wherever he or she is born, must be registered immediately after birth.²³ Therefore, having legal documentation to confirm a child's birth is crucial for their recognition and acquisition of nationality in a country. Nevertheless, instances still exist where a child is born in a situation marked by administrative deficiencies, which can involve the absence of birth registration or any form of documented proof such as a letter or certificate. Without such evidence, it becomes challenging for a child to establish their identity and secure nationality. There is a significant probability that a child born without prompt birth certificate registration will be stateless from birth.

3) Children born to stateless parents

The discourse on individual statelessness does not solely stem from legal conflicts like the situation in Myanmar; various circumstances can indicate an individual's statelessness. In a neighboring Southeast Asian nation, Indonesia, UNHCR has identified at least five conditions under which a person may be without nationality. These include:²⁴

- a. Indonesian Chinese ethnic who lack the necessary documentation to verify their nationality because their citizenship status is inaccurately recorded in registration documents, and they are not officially recognized as either Chinese or Indonesian citizens.

²² *ibid.*

²³ Khald Fadiri Siddiq, and Budi Ardianto, 2020, "Stateless Person dalam Tinjauan Hukum Nasional dan Hukum Internasional di Indonesia," *Ulti Possidetis: Journal of International Law*, Vol. 1 No. 3, 2020, p. 281.

²⁴ Yogi Prabowo, and Taufiqurrohman Syahuri, 2022, "Kewarganegaraan Dalam Perspektif Keimigrasian (Citizenship In Immigration Perspective)," *JLBP: Journal of Law and Border Protection*, Vol. 4 No. 2, 2022, p. 58.

- b. Individuals of Arab and Indian descent who lack documentation to establish their nationality or whose citizenship status is inaccurately recorded in civil registration documents.
- c. Indonesian migrant workers who lost their nationality under National Law on Citizenship.
- d. A minority individuals who were forced to leave Indonesia during the 1965 conflict and subsequently became stateless.²⁵
- e. Others end up in a state of statelessness due to their categorization as undocumented immigrants.

A child born to parents facing one of the aforementioned five situations will also be stateless from birth, as both parents themselves are stateless.

C. The Instruments of International Law Governing the Protection of Stateless Children

The connection between the recognition of statelessness in the awareness of the global community is significantly associated with the increase of protectionist policies and the control of human movement following World War 1 (WW1). This WW1 marked the conclusion of the remarkable flow of labor and capital, which had been propelled by the ideals of international collaboration, technological progress, and the principles of liberal capitalism characteristic of the nineteenth century.²⁶ Following the conclusion of WW1, there was an increase in the quantity of claims brought before local courts by individuals aiming to attain stateless status, aiming to evade consequences linked to being labeled as enemy aliens amid the war.²⁷

²⁵ The 1965 Conflict was a mass killing incident in Indonesia in 1965-1966. It was a massacre of individuals accused of being communist supporters in Indonesia. This massacre is also referred to as the September 30 Movement (In Indonesian language "Gerakan 30 September" or "G30S/PKI").

²⁶ Neha Jain, 2022, "Manufacturing Statelessness", *The American Journal of International Law*, Vol. 116:2, doi:10.1017/ajil.2022.2, Cambridge University Press, p. 237 - 288.

²⁷ Enemy aliens refer to individuals who are citizens or residents of a country that is in a state of conflict, particularly a war, with another country. In the context of a war, individuals from one country who are living in or visiting another country that is their enemy may be classified as "enemy aliens". This designation can lead to various legal and social consequences, including restrictions on their activities, movement, and rights due to the perceived potential threat they might pose to the host country during times of conflict.

Despite past uncertainties and even mistrust surrounding these claims due to national security apprehensions, courts began to display heightened compassion toward them. This shift ignited endeavors aimed at legitimizing statelessness as a valid legal classification.²⁸ However, the stateless individual persisted in being regarded akin to a “*res nullius*”,²⁹ or a “*caput lupinum*”,³⁰ posing a risk to the stability of the global order following the war. Certainly, with the rising population of stateless people, the issue of securing and safeguarding their status on an international scale becomes more urgent, prompting questions about how this can be achieved.

