

Joint Submission to the Committee on the Rights of the Child

88th Pre-Sessional Working Group

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European
Network on
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Institute on
Statelessness and
Inclusion

Joint Submission

to the Committee on the Rights of the Child

at the 88th Pre-Sessional Working Group.

Civil society submission on the right of every child to acquire and preserve a nationality under Article 7 and 8 CRC in accordance with the Guiding Principles to the Convention

United Kingdom

Endorsed by:



Introduction

1. The Liverpool Law Clinic (LLC)¹, European Network on Statelessness (ENS)² and Institute on Statelessness and Inclusion (ISI)³ welcome the opportunity to make this submission to the Committee on the Rights of the Child regarding the UK's compliance with the right of every child to acquire a nationality under Article 7 and to preserve their nationality under Article 8 of the Convention on the Rights of the Child (CRC). This submission also draws on the Guiding Principles of the CRC, including freedom from discrimination (Article 2) and best interests of the child (Article 3). The submission focuses on:
 - I. The right to acquire a nationality of children born stateless in the UK;
 - II. Access to protection for stateless migrant and refugee children;
 - III. The right to birth registration; and
 - IV. Child rights in the context of nationality deprivation.
2. In light of the UK's obligations under the CRC and the importance of eradicating statelessness as expressed by UNHCR's #IBelong campaign, the submitting organisations hope the Committee will raise these matters in the List of Issues Prior to Reporting (LOIPR) and address recommendations to the UK Government to further prevent and reduce childhood statelessness.
3. This submission is structured to highlight key challenges faced by children affected by statelessness in the UK, drawing on the work of the co-submitting organisations.⁴ Each section includes recommended issues to be incorporated into the LOIPR. The submission ends with draft recommendations that may be drawn on by the Committee in formulating its Concluding Observations to the UK.
4. There are three Annexes to this submission:
 - I. [Annex I](#) highlights the UK's international obligations.
 - II. [Annex II](#) contains the relevant national law, for ease of reference of the Committee.
 - III. [Annex III](#) provides information about the co-submitting organisations.
5. This submission has been endorsed by the following members of ENS: Bail for Immigration Detainees⁵, British Rohingya Community⁶, Jesuit Refugee Service UK⁷ and Kuwaiti Community Association⁸.

¹ See further: <https://www.liverpool.ac.uk/law/liverpool-law-clinic/statelessness/>

² See further: www.statelessness.eu

³ See further: www.institutesi.org/ourwork/children.php

⁴ See for example, #StatelessnessIndex UK country profile: <https://index.statelessness.eu/country/united-kingdom>; ENS (2015) *No Child Should Be Stateless: Ensuring the right to a nationality for children in migration in Europe*: https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_Right-to-a-nationality-for-children-in-migration.pdf; Bezzano & Carter (2018) *Statelessness in Practice: Implementation of the UK Statelessness Application Procedure*: <https://www.liverpool.ac.uk/media/livacuk/law/4-liverpool-law-clinic/Statelessness.in.Practice.pdf>

⁵ See further: <https://www.biduk.org>

⁶ See further: <http://britishrohingya.co.uk>

⁷ See further: <https://www.jrsuk.net>

⁸ See further: <https://www.statelessness.eu/about-us/members/kuwaiti-community-association>

Statelessness in the UK

6. There are relatively few sources of accurate data on the stateless population in the UK, but all data indicates that statelessness occurs predominantly in a migratory context.⁹ Most children in migration will automatically acquire a nationality from one or both of their parents by descent, however some may not be able to inherit their parents' nationality nor acquire a nationality through their place of birth, leaving them stateless or at risk of statelessness. Children particularly at risk include:
- children born *en route* to Europe and undocumented children
 - children from countries with large stateless populations (such as Syria,¹⁰ Iraq,¹¹ Iran,¹² Myanmar¹³ and Kuwait¹⁴)
 - children who cannot inherit their parents' nationality (e.g. due to gender discriminatory nationality laws)
 - children from families with complex histories of displacement
 - unaccompanied or separated children
 - other children, such as children of same-sex couples, children born as a result of surrogacy arrangements and abandoned children (foundlings).

UNHCR reports only 161 stateless persons under its mandate in the UK in 2019, a relatively low number, which raises concerns regarding the identification of stateless people and collection of accurate data.¹⁵ In 2018/19, 2972 stateless children registered as British citizens, a significant rise from the 253 who registered in 2016/17.¹⁶ The cause of this increase is unclear. These figures are incomplete as they exclude, for example, stateless children granted other statuses in the UK or children whose statelessness is as yet unrecognised, including children born in the UK.

