

25th Session of the Universal Periodic Review

All country summary and recommendations related to the right to a nationality and the rights of stateless persons

*The Institute on Statelessness and Inclusion (the Institute) is an independent, non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion globally. Participation in the Universal Periodic Review (UPR) process is central to the human rights strategy of the Institute, and this document highlights the statelessness related challenges in the countries that will be reviewed at the Human Rights Council during the 25th Session of the UPR: Antigua and Barbuda, Greece, Hungary, Ireland, Papua New Guinea, Saint Vincent and the Grenadines, Samoa, Sudan, Suriname, Swaziland, Tajikistan, Tanzania, Thailand, and Trinidad and Tobago. 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, and the obligation of states to identify and protect stateless persons.** All states are urged to draw on this document when formulating recommendations to states under review. Besides this summary sheet the Institute also made dedicated submissions on statelessness in [Hungary](#), [Ireland](#), [Sudan](#) and [Thailand](#), as well as one-page summaries on [Hungary](#) and [Thailand](#).*

Hungary

Right to nationality for every child: The safeguard for automatic acquisition of nationality for otherwise stateless children born in the territory fails to adhere to Hungary's obligations under international law by requiring the parents of the child to be stateless and have domicile at the time of birth. Domicile is a restrictive residence concept that persons with a stateless status are not allowed by law to register for. The criteria that the parents must be stateless moreover fails to protect children from statelessness originating from sources other than the parents' lack of nationality (e.g., gender discrimination in nationality laws). Hungary theoretically safeguards against these possibilities as children born in Hungary who fail to acquire their parents' nationality have the opportunity to acquire Hungarian nationality later in life by declaration. However, the conditions relating to the declaration violate Hungary's international law obligations, including under the 1961 Convention on the Reduction of Statelessness, as parents remain obliged to have a domicile at the time the child is born, the child must have at least 5 years of residence with a domicile and applications must be submitted before the applicant's 19th birthday.

Statelessness determination procedure and status issues: In February 2015 the Hungarian Constitutional Court held the lawful stay requirement in order to initiate a statelessness determination procedure as unconstitutional. Although this development means that persons without legal status can now apply to be recognised as stateless, they still require a temporary legal status to be protected from detention, destitution and expulsion while the determination process is underway. Following recognition, stateless persons in Hungary also suffer from restrictions in access to socio-economic rights, particularly the rights to employment, housing, health care and education. Prior to employment, stateless persons need a work permit which is particularly burdensome to obtain. Work permits can moreover not exceed the validity of the residence permit, which has to be renewed on a yearly basis following the first period of 3 years.

Naturalisation: Naturalisation, although no solution to the above shortcomings, is a possibility for stateless persons after continuously residing in Hungary with a domicile for 3 years (compared to 8 years as the general rule). The procedure however sets material conditions that are very difficult to fulfil, particularly for people lacking nationality. Both the naturalisation and declaration procedure are not transparent, do not follow satisfactory due process standards and have very low success rates.

Recommendations

1. Eliminate the restrictive conditions of domicile and the parents of the child being stateless from the safeguard against statelessness to ensure that *all* otherwise stateless children born in Hungary can acquire nationality at birth.
2. Amend the conditions related to the acquisition of nationality by declaration, by eliminating the domicile requirements on both the parents and the child and extending the application period at least until the child's 21st birthday, but ideally with no age limit prescribed.
3. Maintain and publish disaggregated statistics related to the acquisition of nationality by declaration.
4. Comply with the Constitutional Court's ruling on the unconstitutionality of the requirement of "lawful stay" for applicants of stateless status, provide unhindered access to the statelessness determination procedure and create a specific temporary status for those in the statelessness determination procedure.
5. Allow and ensure unrestricted access to the labour market for recognised stateless persons.
6. Extend the validity of residence permits for recognised stateless persons after the first 3 years.
7. Treat recognised stateless persons at least as favourably as other beneficiaries of international protection in all aspects of their enjoyment of socio-economic rights, particularly the establishment of domicile.
8. Increase transparency in naturalisation procedures clearly stating grounds for rejection.

Ireland

Ireland is party to the 1954 and 1961 Statelessness Conventions (though it has a reservation in place on the 1961 Convention) and various human rights treaties which also include obligations related to statelessness and the right to a nationality, but has yet to accede to the 1997 European Convention on Nationality. The most significant concern in Ireland, is that it lacks a formal statelessness determination procedure (SDP) and has failed to enact specific legislative or administrative measures to address statelessness. Flowing from these core concerns, are challenges related the acquisition of travel documents for stateless persons. Furthermore, stateless persons face difficulties in naturalising as Irish citizens, due to the non-existence of a statelessness determination procedure (SDP) which has confirmed their stateless status. The failure to recognise adults as stateless can also result in their children born in Ireland, facing difficulties accessing Irish nationality and increasing the evidentiary burden on them. This is despite there being a safeguard against statelessness in place for otherwise stateless children born in the territory. The safeguard furthermore excludes all other children in situations where they may seem entitled to another citizenship, yet factually are not. Finally, there is a lack of comprehensive, accurate and disaggregated data available on statelessness in Ireland.