Certainly, when a child is born to parents without citizenship, they will automatically become stateless.³¹ These stateless children are unable to access the same rights as those who have citizenship in a country. Consequently, the examination concerning the protection of stateless children becomes a crucial aspect in upholding human values. This perspective is rooted in Article 1 of the Universal Declaration of Human Rights, which asserts that “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*”.³²

For a considerable time, the global community has understood the importance of advocating for measures to prevent and decrease instances of statelessness. This is seen as a component of conflict prevention, post-conflict resolution, the reduction of displacement cases, and an essential part of safeguarding an individual’s Human Rights.³³ Upon closer examination, Article 15 of the 1948 Universal Declaration of Human Rights has already secured an individual’s entitlement to nationality, affirming that every person possesses an

²⁸ Neha Jain, *op. cit.*, p. 237 – 288.

²⁹ The person as “*res nullius*” refers to the perspective or treatment of an individual as an entity without rights or legal protections, or as an entity that is considered to lack a clear legal or citizenship status.

³⁰ The term “*caput lupinum*” refers to individuals declared as enemies of society or people who are considered to lack legal protection and can be killed or harmed without legal consequences. This term is also used metaphorically to describe how stateless individuals are seen as a threat to the stability of the post-war international order.

³¹ Yogi Prabowo, and Taufiqurrohman Syahuri, *op. cit.*

³² See Article 1, The Universal Declaration of Human Rights 1948.

³³ Carol Batchelor, 2005, “The 1954 Convention Relating to the Status of Stateless Persons: Implementation Within the European Union Member States and Recommendations for Harmonization”, *Refuge: Canada’s Journal on Refugees*, Vol. 22 No. 2, Printed ISSN 0220-5113, Online ISSN 1920-7336, September 1, 2005, p. 34.

inherent right to it.³⁴ The difficulty lies in establishing which nationality should rightfully belong to that individual.³⁵

This Article serves as a precursor to the emergence of protection for stateless children, which is present in various formulations of international instruments. The primary international conventions dealing with the issue of statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These conventions are supported by various International Human Rights treaties and provisions that pertain to the right to obtain nationality.³⁶

1) The 1954 Convention relating to the Status of Stateless Persons

The definition in Article 1 paragraph (1) of the 1954 Convention relating to the Status of Stateless Persons states that “a stateless person is a person who is not considered as a national by any State under the operation of its law”.³⁷ This is the internationally accepted definition and is incorporated into the nationality laws of many countries. By defining a stateless person as someone who is not considered a citizen by any state based on that state’s laws, the creators of this Convention are referring to the legal relationship between an individual and a state as determined by the state’s internal laws. Therefore, this Convention encompasses situations of “*de jure*” statelessness, which are determined by referencing the internal laws of the relevant countries.

Article 1 paragraph (2) of this Convention outlines the criteria for individuals who, while meeting the criteria stated in Article 1 paragraph (1), are exempt from the Convention’s provisions for particular reasons. There are three main groups of individuals who won’t be covered by the Convention, despite their stateless status. These three groups are as follows:

³⁴ See Article 15, The Universal Declaration of Human Rights 1948.

³⁵ Carol Batchelor, *op. cit.*

³⁶ UNHCR, 2023, “UN Conventions on Statelessness”, Accessed from the Official Website of UNHCR, <https://www.unhcr.org/what-we-do/protect-human-rights/ending-statelessness/un-conventions-statelessness>, on September 7, 2023, at 3.41 p.m.

³⁷ See Article 1 paragraph (1), The 1954 Convention relating to the Status of Stateless Persons.

- a) Individuals who are currently receiving protection or assistance from United Nations organs or agencies other than the United Nations High Commissioner for Refugees, as long as they are receiving such protection or assistance.
- b) Individuals who are recognized by the competent authorities of the country where they reside as having the rights and obligations of nationals of that country.
- c) Individuals who are not allowed to obtain nationality for serious reasons considered by this Convention.³⁸

Under the terms of this Convention, countries are prohibited from showing discrimination against children born without nationality. Article 3 clearly requires that participating countries implement the Convention's provisions for stateless individuals without any bias related to race, religion, or country of origin.³⁹ Moreover, the 1954 Convention permits countries to extend rights to stateless individuals beyond what is outlined in the Convention. This is permissible under Article 5, which states that the Convention's provisions will not diminish any rights and benefits that a Contracting State may provide to stateless individuals independently of this Convention.⁴⁰

Within the framework of the 1954 Convention relating to the Status of Stateless Persons, there exists an international legal structure designed to address the challenges of statelessness. This international instrument offers the necessary components for recognizing stateless cases and finding solutions. The 1954 Convention plays a significant role as a tool for nations to tackle statelessness problems. In practical terms, to fully implement this instrument, countries should establish systems to identify statelessness and ensure that stateless individuals are granted legal status in an appropriate country.⁴¹

2) The 1961 Convention on the Reduction of Statelessness

The 1954 Convention relating to the Status of Stateless Persons delineates the criteria for identifying stateless individuals and lays out international

³⁸ See Article 1 paragraph (2), The 1954 Convention relating to the Status of Stateless Persons.