7. As elaborated in [Annex I](#), the UK has acceded to most relevant human rights treaties and has a clear obligation to protect every child's right to acquire a nationality, and to protect the rights of stateless children on its territory.

The right to acquire a nationality of children born stateless in the UK

8. International norms for the prevention of statelessness establish that children who would otherwise be stateless shall acquire the nationality of the State where they were born.¹⁷ However, to establish if a child would 'otherwise be stateless' and meet their obligations under the CRC and the 1961 Convention on the Reduction of Statelessness, States must be able to determine whether

⁹ For more information, see #StatelessnessIndex UK country profile: <https://index.statelessness.eu/country/united-kingdom>; ENS (2015) *No Child Should Be Stateless: Ensuring the right to a nationality for children in migration in Europe*: https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_Right-to-a-nationality-for-children-in-migration.pdf.

¹⁰ For more information on populations affected by statelessness in Syria, see ENS & ISI (2019), *Statelessness in Syria Country Position Paper*: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf>

¹¹ For more information on populations affected by statelessness in Iraq, see ENS & ISI (2019), *Statelessness in Iraq Country Position Paper*: <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-final.pdf>

¹² For more information on populations affected by statelessness in Iran, see ENS & ISI (2019), *Statelessness in Iran Country Position Paper*: <https://statelessjourneys.org/resources/statelessness-in-iran/>

¹³ For more information on populations affected by statelessness in Myanmar, see ENS & ISI (2019), *Statelessness in Myanmar Country Position Paper*: <https://statelessjourneys.org/resources/statelessness-in-myanmar/>

¹⁴ For more information on populations affected by statelessness in Kuwait, see ENS & ISI (2019), *Statelessness in Kuwait Country Position Paper*: <https://statelessjourneys.org/resources/statelessness-in-kuwait/>

¹⁵ UNHCR (2020), *Global Trends: Forced Displacement in 2019*: <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>.

¹⁶ UK Government, Home Office, Listing of the detailed managed migration datasets, available at: <https://www.gov.uk/government/statistical-data-sets/managed-migration-datasets#citizenship>

¹⁷ CRC Article 7 (as interpreted and applied by the Committee) and the 1961 Convention on the Reduction of Statelessness, Article 1.

the child has acquired the nationality of another State. The examination of whether the child would otherwise be stateless should be carried out by a competent authority with the necessary expertise, through an established procedure for determining the child's nationality or whether they would otherwise be stateless, and resolved immediately after birth registration or as soon as possible.¹⁸ The nationality of the child should be undetermined for as short a period as possible and never longer than five years. All actions involved in determining whether a child would otherwise be stateless must be undertaken with the best interests of the child as a primary consideration, and the authority responsible for such a procedure should ensure that its decision-making staff are trained on nationality and statelessness law. The procedure should be free of charge and regulated by transparent guidance.¹⁹ Where determination of nationality requires an application procedure, information on how to apply must be provided to individuals whose children would otherwise be stateless or of undetermined nationality.²⁰

9. The British Nationality Act provides that a child has the right to become a British citizen if they were born in the UK, have always been stateless, have lived in the UK for the last five years and have not been out of the country for more than 450 days in the five year period.²¹ The ability to register as a British citizen is only possible if the young person is under the age of 22. Nationality status is not recorded on birth registration documents across the UK (neither of the parents nor the child) and there is no formal, standalone procedure for determining nationality or statelessness. Most children will only have their nationality determined at the point of requesting a British passport, therefore until then childhood statelessness or risk of statelessness is likely to remain unidentified.
10. There have been some recent positive developments, such as the introduction of a statelessness determination procedure (SDP). However, there are significant gaps in law, policy and practice that result in a failure to respect, protect and fulfil every child's right to acquire a nationality. The processing of statelessness applications under the UK Immigration Rules does not fully comply with international human rights law, the UK does not treat statelessness as a protection issue, and the definition of a stateless person in the UK Immigration Rules contains exclusion criteria that go beyond those of the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention). The SDP in the UK allows some people to have their statelessness recognised and acquire residence and socio-economic rights with a route to naturalisation, but it is not directly applicable to other situations where a determination of statelessness may be relevant, such as registration of British nationality.
11. Safeguards are in place in British nationality law to prevent statelessness in the case of most children born in the UK or to British nationals abroad, but prohibitively high fees for registration and naturalisation are a major barrier for stateless people to acquire nationality. The UK currently charges a fee of £1,012 per child for stateless children to register as a British citizen. This fee is approximately three times the administrative cost of processing an individual application, and it has risen dramatically from £35 in 1983.²² There is no fee waiver available for children, even if their families are destitute or the children are looked after by the Local Authority. The fees charged

¹⁸ UNHCR (2012), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04: <https://www.refworld.org/docid/50d460c72.html>

¹⁹ *ibid*, para. 54. For further information see: ENS (2020), *Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers*: https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS-Birth_registrations-StatelessnessINDEX_briefing-revised.pdf.

