



## **Institute on Statelessness and Inclusion**

Submission to the UN Special Rapporteur on the Right  
to Education, in response to the call for contributions on  
*“the right to education, advances and challenges”*

**January 2023**

## Introduction

1. The Institute on Statelessness and Inclusion (ISI)<sup>1</sup> welcomes the opportunity provided by the Special Rapporteur on the right to education, to contribute to the upcoming thematic report to the Human Rights Council, on the advances and challenges to the right to education. This submission focuses on the denial of education to stateless children, whose disenfranchisement emanates from the denial of another fundamental right - the right to nationality. In examining the right to education for stateless children, this submission will focus on:
  - Stateless children and the legal obligations of states to ensure their right to education
  - The challenges faced by stateless children in attempting to realise their right education
  - The implications of denying stateless children the right to education
  - Key recommendations for consideration and inclusion in the Special Rapporteur's annual thematic report on the right to education.

## Background to the submission

2. ISI works in global partnership with organizations, networks, and communities affected by statelessness on an array of themes and issues relating to the right to a nationality and the rights of stateless people. The denial of education for stateless children has consistently emerged as a key concern from partners working in communities affected by statelessness, prompting ISI to direct attention to this issue in the latter part of 2022. In June-July 2022, ISI conducted semi-structured interviews with 14 partners in eight countries<sup>2</sup> around the world, to better understand the specific challenges stateless children face in accessing education; followed by a Roundtable discussion to share and further contextualise the findings together with participating partners, convened online in September 2022.
3. Based on those consultations, ISI notes with deep concern the increasingly significant obstacles stateless children face in realising their right to education, despite international guarantees, as set out in this submission. ISI has also identified, through this dialogue with partners, a number of ways in which stakeholders working to improve equitable access to education for children globally, through dedicated attention to the distinct challenges faced as a result of statelessness. Relevant recommendations for consideration by the Special Rapporteur on the right to education can be found in the final section of this submission.

## Stateless Children and the legal obligations of states to ensure the right to education

4. A stateless person is defined as "a person who is not considered as a national by any State under the operation of its law".<sup>3</sup> According to the United Nations High Commissioner for Refugees, 70,000 stateless children are born every year, which is the equivalent of a stateless child being born every 10 minutes<sup>4</sup>. The CRC guarantees the right to birth registration and nationality (article 7), yet discrimination, lack of safeguards to prevent statelessness, and

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<sup>1</sup> ISI is the first and the only human rights NGO dedicated to promoting the right to a nationality and the rights of stateless people globally. For more information, see [www.institutesi.org](http://www.institutesi.org).

<sup>2</sup> ISI conducted Education Consultations with partners in India, Pakistan, Bangladesh, Malaysia, the Dominican Republic, Kenya, Montenegro, North Macedonia

<sup>3</sup> Article 1, 1954 Convention relating to the status of stateless persons.

<sup>4</sup> UN High Commissioner for Refugees (UNHCR), I Am Here, I Belong: The Urgent Need to End Childhood Statelessness, 3 November 2015

intergenerational statelessness are amongst the main reasons children continue to be deprived of nationality.

5. As an enabling right, nationality is key to unlocking other rights guaranteed under the CRC, even though the convention is clear that all rights contained therein apply to all children regardless of nationality or other status. For stateless children - who are frequently undocumented and lacking legal identity – protecting the rights guaranteed under the convention on an equal basis and without discrimination, is of critical importance to ensure the realization of basic rights accorded under international law. In 2015, UNHCR elaborated on the range of rights stateless children do not enjoy, due to their lack of nationality, including education.<sup>5</sup>
6. Under the CRC, states are obliged to provide free and compulsory primary education to children on an equal basis and are further required to, among others, implement measures to monitor school attendance and dropout rates (article 28). The Committee on the Rights of the Child has further clarified that these obligations extend to stateless children within the jurisdiction of a state, without discrimination (article 2) and in accordance with the best interest of the child (article 3). In General Comment No. 6 (2005), the Committee further expounded on this obligation for unaccompanied and separated children in the displacement cycle, a context in which childhood statelessness often arises:

*“The enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.”<sup>6</sup>*

7. The ICESCR obliges states to respect, protect and fulfil the right to education and adopt all appropriate measures that lead to full realisation of the right. Like the CRC, the ICESCR does not limit the enjoyment of the right to education to nationals, such that this right also extends to stateless people. In General Comment No. 13, the Committee on Economic Social and Cultural Rights reaffirmed this position stating:

*“The Committee takes note of article 2 of the Convention on the Rights of the Child and article 3 (e) of the UNESCO Convention against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status”.<sup>7</sup>*

8. The right to education for stateless children is further explicitly protected under article 22 of the Convention Relating to the Status of Stateless Persons. While enjoying a lower level of ratification, this is nevertheless significant because it re-affirms the obligations of states to guarantee the right to education for stateless children specifically. Strengthening the rights enshrined in the aforementioned instruments, are the cross-cutting principles of non-discrimination and equality that underpin all international human rights treaties. In addition to the robust body of international human rights law which guarantees the right to education, multiple regional instruments also embrace this right, indicative of a broad consensus

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<sup>5</sup> Ibid.

<sup>6</sup> UN Committee of the Rights of the Child (CRC), General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin) para. 12, CRC/GC/2005/6

<sup>7</sup> UN Committee on Economic Social and Cultural Rights (CESCR). 1999. General Comment No. 13: The Right to Education (Art. 13 of the Covenant) (Doc. E/C.12/1999/10.)

amongst states, pertaining to the value and importance of education in societies and the need to ensure protection of this right for all, regardless of status.

### **Challenges faced by stateless children in accessing education**

9. This section of the submission conveys information obtained by ISI during Education Consultations with 14 civil society partners that work directly with stateless communities, across multiple countries, including India, Bangladesh, Pakistan, Malaysia and the Dominican Republic<sup>8</sup>.

#### *Discriminatory policies and arbitrary application of laws on equal access to education*

10. In some states, overt discriminatory policies deny stateless children public school registration. For example, India and Bangladesh are both home to large populations of stateless Rohingya refugees but deprive this population of the necessary legal identity documents required to access basic education, healthcare, and a host of other services.
11. In 2018, a shift in Government policy in India relating to the issuance of identification documents created an adverse and precarious impact for refugees, particularly stateless Rohingya refugees who are deemed “illegal immigrants”. Since 2012, an undeniable regression in the enjoyment of basic rights has left the Rohingya in India particularly vulnerable, and unable to access services such as education. Prior to 2019, Rohingya refugees benefited from limited protection, including the possibility of access to education, which is no longer the case under current policies.
12. On accession to the ICESCR in 1998, Bangladesh entered a declaration to article 13 on the right to education, claiming it would implement the right in a “progressive manner”. To date stateless Rohingya children are barred from enrolling in the public education system and in 2019, several Rohingya children who had managed to access public institutions were expelled<sup>9</sup>. The Committee on Economic Social and Cultural Rights has previously called on Bangladesh to withdraw its declaration on the right to education, further noted with “deep concern” that stateless Rohingya children do not have access to education.<sup>10</sup>
13. Stateless children are also denied education due to the arbitrary application of national laws that guarantee equal access to education. Such is the experience for stateless and undocumented children in the Dominican Republic, where Dominicans of Haitian descent have long been subjected to ethnic and racial discrimination. A controversial Constitutional Court ruling in 2013 further entrenched divisions after it stripped nationality from tens of thousands of Dominicans of Haitian descent following a reinterpretation of the country’s citizenship provisions. This act, together with the pre-existing situation facing Dominicans of Haitian descent has resulted in the “structural” and “administrative” exclusion from the public education system.<sup>11</sup> Notwithstanding the constitutionally guaranteed right to education regardless of documentation, Dominicans of Haitian descent continue to be experience difficulty enrolling in primary and secondary schools.