³⁹ See Article 3, The 1954 Convention relating to the Status of Stateless Persons.

⁴⁰ See Article 5, The 1954 Convention relating to the Status of Stateless Persons.

⁴¹ Carol Batchelor, *op. cit.* pp. 51 – 52.

responsibilities to safeguard their basic rights and liberties. Nevertheless, an additional treaty was required to decrease the occurrence of statelessness, including among children born without nationality, and to prevent it from happening in the future. This objective is to guarantee the right of every person to possess a nationality. Consequently, while the 1954 Convention's objective is to safeguard the rights of stateless people, the 1961 Convention places greater emphasis on minimizing instances of statelessness among individuals.⁴²

The primary focus of the 1961 Convention is to eliminate statelessness for individuals, including children, from birth. This is stipulated in the "Preamble" of the Convention. Preventing statelessness in children from the moment they are born is ensured by requiring countries to bestow citizenship upon children born within their borders or to their citizens abroad, who would otherwise lack nationality. To avert statelessness under these circumstances, nations have the option to confer citizenship on these children either automatically at birth or upon the submission of an application.⁴³

The 1961 Convention, further, establish a fundamental principle that the loss or deprivation should not result in a person becoming stateless.⁴⁴ Nevertheless, the Convention does not provide a definition for the term "statelessness". Instead, Article 1 paragraph (1) of the 1954 Convention defines a stateless person as someone "who is not considered as a national by any State under the operation of its law".⁴⁵ Meanwhile, the 1961 Convention requires that a person should not lose their nationality if it would make them stateless. States must check if the individual holds another nationality at the moment of losing or being deprived of it, rather than leaving them without the assurance that they could obtain nationality in the future.⁴⁶

The loss or deprivation must be firmly grounded in the country's legal framework. Rules concerning such loss and deprivation should be foreseeable and should not be subject to interpretation by analogy.⁴⁷ To ascertain whether an individual gains or loses

⁴² Peter McMullin Centre on Statelessness, "Factsheet: The 1961 Convention on the Reduction of Statelessness", Melbourne Law School, p. 1, accessible through Peter McMullin Centre on Statelessness Official Website, on https://law.unimelb.edu.au/_data/assets/pdf_file/0006/3489621/1961-Convention_factsheet_Sept_2020.pdf.

⁴³ See Introductory Note, The 1961 Convention on the Reduction of Statelessness.

⁴⁴ See Article 5 - 8, The 1961 Convention on the Reduction of Statelessness.

⁴⁵ See Article 1 paragraph (1), The 1954 Convention relating to the Status of Stateless Persons.

⁴⁶ UNHCR, 2013, *Expert Meeting Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality*, October 31 - November 1, 2013, Tunisia, p. 3.

⁴⁷ *ibid.*, p. 5.

nationality due to specific actions or circumstances, the laws applicable at the time of those actions should be applied. If a new basis for losing or depriving nationality is introduced in national law, the state must include a transitional provision to prevent individuals from losing their nationality due to actions that wouldn't have led to loss or deprivation before the new regulation was introduced.⁴⁸ Additionally, it's emphasized in the Convention that losing or depriving nationality cannot be based on discrimination for any reasons prohibited by international human rights law.⁴⁹

3) The International Covenant on Civil and Political Rights (ICCPR)

Introduced in 1966 and coming into effect in 1976, the ICCPR stands as the central international human rights treaty that outlines civil and political rights.⁵⁰ It deals with the issue of statelessness by incorporating various provisions, encompassing non-discrimination (Article 2 and 26), gender equality (Article 3 and 23), and the entitlement of every child to gain nationality (Article 24).⁵¹ The safeguarding of stateless individuals is detailed in Article 2 and 26 of the Covenant. It states “...to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind...”⁵² and “...In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...”⁵³ These two Articles require that nations must guarantee the safeguarding of the rights of stateless individuals, including children, without any form of discrimination, as outlined in the ICCPR.⁵⁴

Regarding the civil and political rights of both genders, equality is imperative. In over 60 countries, women do not enjoy equal rights with men concerning the acquisition, alteration, or retention of nationality when their civil

⁴⁸ For instance, if a State introduces a new rule stating that obtaining foreign nationality voluntarily can lead to loss of one's original nationality, then the loss of nationality should not occur if someone obtains foreign nationality, even after this rule takes effect, because they had already submitted an application for foreign nationality before the rule was enforced.