²⁰ Council of Europe (2009) Recommendation to Member States on the Nationality of Children, Principle 6.

²¹ British Nationality Act 1981, Section 36 & Schedule 2, Section 1 & 3: <http://www.legislation.gov.uk/ukpga/1981/61/contents>

²² PRCBC & Amnesty International UK (2019), *Briefing on Fees for the Registration of Children as British Citizens*, pp. 2-3.

by the UK Government for the registration of stateless children prohibit many children from accessing their entitlement to British citizenship, particularly children whose families are subject to No Recourse to Public Funds – as many immigrant families are – and who are living in poverty. Consequently, children continue to be denied the right to acquire nationality in the UK, even when this results in their continued statelessness, or spend years of their childhood with an undetermined or unknown nationality, contrary to their best interests (Article 3 CRC).

12. In recent years, there have been significant cuts to legal aid in England and Wales²³ and there are fewer providers of publicly funded legal advice in immigration and nationality matters.²⁴ For many children and families with complex immigration or nationality issues, it is extremely difficult to access quality legal advice. This can mean that families are either not aware of their rights or are unable to access legal advice in order to register their children as British citizens.
13. Furthermore, persons born to a parent holding certain forms of British nationality (British Overseas Territories Citizenship, British Overseas Citizenship, and British subject) who would otherwise be stateless acquire the parent's British nationality automatically. However, the status of British Overseas Citizen has been held not to meet the international definition of a 'nationality' by the UK Upper Tribunal because it does not attract a right to enter and reside in the UK.²⁵
14. As seen above, the UK Government is failing to protect the right of every child to acquire a nationality and to prevent childhood statelessness, due to significant law and policy gaps including:
 - I. The lack of any mechanism to determine whether children acquire another nationality at birth,
 - II. A five-year residence requirement to apply for British citizenship,
 - III. Prohibitive application fees, and
 - IV. Limited access to legal aid hindering access to legal advice and information.

In light of the above, the Committee is urged to ask the United Kingdom:

- a. What is the UK Government doing to implement and improve safeguards in place to ensure that all children born in the UK who would otherwise be stateless can acquire a nationality as soon as possible after birth, regardless of the status or identity of their parents?**
- b. What steps are being taken to identify children born in the UK who may be stateless or at risk of statelessness, during birth registration and other administrative procedures?**
- c. Why has the UK not taken steps to reduce or abolish citizenship registration fees for children who are stateless and who are entitled by law to acquire British nationality?**
- d. What measures will the UK take to ensure that legal aid is provided to all children across all UK jurisdictions who are stateless or at risk of statelessness?**

²³ The Bach Commission (2017), *Fabian Policy Report: The Right to Justice*: http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf; Amnesty International (2016), *Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice*: https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf. Chambers Students (2013), 'Thanks to the latest wave of sweeping budget cuts access to the law looks set to become an inaccessible luxury for many': <https://www.chambersstudent.co.uk/where-to-start/newsletter/legal-aid-cuts-and-reforms>

²⁴ For further information see: Bezzano & Carter (2018) 7, 'Legal Advice: Role of the legal adviser and the case for legal aid' in *Statelessness in Practice: Implementation of the UK Statelessness Application Procedure*.

²⁵ Teh v SSHD [2018] EWHC 1586 (Admin), High Court (Administrative Court) <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1586.html>