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<sup>8</sup> The list of organizations that participated in consultations with ISI can be provided on request.

<sup>9</sup> Human Rights Watch, *Bangladesh: Rohingya Refugee Students Expelled*, April 1, 2019, available at [Bangladesh: Rohingya Refugee Students Expelled | Human Rights Watch \(hrw.org\)](#)

<sup>10</sup> E/C.12/BGD/CO/1

<sup>11</sup> Georgetown Law Human Rights Institute, *Left Behind: How statelessness in the Dominican Republic Limits Children’s Access to Education*, available at [Georgetown HRI Left-Behind Report Dominican Republic 2014.pdf \(right-to-education.org\)](#)

## *Lack of documentation*

14. Despite the right of every child to legal identity, UNICEF estimates approximately 166 million children – or a quarter of the children born in the world today - have no legal document proving their existence<sup>12</sup>. Stateless children are amongst those often deprived of birth certificates and other identification documents which are usually essential to secure school enrolment, thereby directly impacting their ability to access education. There is a clear nexus between lack of documentation and the denial of education, despite guarantees in national legal frameworks guaranteeing education for all.
15. The Constitution of the Islamic Republic of Pakistan guarantees free and compulsory education to all children aged five to sixteen years<sup>13</sup>, yet 22.8 million children between the age of 5-16 are out of school (almost half of the total population in this age group).<sup>14</sup> Pakistan is home to several ethnic minorities including Biharis, Bengalis and Rohingya, many of whom were born in Pakistan and whose ancestors have resided there for generations. Despite being born in Pakistan, which provides for unconditional *jus soli* in its nationality law, many children born into these ethnic minorities are stateless or at risk of statelessness due to lack of documentation and procedural obstacles to acquire nationality. For these children, the prospect of acquiring documentation such as a Child Registration Certificate or Juvenile Cards which prove citizenship and are compulsory for school registration remains a challenge and presents a significant barrier for them to access public education.
16. In Malaysia, public education is governed by the Education Act 1996 (Act 550) and is generally reserved for Malaysian nationals or at the very least, children with one Malaysian parent. According to UNHCR, Malaysia has a population of at least 10,000 stateless people in Western Malaysia alone<sup>15</sup>, and a further unknown number of stateless people reside in Eastern Malaysia. Research undertaken by PLOS One revealed a complex set of government policies applied to undocumented and stateless children in Malaysia.<sup>16</sup> Most undocumented and stateless children in Malaysia must rely on informal education provided by alternative or community learning centres that typically lack standardised curricula, resources, and accreditation for education progression beyond primary levels. Stateless Rohingya children in Peninsular Malaysia and the Bajau Laut children in Sabah are amongst the most marginalised and are forced to rely on alternative learning centres not recognised or regulated by the state.

## **Implications for stateless children excluded from education**

17. Education is considered an empowering right which plays a fundamental role in alleviating poverty for the most marginalised groups. Access to good quality education has a transformative effect on the trajectory of a child's life, and for stateless children, represents the difference between the potential to live a fulfilling, self-sufficient life, rather than one trapped in a cycle of discrimination and deprivation. Here, the submission presents a synthesis of discussions and conclusions from ISI's Roundtable on Education convened in September 2022 with civil society partners working with stateless communities across different national contexts.

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<sup>12</sup> United Nations Children's Fund (UNICEF), available at [Birth registration | UNICEF](#)

<sup>13</sup> Article 25-A of the Constitution of Pakistan, *Constitution of Pakistan* (1973; in English).