⁴⁹ See Article 9, The 1961 Convention on the Reduction of Statelessness.

⁵⁰ Office of the United Nations High Commissioner for Human Rights (OHCHR), 2021, *Reporting under the International Covenant on Civil and Political Rights Training Guide*, New York, United Nations Publications, p. 6.

⁵¹ UNHCR, 2016, *ICCPR: Quick Reference Guide Statelessness and Human Rights Treaties*, Geneva, United Nations High Commissioner for Refugees, p. 1.

⁵² See Article 2, The International Covenant on Civil and Political Rights.

⁵³ See Article 26, The International Covenant on Civil and Political Rights.

⁵⁴ UNHCR, 2016, *op.cit.*, p. 2.

status changes.⁵⁵ This situation can potentially result in statelessness, particularly when a foreign woman is obligated to renounce her nationality upon marriage without automatically gaining her husband's nationality. To prevent statelessness, especially among children, it is crucial to establish gender equality in the transmission of nationality.⁵⁶ Hence, Article 3 and 23 of the Covenant additionally elaborate on the prevention and decrease of statelessness. States are required to guarantee that both men and women possess an equal entitlement to enjoy all civil and political rights.⁵⁷ Furthermore, it is incumbent upon the states to secure parity in the rights and obligations of spouses before, during, and after marriage. In situations of marriage dissolution, provisions must be established to ensure the essential protection of any children involved.⁵⁸

Failure to register births can also pose challenges in demonstrating the necessary connections to a nation that grant individuals their right to nationality. Consequently, this situation can increase the likelihood of children becoming stateless. The Article 24 promotes a child's right to possess a nationality.⁵⁹ It affirms: *"Every child shall have, without any discrimination as to..."*, *"Every child shall be registered immediately after birth..."*, *"Every child has the right to acquire a nationality."*⁶⁰ According to the Article, immediate registration of a child after birth is required to establish their legal identity within the state. Furthermore, the Article emphasizes that every child has the inherent right to obtain nationality.

4) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The principle of non-discrimination is intricately connected with the principle of equality. Both are essential elements of international human rights

⁵⁵ UNHCR, 2016, *Background Note on Gender Equality, Nationality Laws and Statelessness*, Geneva, United Nations High Commissioner for Refugees.

⁵⁶ UNHCR, 2016, *ICCPR: Quick Reference Guide Statelessness and Human Rights Treaties*, op.cit., p. 1.

⁵⁷ See Article 3, The International Covenant on Civil and Political Rights.

⁵⁸ See Article 23, The International Covenant on Civil and Political Rights.

⁵⁹ Carol Batchelor, and Philippe Leclerc, 2005, *Nationality and Statelessness: A Handbook for Parliamentarians*, UNHCR, France, SADAG Imprimerie, p. 14.

⁶⁰ See Article 24, The International Covenant on Civil and Political Rights.

law and are of significant importance in addressing issues of gender inequality and racial discrimination in nationality-related matters.⁶¹ As an example, Article 5 of the ICERD forbids discrimination based on race, color, national origin, or ethnic origin when it comes to enjoying the right to nationality.⁶² The challenge of reconciling state sovereignty with individual rights in shaping these standards is demonstrated in Article 1, paragraph (3) of the Convention,⁶³ where it states, “Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality”.⁶⁴

Additionally, Article 2 delineates the responsibilities of states in eradicating racial discrimination. In essence, state parties are required to actively pursue a policy of eradicating racial discrimination “by all appropriate means”. This encompasses responsibilities to uphold, such as refraining from “engaging in any form of racial discrimination” and “abstaining from endorsing, defending, or supporting racial discrimination”.⁶⁵ The most severe infringement upon the right to nationality is its deprivation. As the deprivation and refusal of nationality based on discriminatory reasons still contribute significantly to statelessness, the ICERD retains its significance concerning the right to nationality.⁶⁶ The ICERD acknowledges that ethnic distinctions are frequently manipulated for political advantages and that citizenship can be and has been employed for political motives and nationalism, resulting in adverse consequences for those who have had their nationality revoked.⁶⁷ The Committee has previously stated that deprivation or stripping individuals of

⁶¹ Michelle Foster, and Hélène Lambert, 2019, *International Refugee Law and the Protection of Stateless Persons*, Oxford, Oxford University Press, p. 64.