Access to protection for stateless migrant and refugee children

15. To provide the protection and rights enshrined in the CRC as well as the 1954 Convention, including a residence permit, the right to study and facilitated naturalisation, States must identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.²⁶ Stateless children or children at risk of statelessness should be referred to an SDP (with due consideration for confidentiality and the primacy of resolving any outstanding asylum claim before initiating contact with State authorities to determine statelessness) so that their statelessness is formally identified and recognised, and they receive full protection and enjoyment of their rights, including their right to acquire a nationality. International guidance states the need for additional procedural, substantive and evidentiary safeguards for children, including timelines, non-discrimination with regards to residency status, child-sensitive procedures and shared burden of proof.²⁷ The principle of upholding the best interests of the child must be adhered to in any decision-making relating to their nationality status and stateless protection status.²⁸
16. The UK has a formal SDP through which persons may be recognised as stateless and granted a residence permit,²⁹ but this procedure only partially complies with the object and purpose of the 1954 Convention and contains exclusion criteria that go beyond the Convention. The SDP is applied to children without adaptation from the general procedure, and the burden of proof remains with the child.³⁰ There is no statutory appeal against refusal (only the more limited remedy of judicial review) and there are significant barriers to accessing legal aid for statelessness applications in England and Wales. Officials have indicated to Liverpool Law Clinic that decisions on statelessness applications should be made within twelve months³¹. These timeframes are much longer than recommended by UNHCR (ranging from a few months where a claim is well evidenced to twelve months only in exceptional circumstances³²).
17. According to the 1954 Convention,³³ the UK is bound to “as far as possible facilitate the assimilation and naturalisation of stateless persons”, and “make every effort to expedite naturalisation proceedings and to reduce [...] the charges and costs of such proceedings”. However, in the UK naturalisation is not facilitated for stateless people, including children, who are not exempt from paying very high fees to acquire a nationality.³⁴

²⁶ UNHCR (2014), *Handbook on Protection of Stateless Persons*, para. 57-58, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

²⁷ UNHCR (2012), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, para. 11 <https://www.refworld.org/docid/50d460c72.html>.

²⁸ UNHCR (2014), *Handbook on Protection of Stateless Persons*, para. 119: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

²⁹ Part 14 of the Immigration Rules (Changes to the Immigration Rules took effect on 6 April 2019).

³⁰ EMN (2020), *EMN Inform: Statelessness in the EU*: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_inform_statelessness_en.pdf

³¹ Bezzano & Carter (2018) *Statelessness in Practice: Implementation of the UK Statelessness Application Procedure*, p. 24: <https://www.liverpool.ac.uk/media/livacuk/law/4-liverpool-law-clinic/Statelessness.in.Practice.pdf>

³² UNHCR (2014), *Handbook on Protection of Stateless Persons*, para. 75: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

³³ 1954 Convention, Article 32.

³⁴ British nationality application fees are currently set at £1,330 for adults and £1,012 for children.

In light of the above the Committee is urged to ask the United Kingdom:

- a. What steps are being taken to identify the (risk of) statelessness of children who arrive in the UK and to enable them to fulfil their right to acquire a nationality?**
- b. What steps are being taken to ensure that the SDP complies with the requirements of the 1954 Convention and that the naturalisation of stateless people in the country is facilitated?**
- c. What measures are being taken to ensure that all stateless children in the UK enjoy their full CRC rights without discrimination?**

The right to birth registration

18. Lack of birth registration heightens the risk of leaving children without a nationality.³⁵ In order to ensure that all children have their births registered regardless of their or their parents' residence status, international norms and good practice urge States to prohibit data-sharing between health or registration officials and immigration enforcement authorities.³⁶
19. All births must be registered by law within 42 days (England, Wales and Northern Ireland) or 21 days (Scotland) even if parents are undocumented or without residence status. However, public health services are required to report certain immigration matters to immigration authorities and some undocumented migrants are required to pay for certain healthcare, including maternity care, which may prevent them from accessing health services and registering the birth of their child. For example, undocumented women can face NHS charges of up to £12,677 for delivery of a baby in England, whilst applications for indefinite leave to remain can be refused if there is an outstanding debt to the NHS.³⁷ There is evidence that some pregnant women delay accessing services because of the disincentive of healthcare charges and the impact of debt on future immigration applications.³⁸ This is likely to impact on the quality of healthcare received, as well as vital information from midwifery teams, including on birth registration.
20. Furthermore, the Coronavirus pandemic significantly impacted birth registration with birth registration services suspended from the March to June 2020.³⁹ Some Local Authorities are now assigning resources to trace and register babies who were born during this time, however there are still delays in accessing birth registration.⁴⁰ These factors may deter parents from accessing services and there is anecdotal evidence that some children may not be registered within a timely

³⁵ For further information, see ENS (2020), *Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers*: https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS-Birth_registrations-StatelessnessINDEX_briefing-revised.pdf

³⁶ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: <https://www.refworld.org/docid/5a12942a2b.html>

³⁷ The National Health Service (Charges to Overseas Visitors) Regulations 2015 (England), Regulation 7(3); NHS, '2019/2020 National Tariff Payment System: non-mandatory currencies and prices'. The maximum cost for maternity care of £12,677 includes antenatal, delivery and postnatal services. However, there is anecdotal evidence of women being charged sums far in excess of this (of which some may be related to charges for neonatal care).