<sup>14</sup> United Nations Children's Fund (UNICEF), available at [Education | UNICEF Pakistan](#)

<sup>15</sup> United Nations High Commissioner for Refugees (UNHCR), available at [UNHCR - Ending Statelessness in Malaysia](#)

<sup>16</sup> Loganathan T, Chan ZX, Hassan F, Ong ZL, Majid HA (2022) Undocumented: An examination of legal identity and education provision for children in Malaysia. PLoS ONE 17(2): e0263404. <https://doi.org/10.1371/journal.pone.0263404>

18. As it currently stands, the denial of education for stateless children forces them to rely on informal or non-formal systems which are inadequate alternatives to formal education. Lack of resources, qualified educators, interruptions in studies and most importantly the lack of accreditation, and recognition often prevents stateless children from progressing to secondary and higher education. These factors have a direct impact on the value marginalised families place on education and whether children are even enrolled in school, whether they remain or whether they eventually drop-out.
19. Without a basic education, formal training or access to technical or vocational studies, stateless children become young adults with limited ability to build a sustainable livelihood let alone become self-sufficient. Without qualifications, stateless people are unable to enter the competitive work force and are forced to rely on assistance for basic survival, which further entraps them in a cycle of lifelong dependency, exclusion, and marginalisation.
20. Remaining on the periphery of society, barred from any meaningful participation, stateless children and youths are at an increased risk of developing mental health and behavioural problems, low self-esteem, and are more susceptible physical and sexual abuse, exploitation and a range of other protection issues including early marriage and child labour. Without education, they are ill-equipped to take the steps necessary to improve their socio-economic situation, or even demand rights owed to them under international human rights law.
21. As noted throughout this submission, it is the primary role of the state to ensure stateless children within its jurisdiction have equitable access to education, as prescribed under international and regional law. A failure to do so, violates the right to education, and as previously noted, has an impact on the child's wellbeing, development and society as a whole. It should be highlighted however, that some models of informal education for stateless children have emerged as good practices to be acknowledged in the absence of the state fulfilling its obligations. While informal or non-formal education cannot and should not replace formal education, it is important to recognise good practices which provide opportunities for the advancement of stateless children, who would otherwise be left behind. These good practices have been identified by organizations working with stateless children in Pakistan<sup>17</sup> and Malaysia<sup>18</sup>.

## **Conclusion and Recommendations**

22. This submission focused on the challenges stateless children face to access their right to education, as protected under international law, and the life-long implications and risks associated with the denial of education. The UN has recognized that education is an important part of realising a more peaceful and prosperous world and has accordingly set its agenda around ensuring that education is available for all, and that no one is left behind. Goal 4 of the UN Sustainable Development Goals obliges States to put in place measures necessary to ensure free, equitable and quality education for all, as a part of attaining the target under this goal. However, this cannot be achieved if states continue to exclude stateless and undocumented children from formal education systems.

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<sup>17</sup> For more information see [www.imkaan.org](http://www.imkaan.org)

<sup>18</sup> For more information, see [www.iskul.my](http://www.iskul.my)

23. In light of the foregoing, the Institute on Statelessness and Inclusion **urges the Special Rapporteur on the right to education to address the equal right to education for stateless children in her annual thematic report to the Human Rights Council**, and specifically to:
- I. Emphasize the universal right to education for *all* children, including stateless children, who face unique challenges to meet minimum requirements for school enrolment and completion due to their lack of nationality and/or documentation.
  - II. Urge States to fully comply with their international, regional, and national obligations relating to the right to education, by ensuring education is available and accessible to *all* children within the jurisdiction on an equal and non-discriminatory basis, irrespective of their nationality, immigration status or statelessness.
  - III. Urge States to remove any legal and/or practical barriers that effectively deny stateless children access to education and adopt necessary administrative and/or policy measures and guidelines that reflect the principles of non-discrimination, equality and the best interests of the child as a way to reach the most marginalised groups, including stateless children.
  - IV. Urge States to ensure the coherent application of legal and administrative policies related to access to education for stateless children at national and sub-national level, and further encourage states to use the opportunity when encountering stateless and undocumented children to desist from penalising them, but instead, facilitate the provision of documentation and nationality where appropriate.