⁶² See Article 5, *International Convention on the Elimination of All Forms of Racial Discrimination*

⁶³ Michelle Foster and Hélène Lambert, *op.cit.*, p. 65.

⁶⁴ See Article 1 paragraph (3), *International Convention on the Elimination of All Forms of Racial Discrimination*

⁶⁵ See Article 2, *International Convention on the Elimination of All Forms of Racial Discrimination*

⁶⁶ Michiel Hoornick, 2020, “Addressing Statelessness through the International Convention on the Elimination of All Forms of Racial Discrimination (‘ICERD’)”, *The Statelessness & Citizenship Review*, Vol. 2 No. 2, Dec 2020, p. 223.

⁶⁷ Committee on the Elimination of Racial Discrimination, 1993, “General Recommendation 15: Organized Violence Based on Ethnic Origin, Article 4”, UN Doc A/48/18, March 23, 1993.

their citizenship based on discriminatory reasons constitutes a violation of the ICERD.⁶⁸

As with nationality deprivation, political and discriminatory factors can have a significant impact on the acquisition of citizenship and the naturalization process.⁶⁹ Streamlined naturalization has been identified as a potential long-term remedy for statelessness among refugees who are unable to avail themselves of their home country's nationality.⁷⁰ The Committee has issued a General Recommendation dedicated to refugees and displaced individuals, with a primary emphasis on non-refoulement, and it did not extensively explore the interpretation of the diverse rights outlined in Article 5.⁷¹

The Committee has also suggested the establishment of a procedure for determining statelessness to effectively guarantee the recognition and safeguarding of stateless individuals.⁷² States are advised that streamlining the naturalization process for refugees and stateless individuals can serve as a potential solution to their statelessness.⁷³ Although the Committee does not propose this approach for all refugee scenarios, it does appear to create an opportunity for streamlined naturalization as a lasting solution for refugees and asylum-seekers who face the risk of statelessness.⁷⁴

5) Convention on the Rights of the Child (CRC)

The critical moment in ensuring an individual's right to nationality occurs at birth. If a child does not acquire nationality at birth, they could potentially remain stateless for extended periods, perhaps even throughout their entire life, which can lead to serious repercussions. The statelessness of children

⁶⁸ The Committee refers to the Committee on the Elimination of Racial Discrimination. It consists of a group of human rights specialists whose responsibility is to oversee the execution of the ICERD.

⁶⁹ Laura van Waas, 2008, *Nationality Matters: Statelessness Under International Law*, United Kingdom, Intersentia, p. 360.

⁷⁰ Tamás Molnár, "A Fresh Examination of Facilitated Naturalisation as a Solution for Stateless Persons" in Laura van Waas and Melanie J. Khanna, 2016, *Solving Statelessness*, Oisterwijk, Wolf Legal Publishers, pp. 248 - 252.

⁷¹ Committee on the Elimination of Racial Discrimination, 1996, "General Recommendation No 22: Article 5 of the Convention on Refugees and Displaced Persons", UN Doc A/51/18, August 24, 1996.

⁷² Michiel Hoornick, *op.cit.*, pp. 244 - 245.

⁷³ Committee on the Elimination of Racial Discrimination, 2012, "Concluding Observations on the Fourth to Sixth Periodic Reports of Liechtenstein", UN Doc CERD/C/LIE/CO/4-6, August 31, 2012.

⁷⁴ Michiel Hoornick, *op.cit.*, p. 245.

jeopardizes their access to education, a satisfactory living standard, social support, healthcare, and other particular forms of protection that children are entitled to receive.⁷⁵ This is the reason why the right of a child to obtain nationality is established in various global agreements, including the widely ratified 1989 Convention on the Rights of the Child (CRC).⁷⁶

The CRC holds even greater importance in the context of this article because it is nearly universally adopted, with very few exceptions, when it comes to recognizing the child's right to nationality. Therefore, concerning children statelessness, practically every country worldwide is obligated to promote and guarantee the child's right to nationality.⁷⁷ Regarding nationality at birth, the Convention upholds the child's entitlement to nationality and compels nations to record children's births, aiming to simplify the process of obtaining nationality.⁷⁸ Moreover, a unique aspect of the Convention in safeguarding stateless children is that the Convention mandates all countries to prioritize the child's best interests as the guiding principle for all decisions concerning children, including the formulation and application of nationality laws.⁷⁹

Article 7 of the CRC asserts: *"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality..."* and *"...ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless..."*.⁸⁰ Article 7 comprises various components, including the entitlement to birth registration, the right to a name, and the right to obtain nationality. Collectively, these "identity rights" play a vital role in preventing any child from becoming stateless. However,

⁷⁵ Gerard-René de Groot, 2014, *Children, Their Right to a Nationality and Child Statelessness*, Cambridge, Cambridge University Press, p. 144.