³⁸ Maternity Action (2017), *A Scoping Study: The Impact On Health Inequalities Of Charging Migrant Women For NHS Maternity Care*: <https://www.maternityaction.org.uk/wp-content/uploads/ChargingReportMarch2017FINALcompressed.pdf>

³⁹ BBC, 'Coronavirus lockdown: Parents 'frustrated' by birth registration delays, 10 July 2020: <https://www.bbc.co.uk/news/uk-53365503>

⁴⁰ Brighton & Hove City Council, 'Babies of 2020', 21 September 2020: https://new.brighton-hove.gov.uk/news/2020/babies-2020?utm_source=hootsuite&utm_medium=twitter

manner as a result. Parents who delay accessing healthcare due to a fear of or inability to pay healthcare charges are less likely to access full updated information about the procedures to register their child's birth.

Considering the context outlined above, the Committee is urged to ask the UK:

- a. What measures is the UK Government taking to ensure unrestricted access to healthcare for all children and their families, including considering introducing a firewall to prevent the sharing of data between health and immigration authorities in line with international guidance?**
- b. Why does the UK require health services to share information with the immigration authorities, when such measures may lead to low birth registration amongst undocumented migrants and international law requires data sharing to be prohibited?**

Child rights in the context of nationality deprivation

21. The UK is one of a small but growing number of countries which has increased its powers to deprive citizens of their nationality. According to public records, 104 people were deprived of their nationality in 2017 alone.⁴¹ The powers are used most often in relation to suspected or convicted terrorists, and mostly when the individual has travelled abroad. Citizenship deprivation has also been pursued in relation to other crimes – for instance, in the Rochdale child sex abuse 'grooming gang', which raised questions related to the best interests and right to family life of children whose fathers were deprived of their nationality.⁴²
22. The UK nationality deprivation powers are discriminatory – with minorities, naturalised and dual citizens disproportionately impacted – and do not adequately protect against statelessness.⁴³ In the high profile Shamima Begum case, Begum, who travelled to Syria as a child to join ISIS, was stripped of her British citizenship, denying both her and her infant child a viable path back to the UK. The baby subsequently died and the UK Court of Appeal recently ruled in favour of Ms Begum's right to return to the UK, a decision which has been appealed by the UK Government.⁴⁴ Intervening in this case, the UN Special Rapporteur on human rights and counter terrorism expressed deep concern:

“to ensure that States (including the UK) adhere to their international law obligations in cases concerning foreign fighters abroad, particularly those involving women and children. The prohibition of the arbitrary deprivation of citizenship provides essential protection to such individuals. The due process guarantees that are inherent in this prohibition are especially significant in cases (i) involving a risk of statelessness, (ii) in which the deprivation of

⁴¹ The Independent, 'Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year', 20 February 2019: <https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html>

⁴² *Aziz & Others v the Secretary of State for the Home Department* [2018] EWCA Civ 1884.

⁴³ Van Waas, L. and Jaghai, S. (2018), 'All Citizens are Born Equal but Some are More Equal than Others' in *Netherlands International Law Review*.

⁴⁴ *Begum v Special Immigration Appeals Commission and the Secretary of State for the Home Department* [2020] EWCA Civ 918.

nationality is made in absentia and (iii) in which the deprivation is made on the basis of broad and vague statutory language.”⁴⁵

23. Similar concerns have previously been expressed by the Human Rights Committee in relation to the UK.⁴⁶
24. The Principles on Deprivation of Nationality as a National Security Measure⁴⁷ articulate international law standards which regulate, and limit state practice related to nationality deprivation. Accordingly, state discretion in this area is subject to the individual right to a nationality,⁴⁸ the prohibition of arbitrary deprivation of nationality,⁴⁹ the prohibition of discrimination⁵⁰ and the obligation not to render a person stateless.⁵¹ When assessing the legality of citizenship deprivation, its impact on other human rights must be taken into consideration. This includes, among others, the right to private and family life, legal personhood, and the rights of the child.⁵² Importantly, the child must not be discriminated or punished by association, if their parent is subject to nationality deprivation (Article 2 CRC);⁵³ and “*the best interests of the child must be a primary consideration in all proceedings affecting the nationality of children, their parents and other family members*”⁵⁴ (Article 3 CRC).

