The Prevention of Child Statelessness at Birth: A Multilevel Perspective

Peter Rodrigues and Jill Stein

Abstract

This chapter explores the prevention of child statelessness at birth by looking at three levels: the international, regional and national legal framework. First, the international level is assessed with a specific focus on the CRC. The current legal norms are discussed as well as the CRC Committee’s role in the prevention of statelessness at birth, inter alia by looking at the 419 Concluding Observations it has produced. Secondly, with reference to the regional level, relevant European treaties are discussed, including the European Convention on Nationality and the European Convention on Human Rights. Thirdly, as an example of the national level, the Netherlands is used to demonstrate which issues can arise when it comes to acquiring a nationality at birth. Finally, several recommendations are made for all three levels on how the prevention of statelessness at birth can be more effective. The interplay between the different levels is crucial in this regard.

1 Introduction

Statelessness is a serious problem that affects an estimated 10 million people throughout the world.\(^1\) A substantial part of this stateless population is made up of minors, with the United Nations High Commissioner for Refugees (UNHCR) estimating that worldwide every ten minutes a stateless child is born.\(^2\) These children have no state to protect them, no homeland to return to and, if without residence rights, no civil rights such as social protection rights to enjoy. This increases their risk of being subjected to poverty, exploitation and detention. Many of these children are stateless from the moment they are born, for example due to discriminatory laws. Recent initiatives, such as the #ibelong campaign to eliminate statelessness by 2024\(^3\) and the development of

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a nationality law database, show a growing realisation that statelessness must be eradicated. But who is going to take responsibility for this group?

The most obvious point to start eradicating statelessness is at the beginning, that is at birth. Factors causing statelessness at birth include poor birth registration and gaps in nationality laws and frameworks. Since in principle it is up to states themselves to determine their nationality systems, it is obvious that states need to be involved in tackling this problem. Furthermore, given that friction exists between nationality systems, leaving certain people stateless, it is important to include the regional and international level when dealing with the issue. This chapter therefore focuses on the prevention of child statelessness at birth from a multilevel perspective, one in which solutions are developed through an assessment of the current legal frameworks at the national, regional and international level.

To this end, Section 2 identifies the causes of statelessness, and Section 3 outlines a framework of human rights treaties that can offer protection in the case of (imminent) statelessness. Thereafter, the chapter examines the potential protection against statelessness at birth afforded by the UN Convention on the Rights of the Child (CRC) and the Committee that monitors it; the examination includes an analysis of 419 Concluding Observations of the CRC Committee. After having looked at international law, the chapter sets out a similar inventory of regional human rights treaties, such as the European Convention of Human Rights (ECHR). The next section, using the Dutch situation as an example, considers the difficulties stateless children face under national law. Then, on the basis of the problems that arise from birth registration and ius sanguinis systems, problems which lead to statelessness at birth, the chapter outlines a number of solutions that international, regional and national frameworks could offer. For practical reasons, this is not a global framework with country-specific information. It is the intention, however, that the framework will offer an initial solution for countries which have ratified the human rights treaties in question. The final section provides conclusions and recommendations.

2 Causes of Statelessness

Before discussing the prevention of child statelessness at birth, it is important to understand its causes. Statelessness can arise from many factors, ranging from denationalisation to state succession or dissolution. However, three such