Recommendations:

1. Fully promote, respect, protect and fulfil its obligations towards stateless persons and to protect against statelessness under international human rights law.
2. Collect and make publicly available, reliable data on statelessness in Ireland, including separate/disaggregated data on stateless children.
3. Introduce a fair and effective system for identifying persons as stateless through a national statelessness determination procedure that complies with international standards.
4. Define under law the rights of recognised stateless persons.
5. Introduce safeguards preventing the revocation of naturalisation certificates where this would give rise to statelessness
6. Accede to the 1997 European Convention on Nationality.
7. Provide regular training on statelessness and the protection of human rights of stateless persons to state authorities
8. Adopt comprehensive measures to ensure access to nationality, in practice, for stateless children born in Ireland, in accordance with the Irish Nationality and Citizenship Act.

Papua New Guinea

Papua New Guinea is not party to the 1954 and 1961 Statelessness Conventions. The children of West Papuan refugees in Papua New Guinea do not benefit from universal birth registration. Without proof of their birth many children born in exile are at risk of statelessness, such as is the case with the West Papuan refugees. Papua New Guinea furthermore is one of the offshore processing and detaining centres for refugees, stateless persons and other migrants under Australia's international law contravening policy. The role of Papua New Guinea in this process brings about significant concerns regarding the arbitrary detention and lack of protection for refugees, stateless persons and migrants, with poor detention conditions falling below the internationally accepted standards.

Recommendations:

1. Ensure effective and universal birth registration to facilitate the documentation of all children born in the territory, including the children of refugees and stateless persons.
2. Ensure that all children born in the territory who would otherwise be stateless, have access to nationality in compliance with the obligations of Papua New Guinea under international law.
3. Cease to perform the role of offshore processing and detaining centre for refugees, stateless persons and migrants who Australia is obligated to protect under international law.
4. Accede to and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Sudan

Sudan is not party to the 1954 and 1961 Statelessness Conventions nor to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Gender discrimination in Sudan's nationality law is a significant concern. While the Constitution of Sudan states that *"every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship"*, in practice, administrative authorities commonly rely on the Sudanese Nationality Act of 1994. The Act is gender discriminatory and places Sudan among 27 countries worldwide that continue to discriminate against women in their ability to confer nationality to their children on an equal basis with men. Following an amendment in 2005 mothers are allowed to pass Sudanese nationality to their children, but only under the strict conditions of an application accompanied with the father's consent and a marriage certificate (or a Court order establishing custody for the mother when the relationship with the father is not ongoing or a death certificate when the father has died). This discrimination results in severe hardship for the families concerned, culminating in the statelessness of children who cannot acquire their father's nationality either, such as when the father is stateless, deceased, or unwilling or unable to cooperate. Sudan is moreover one

of 60 countries that continues to deny women equal rights with men to acquire, change or retain their nationality and to confer nationality to their non-Sudanese spouses.

Recommendations:

1. Take immediate steps to amend/repeal all discriminatory provisions in the Sudanese Nationality Act of 1994 that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men, and ensure the effective implementation of the law.
2. Fully promote, respect, protect and fulfil its obligations under international human rights law. In particular, ensure that its national laws, policies and practices fully comply with Articles 7 and 8 of the CRC, as well as the principle of the best interests of the child and with general principles of equality and non-discrimination.
3. Ratify without any limiting reservations the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol.
4. Recognise the fundamental human right of all human beings to a nationality, without discrimination.
5. Accede to and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Suriname

Suriname is commended for amendments to its Law on Nationality and Residence (1975) in July 2014, allowing mothers to confer nationality to their children and giving women equal rights with men to confer nationality to their spouses. The reform moreover introduced important safeguards to prevent statelessness following loss of nationality. Suriname is not party to the 1954 1961 Statelessness Convention.

Recommendations:

1. Ensure effective implementation of the amendment to the nationality law providing gender equal rights related to the acquisition, transfer, retention and conferral nationality.
2. Accede to and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Swaziland

Swaziland is party to both the 1954 and 1961 Statelessness Conventions as well as to CEDAW and CRC. However, Swazi nationality law is gender discriminatory. It denies women equal rights with men in the conferral of nationality to their children. Although the 2005 Constitution of Swaziland provides citizenship by descent to children born in and outside of Swaziland prior to 2005 and who have at least one Swazi parent, children theoretically eligible to benefit from this provision remain barred from acquiring Swazi nationality from their mothers.

Recommendations:

1. Take all necessary steps to immediately and effectively implement the gender equal nationality provision of the 2005 Constitution of Swaziland so that women have equal rights with men in acquiring, retaining and transferring citizenship, and ensure the effective implementation of the law.
2. Fully promote, respect, protect and fulfil its obligations under international human rights law. In particular, ensure that its national laws, policies and practices fully comply with Articles 7 and 8 of the CRC, as well as the principle of the best interests of the child and with general principles of equality and non-discrimination.
3. Recognise the fundamental human right of all human beings to a nationality, without discrimination.