⁴⁵ Skeleton Argument of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Combatting Terrorism, para. 6: https://www.ohchr.org/Documents/Issues/Terrorism/SR/2020_05_29_FINAL_Begum_Intervention.pdf In her intervention in the case before the European Court of Human Rights on *H.F. and M.F. v. France* (Application no. 24384/1), the SR also stressed “the state of nationality’s responsibility for the treatment of its citizens in other territories, and [...] that this responsibility becomes all the more compelling when non-derogable jus cogens norms being unequivocally breached, and the state of nationality is the only state with the legal capacity to provide relief” (para. 61) available at: https://www.ohchr.org/Documents/Issues/Terrorism/SR/Final-Amicus_Brief_SRCT_SRSsummex.pdf

⁴⁶ CCPR has stated that: “the State party should review its laws to ensure that restrictions on re-entry, and denial of citizenship, on terrorism grounds, include appropriate procedural protections and are consistent with the principles of legality, necessity and proportionality. The State party should also ensure that appropriate standards and procedures are in place to avoid rendering an individual stateless.” CCPR, *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/7, 17 August 2015, available at: <https://undocs.org/CCPR/C/GBR/CO/7>

⁴⁷ Principles on Deprivation of Nationality as a National Security Measure (2020): <https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were drafted by The Institute on Statelessness and Inclusion in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. They were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the field of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. At the time of submission, they have been endorsed by over 100 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure. More information is available here: <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

⁴⁸ Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/7/10 (27 March 2008); Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/10/13 (26 March 2009); Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/13/2 (24 April 2010); Human Rights Council Resolution 20/4, The right to a nationality: women and children, UN Doc A/HRC/RES/20/4 (16 July 2012); Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/20/5 (16 July 2012); Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/26/14 (11 July 2014); Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/32/5 (15 July 2016).

⁴⁹ Principles on Deprivation of Nationality as a National Security Measure (2020), Principle 7: <https://files.institutesi.org/PRINCIPLES.pdf>. See also the Draft Commentary to the Principles: https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

⁵⁰ *Ibid.*, Principle 6.

⁵¹ *Ibid.*, Principle 5.

⁵² *Ibid.*, Principle 9.

⁵³ *Ibid.*, Principle 9.7.5

⁵⁴ *Ibid.*, Principle 9.7.3

In light of the above, the Committee is urged to ask the United Kingdom:

- a. What steps is the UK taking to ensure persons are not deprived of their citizenship on the basis of their alleged actions as children?
- b. What steps are being taken to ensure that the children of parents who are subject to citizenship deprivation proceedings, are not discriminated against or punished by association for the actions of their parents, including by being denied re-entry to the UK or being separated from their families?
- c. What procedures are in place to ensure that the best interests of the child are a primary consideration in all proceedings related to deprivation of nationality?

Recommendations

25. Based on the content of this submission, the following recommendations are made, which we hope the Committee will consider in urging the UK Government to ensure the right of every child to acquire a nationality, and to protect the rights of all stateless children in the UK:
 - I. **Protect the right to acquire a nationality of all children born in the UK who would otherwise be stateless, ensuring they acquire British nationality either automatically or as soon as possible after birth, regardless of the status or identity of their parents.**
 - II. **Introduce an expedited procedure for stateless children wishing to acquire British nationality and provide fee exemptions or appropriately reduced fees for applicants with insufficient means.**
 - III. **Ensure that stateless children have access to adequate legal advice and (free) legal aid in British nationality applications in all UK jurisdictions.**
 - IV. **Ensure that the SDP fully complies with the requirements provided in the 1954 Convention and that all stateless children in the UK enjoy their Convention rights without discrimination.**
 - V. **Ensure unrestricted access to healthcare for all children and their families, including by introducing a firewall to prevent the sharing of data between health and immigration authorities in line with international guidance.**
 - VI. **Ensure that the best interests of the child are a primary consideration in all nationality deprivation proceedings, and that the child is not discriminated against or punished by association for the actions of their parents.**