⁷⁶ United Nations Convention on the Rights of the Child, New York, Signed on November 20, 1989, In force on September 2, 1990. United Nations Convention on the Rights of the Child is known as UNCRC or CRC.

⁷⁷ William Thomas Worster, 2019, "The Obligation to Grant Nationality to Stateless Children Under Treaty Law", *Tilburg Law Review*, Vol. 24 Issue 2, July 2, 2019, p. 207.

⁷⁸ *ibid.*, p. 210.

⁷⁹ See Article 3, Convention on the Rights of the Child.

⁸⁰ See Article 7, Convention on the Rights of the Child.

Article 7 goes on to specify that when a child does not acquire nationality at birth, it becomes the responsibility of states to guarantee the child obtains nationality. Hence, although states can, in principle, maintain control over the criteria for nationality, the practical application of this provision should prevent any child from experiencing statelessness. As a facilitating right, the fulfillment of Article 7 is vital to guaranteeing that children can avail themselves of all the rights outlined in the Convention.⁸¹

Furthermore, Article 8 guarantees the safeguarding of a child's right to uphold their identity, which encompasses their nationality, name, and familial ties. It not only demands the protection of these elements but also obliges the state to take measures to rectify the situation when a child has not acquired nationality or has had any facet of their identity revoked.⁸² This Article provides, "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity".⁸³

The CRC has garnered almost universal ratification, and as a treaty with 196 countries as State Parties, it stands as the most extensively ratified international agreement.⁸⁴ The Committee collaborates closely with State Parties, Civil Society Organizations, and UN Agencies to assess the execution of the CRC.⁸⁵ In particular, regarding the child's entitlement to obtain nationality and the rights of stateless children, the Committee has become more involved in this matter. Between 2010 and 2020, it has issued 126 recommendations directly linked to nationality and statelessness.⁸⁶

⁸¹ Institute on Statelessness and Inclusion, 2023, *The Child's Right to A Nationality and Childhood Statelessness: A Toolkit for Child Rights Actors*, Netherlands, Institute on Statelessness and Inclusion, p. 5.

⁸² *ibid.*

⁸³ See Article 8, Convention on the Rights of the Child.

⁸⁴ UN Treaty Collection, 2023, "Convention on the Rights of the Child State Parties", Accessed from the Official Website of UN Treaty, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4, on October 2, 2023, at 1.58 p.m.

⁸⁵ The Committee of CRC, comprised of 18 independent experts, oversees the adherence to the CRC by the States that are parties to it.

⁸⁶ Institute on Statelessness and Inclusion, *op.cit.*, p. 6.

CONCLUSION

Statelessness is a condition where a person, whether from birth or due to a change in their country of origin, lacks a nationality. The issue of an individual's nationality is significant not only for adults but also for newborns, and it often arises from the citizenship status of the child's parents. In general terms, there are three main scenarios in which children are born without a nationality: when their parents are involved in legal conflicts or are refugees, when administrative shortcomings result in inadequate birth registration, and when parents themselves lack nationality or are stateless.

Children who do not possess a nationality confront a range of distinct difficulties, which can vary based on their place of residence and the factors contributing to their stateless status. The absence of nationality limits their ability to realize their full potential and can lead to detrimental consequences for social cohesion and stability. In some cases, it may even spark social tensions and displacement. Stateless children are deprived of access to the same rights enjoyed by those with citizenship in a particular country. Consequently, the examination of protective measures for stateless children takes on paramount significance in the context of upholding fundamental human rights.

In relation to an individual's nationality status, Article 15 of the UDHR lays the foundation for the development of protections for stateless children, which are incorporated into various international agreements. The primary international treaties addressing statelessness include the 1954 Convention on Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Additionally, the commitment to protect and ensure individual's nationality is enshrined in the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.

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