Tajikistan

Tajikistan is commended for registering nearly 20,000 persons at risk of statelessness as of late 2014, with over 1,000 people submitting applications to confirm nationality and over 500 persons having had their nationality confirmed since. UNHCR has also reported favourable improvements to prevent and reduce statelessness following amendments to the Constitutional Law on Nationality of Tajikistan. However, thousands of persons remain stateless in Tajikistan, which moreover is not party to either the 1954 and 1961 Statelessness Conventions.

Recommendations:

1. Maintain and heighten efforts to register *all* persons at risk of statelessness and grant/confirm their Tajik nationality.
2. Accede to and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Tanzania

Tanzania is commended for its efforts in granting nationality to 162,156 former Burundian refugees. The government committed to grant citizenship to this group in 2008. This commitment however long proved elusive, leading to the exclusion of these refugees who were no longer Burundian but not Tanzanian either, until October 2014 when Tanzania began granting

citizenship. UNHCR furthermore reports on Tanzanian efforts to issue birth certificates and identification cards for refugees and other persons of concern, a practice that is important in relation to the prevention of statelessness, particularly in a migratory setting. Tanzania is not party to either the 1954 nor the 1961 Statelessness Conventions.

Recommendations:

1. Ensure that the grant of Tanzanian nationality to former Burundian refugees is effective and reaches all of those concerned.
2. Ensure the full integration, non-discriminatory treatment and access to fundamental human rights of former Burundian refugees granted Tanzanian nationality.
3. Maintain efforts to issue birth certificates and identification cards for refugees and other people of concern in order to prevent future statelessness.
4. Accede to and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Thailand

Hill Tribe People: With over half a million stateless hill tribe people, Thailand is home to one of the largest stateless populations in the world. The statelessness of many hill tribe people stems from a combination of problems with nationality, civil registration and immigration regulations which led to the exclusion of tens of thousands of persons and their descendants. Being stateless has a detrimental impact on hill tribe people's enjoyment of human rights, most significantly in the form of travel restrictions, risk of exploitation and trafficking, and denial of equal access to education and the labour market etc. Although Thailand has a policy of 'Education for All', stateless students face difficulties paying the costs involved in higher education and cannot access government study loans. In 2008 Thailand passed a very promising amendment to the Nationality Act which should pave the way for the resolution of many cases of statelessness among the hill tribes. However, significant challenges remain in the implementation of this law: many believe that they are not eligible or lack the required documents to prove that they are, including due to previous restrictions in access to civil registration for this group. High administrative costs, lengthy processing times of over 4 years, and the requirement to undertake long and expensive journeys, the latter exacerbated by travel restrictions, further impede the implementation of the law.

Rohingya in Thailand: The Rohingya are an ethno-religious minority from the Rakhine region of Myanmar, who have been arbitrarily deprived of their Burmese nationality. The long-term persecution, discrimination, exclusion and violence they have faced in Myanmar continues to drive them out of the country, often on long and dangerous boat journeys. Thailand – which is mainly a transit country for the Rohingya, but which also hosts a small Rohingya population – has historically treated the Rohingya extremely poorly, with little respect for their human rights. In May – June 2015, in a clear and gross violation of international law, Thailand pushed back into open seas, boats full of Rohingya refugees. Thailand moreover lacks a domestic refugee law framework, relying instead on its Immigration Act of 1979 to regulate all situations of foreigners entering the country. As a result, Rohingya who do enter the country are arbitrarily detained in overcrowded Immigration Detention Centres and camps for indefinite and extremely lengthy periods. Moreover, Rohingya refugees have been informally deported collusively by authorities and brokers/smuggles facilitating their onward travel.

Recommendations:

1. Lift travel restrictions imposed on stateless persons to make safe migration possible and to lower the risk of being trafficked, as well as to ensure access to education and the labour market.
2. Facilitate access to citizenship in accordance with the 2008 amendment of the Nationality Act, including by simplifying procedures, disseminating information and reducing waiting times.
3. Make education truly available to all, including by providing equal access to educational loans for stateless students.
4. Ensure respect for the principle of *non-refoulement* and meet the protection needs of the Rohingya as well as other vulnerable groups in accordance with international law.
5. End the arbitrary detention of stateless Rohingya and end trafficking across borders.
6. Accede to the UN Convention Relating to the Status of Refugees and its 1967 Protocol and strengthen the domestic refugee law framework in line with international standards.
7. Accede to and take all necessary steps to implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Other countries under review: Antigua and Barbuda, Greece, Saint Vincent and the Grenadines, Samoa, and Trinidad and Tobago.

The Institute has no information on human rights challenges related to statelessness in these countries. However, none of these countries are party to the 1961 Convention on the Reduction of Statelessness. Furthermore, Samoa is also not party to the 1954 Convention Relating to the Status of Stateless Persons. It is recommended that they all accede to and take all necessary steps to implement these Conventions as relevant.