Annex I - The UK's International Obligations

1. The UK has acceded to both the Convention Relating to the Status of Stateless Persons (1954 Convention) and the Convention on the Reduction of Statelessness (1961 Convention). However, the UK maintains several reservations to these treaties, and neither convention has been fully incorporated into domestic law.
2. In addition to the CRC, the UK is party to most international human rights treaties, including the ICCPR, the ICESCR, ICERD, CEDAW, CRPD and CAT. It is not party to several treaties relating to statelessness, namely the European Convention on Nationality, the European Convention on the Avoidance of Statelessness in Relation to State Succession, and the International Convention on the Protection of the Rights of all Migrant Workers and their Families.
3. In light of the CRC and other international instruments that the UK is a state party to, it has the following obligations with regard to protecting every child's right to acquire a nationality and the prevention of childhood statelessness:
 - I. The right of every child to acquire a nationality, with particular attention to those children who would otherwise be stateless;⁵⁵
 - II. The automatic acquisition of nationality by foundlings found on its territory who would otherwise be stateless;⁵⁶
 - III. The acquisition of nationality by children born on its territory who do not acquire another nationality, either at birth or subsequently if they remain stateless, enabling children who remain stateless to acquire nationality upon application (with the possibility to require maximum five years of habitual residence before submitting the application, no other conditions);⁵⁷
 - IV. The Guiding Principles of the CRC, including the prohibition of discrimination against any child or their parents or guardians and ensuring that the best interests of the child are a primary consideration for authorities in dealing with all the matters above.⁵⁸

⁵⁵ 1989 Convention on the Rights of the Child, Article 7.

⁵⁶ 1997 European Convention on Nationality, Article 6 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 2.

⁵⁷ 1997 European Convention on Nationality, Article 6(2); 1961 Convention on the Reduction of Statelessness, Article 1(2)(b). Under the British Nationality Act (1981) children born stateless in the UK have a statutory entitlement to British citizenship at age 5.

⁵⁸ 1989 Convention on the Rights of the Child, Articles 2 and 3

Annex II – National Law

British Nationality Act 1981⁵⁹

Section 1: Acquisition by birth or adoption.

(1) A person born in the United Kingdom after commencement or in a qualifying territory on or after the appointed day, shall be a British citizen if at the time of the birth his father or mother is—

- (a) a British citizen; or
 - (b) settled in the United Kingdom or that territory.
- (...)

(2) A new-born infant who, after commencement, is found abandoned in the United Kingdom or on or after the appointed day is found abandoned in a qualifying territory, shall, unless the contrary is shown, be deemed for the purposes of subsection (1)—

- (a) to have been born in the United Kingdom after commencement or in that territory on or after the appointed day; and
 - (b) to have been born to a parent who at the time of the birth was a British citizen or settled in the United Kingdom or that territory.
- (...)

Section 36: Provisions for reducing statelessness

The provisions of Schedule 2 shall have effect for the purpose of reducing statelessness.

Schedule 2 - Provisions for Reducing Statelessness

Schedule 2, Section 1: Persons born in the United Kingdom after commencement

1(1) Where a person born in the United Kingdom after commencement would, but for this paragraph, be born stateless, then, subject to sub-paragraph (3)—

- (a) if at the time of the birth his father or mother is a citizen or subject of a description mentioned in sub-paragraph (2), he shall be a citizen or subject of that description; and accordingly
- (b) if at the time of the birth each of his parents is a citizen or subject of a different description so mentioned, he shall be a citizen or subject of the same description so mentioned as each of them is respectively at that time.

(2) The descriptions referred to in sub-paragraph (1) are a British overseas territories citizen, a British Overseas citizen and a British subject under this Act.

(3) A person shall not be a British subject by virtue of this paragraph if by virtue of it he is a citizen of a description mentioned in sub-paragraph (2).

Schedule 2, Section 3: Persons born in the United Kingdom or a British overseas territory after commencement

3(1) A person born in the United Kingdom or a British overseas territory after commencement shall be entitled, on an application for his registration under this paragraph, to be so registered if the following requirements are satisfied in his case, namely—

- (a) that he is and always has been stateless; and
- (b) that on the date of the application he was under the age of twenty-two; and
- (c) that he was in the United Kingdom or a British overseas territory (no matter which) at the beginning of the period of five years ending with that date and that (subject to paragraph 6) the

⁵⁹ Updated as of 22 October 2020.

number of days on which he was absent from both the United Kingdom and the British overseas territories in that period does not exceed 450.

(2) A person entitled to registration under this paragraph—

(a) shall be registered under it as a British citizen if, in the period of five years mentioned in subparagraph (1), the number of days wholly or partly spent by him in the United Kingdom exceeds the number of days wholly or partly spent by him in the British overseas territories;

(b) in any other case, shall be registered under it as a British overseas territories citizen.

Immigration Rules, Part 14: stateless persons⁶⁰

401. For the purposes of this Part a stateless person is a person who:

(a) satisfies the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons, as a person who is not considered as a national by any State under the operation of its law;

(b) is in the United Kingdom; and

(c) is not excluded from recognition as a Stateless person under paragraph 402.

402. A person is excluded from recognition as a stateless person if there are serious reasons for considering that they:

(a) are at present receiving from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees, protection or assistance, so long as they are receiving such protection or assistance;

(b) are recognised by the competent authorities of the country of their former habitual residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(c) have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(d) have committed a serious non-political crime outside the UK prior to their arrival in the UK;

(e) have been guilty of acts contrary to the purposes and principles of the United Nations.

403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for limited leave to remain as a stateless person;

(b) is recognised as a stateless person by the Secretary of State in accordance with paragraph 401;

(c) has taken reasonable steps to facilitate admission to their country of former habitual residence or any other country but has been unable to secure the right of admission; and

(d) has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless or whether they are admissible to another country under the meaning of paragraph 403(c);

(e) has sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and

(f) if, in the case of a child born in the UK, has provided evidence that they have attempted to register their birth with the relevant authorities but have been refused.

404. An applicant will be refused leave to remain in the United Kingdom as stateless person if:

⁶⁰ Updated as of 5 October 2020.

- (a) they do not meet the requirements of paragraph 403;
- (b) there are reasonable grounds for considering that they are:
 - (i) a danger to the security of the United Kingdom;
 - (ii) a danger to the public order of the United Kingdom; or
- (c) their application would fall to be refused under any of the grounds set out in paragraph 322 of these Rules.

Annex III - The Co-Submitting Organisations

1. The [Liverpool Law Clinic](#) (LLC)⁶¹ is a legal practice based in The University of Liverpool. Clients access free legal advice, assistance and representation on a range of matters, including determinations of statelessness in the context of migration, deportation and acquisition of nationality. Qualified lawyers at the Law Clinic have been teaching students through this work since 2013. Staff have authored a practice guide, a report, a case note, hold regular stakeholder policy meetings with the Home Office, contributed to pre-UPR work on the UK's 2018 review, held an international conference on statelessness, maintain the UNHCR Index on Statelessness for the UK, and are active members of ENS.
2. The [European Network on Statelessness](#) (ENS)⁶² is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe, with over 150 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. Promoting every child's right to a nationality in Europe is a thematic priority for ENS, including ensuring access to birth registration and promoting nationality law reform to end childhood statelessness. This submission partially draws on information and analysis from the Statelessness Index on the UK,⁶³ maintained and developed by ENS and its members. The Index is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice.
3. [The Institute on Statelessness and Inclusion](#) (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. Addressing childhood statelessness is one of the core thematic priorities of the Institute. As part of this work, ISI has made over fifteen country submissions to the Committee,⁶⁴ developed a range of resources on the child's right to a nationality and childhood statelessness, including a Toolkit on Addressing the Right to a Nationality through the Convention on the Rights of the Child⁶⁵, Statelessness Essentials Booklets on Childhood Statelessness,⁶⁶ the Convention on the Rights of the Child⁶⁷ and other related issues,⁶⁸ The 2017 World's Stateless Report: Children,⁶⁹ and a range of resources for children, which can be found online.⁷⁰ ISI has also contributed its expertise and information towards General Recommendations of the Committee as well as Joint General Recommendations by the Committee and the CMW.

⁶¹ See <https://www.liverpool.ac.uk/law/liverpool-law-clinic/>

⁶² For more information about the European Network on Statelessness, see: www.statelessness.eu.

⁶³ See <https://index.statelessness.eu/country/united-kingdom>

⁶⁴ <https://www.institutesi.org/core-activities/human-rights-advocacy-crc>

⁶⁵ Institute on Statelessness and Inclusion (2018), *Addressing the right to a nationality through the Convention on the Rights of the Child: A Toolkit for Civil Society*, available at: https://files.institutesi.org/CRC_Toolkit_Final.pdf

⁶⁶ Institute on Statelessness and Inclusion (2018), *Statelessness Essentials, Childhood Statelessness*, available at: <https://files.institutesi.org/childhood-statelessness.pdf>

⁶⁷ Institute on Statelessness and Inclusion (2018), *Statelessness Essentials, Statelessness & Human Rights, The Convention of the Rights of the Child*, available at: <https://files.institutesi.org/statelessness-and-CRC.pdf>

⁶⁸ For all the Essentials Booklets, see: <https://www.institutesi.org/core-activities/statelessness-essentials-booklet-series>.

⁶⁹ Institute on Statelessness and Inclusion (2017), *The World's Stateless children*, available at:

<https://files.institutesi.org/worldsstateless17.pdf>

⁷⁰ <http://kids.worldsstateless.org/>