

Institute on Statelessness and Inclusion European Network on Statelessness

Joint Submission to the Human Rights Council at the 30th Session of the Universal Periodic Review

Federal Republic of Germany

Introduction

1. The Institute on Statelessness and Inclusion (ISI) and the European Network on Statelessness (ENS) make this joint submission to the Universal Periodic Review (UPR) in relation to statelessness, access to nationality and human rights in the Federal Republic of Germany.
2. The Institute on Statelessness and Inclusion (ISI)¹ is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 20 country-specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 28th UPR Sessions.²
3. The European Network on Statelessness (ENS)³ is a civil society alliance of NGOs, lawyers, academics and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 100 members in 40 European countries. ENS organises its work around three pillars – law and policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments.
4. This joint submission focuses on the protection of stateless persons in Germany, awareness of rights and responsibilities relating to statelessness in Germany, and barriers to birth registration. It draws on the combined expertise of the submitting organisations.

The Universal Periodic Review of Germany under the First and Second Cycle (2009 and 2013)

5. Germany was subject to the UPR under the first cycle in 2009 and the second cycle in 2013. During the second cycle, the UN High Commission for Refugees (UNHCR) stated that because of its decentralised authorities, Germany has different mechanisms for identifying stateless persons, leading to different applications of the 1954 Convention relating to the Status of Stateless Persons, and a subsequent failure to protect stateless persons who remain unidentified.⁴ The protection of stateless persons in Germany remains an issue as this submission will demonstrate.

¹ For more information about ISI, please see the website: <http://www.institutesi.org/>

² For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>

³ For more information about ENS, please see the website <http://www.statelessness.eu/>

⁴ Human Rights Council, Working Group on the Universal Periodic Review, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/16/DEU/2, April/May 2013, para 88.

Germany's Regional and International Obligations

6. Germany is party to the 1954 Convention relating to the Status of Stateless Persons,⁵ the 1961 Convention on the Reduction of Statelessness, and the International Commission on Civil Status' 1973 Convention for the Reduction of Cases of Statelessness.⁶
7. Germany is also a party to core human rights treaties that include provisions related to statelessness and/or nationality, such as the International Covenant on Civil and Political Rights (ICCPR),⁷ the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁸ the Convention on the Rights of the Child (CRC)⁹ and the Convention on the Rights of Persons with Disabilities (CRPD). In addition to guarantees of the right to nationality, both the ICCPR and CRC contain provisions that oblige Germany to ensure the *timely* birth registration of *every* child *immediately* after birth.
8. Germany's regional treaty obligations include the European Convention on Human Rights,¹⁰ the European Convention on Nationality,¹¹ and the Council of Europe Convention on the avoidance of statelessness in relation to State succession.¹²

Statelessness in Germany

9. The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone "*who is not considered as a national by any state under the operation of its law*".¹³ The definition of a stateless person in German law aligns with the 1954 Convention.¹⁴ However, there is no dedicated Statelessness Determination Procedure in Germany to identify and protect stateless persons. Although there are a number of administrative procedures¹⁵ relevant to stateless persons, these currently do not offer all the rights and protection stipulated by the 1954 Convention.¹⁶
10. There is no clear or binding guidance on how to determine statelessness on individual basis. In each federal state (*Land*), the aliens' authority follows its own rules that seem to be based upon the General Administrative Regulations for the Nationality Act. The General Administrative Regulations for the Nationality Act briefly mentions stateless people in relation to the acquisition of nationality, prevention of statelessness, vulnerable groups and the renunciation of German nationality. Further, the General Administrative Regulation for the Residence Act provides some (vague) procedural instructions on in relation to the collection of evidence and the obligation to participate in the procurement of documents.¹⁷

⁵ Gesetz zu dem Übereinkommen vom 28. September 1954 über die Rechtsstellung der Staatenlosen, BGBl 1976 II, 473.

⁶ Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit (Gesetz zur Verminderung der Staatenlosigkeit), I BGBl 1977, 1101.

⁷ BGBl II 1973, 1534.

⁸ BGBl II 1985, 647.

⁹ BGBl II 1992, 122.

¹⁰ BGBl II 1952, 685.

¹¹ BGBl II 2006, 1353.

¹² BGBl II 2004, 578.

¹³ Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117, art 1.

¹⁴ §1 Gesetz zu dem Übereinkommen vom 28. September 1954 über die Rechtsstellung der Staatenlosen, BGBl II 1976, 473.

¹⁵ BGBl I 2008, 162; BGBl I 2017, 2780; BGBl I 2004, 2945; BGBl I 2017, 3066; GMBI 2009, 878; Holger Hoffmann, 'Staatenlosigkeit – Rechte und rechtliche Folgen' (2017) 9 Asylmagazin 327-329.

¹⁶ UNHCR, Handbook on Protection of Stateless Persons, 2014. Available at: <http://www.refworld.org/docid/53b676aa4.html>
¹⁷ 3 on §3a

4.4.1; 8.1.3.1; 18 Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeits-recht (StAR-VwV) vom 13. Dezember 2000 [General Administrative Regulation for the Nationality Act]. See eg 25.5.4 Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]

11. UNHCR estimates there to be 12,017 stateless persons in Germany in 2016.¹⁸ This figure relies on the data of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* - BAMF) and its Central Register of Aliens (*Ausländerzentralregisters* - AZR). In 2011, 11,298 people self-identified as being stateless during the first national census after Germany's reunification.¹⁹ More data on stateless individuals in the country between the years 1967 and 2016²⁰ is provided by the *GENESIS Online Datenbank*.²¹ Genesis provides insights on, for example, the number of stateless people that were granted nationality based upon article 2 of the Convention on Reduction of Statelessness (foundlings),²² article 8 on discretionary naturalisation (*Ermessenseinbürgerung*) and article 10 on claim to naturalisation (*Anspruchseinbürgerung*) of the German Nationality Act.²³ Further, this data distinguishes between federal state and district levels, and disaggregates data by age, sex, length of stay and marital status of stateless individuals. Stateless people are also listed in the statistics of foreigners in a direct and indirect manner, in relation to data on the length of stay, type of residence permit, asylum and sex.²⁴ Finally, both statistical themes ('naturalisation of foreigners' and 'statistics of foreigners') contain the category 'Unknown/ Not specified' which may include within them, stateless people as well.
12. There is also some data on stateless refugees. The parliamentary inquiries (*Kleine oder Große Anfrage*) of MPs to the German government have unearthed some information in this regard,²⁵ which should be looked at alongside the information published by the Federal Office for Migration and Refugees.²⁶ However, there is no solid, structured and transparent data on this particular group. This gap in data is further accentuated by a high number of individuals being recorded as having 'unknown' or 'unspecified' nationality. In 2015, 11,721 such persons were listed in the statistics of the Federal Office for Migration and Refugees. In 2016, the number reported was 14,659.²⁷ The lack of accuracy and correctness of the data collected by the Central Register of Aliens has also been subject to recent criticism and concern.²⁸
13. Against the above-mentioned background, it is difficult to determine the scale of the issue in Germany and to monitor whether the country is complying with its international obligations to protect stateless persons, and prevent and reduce statelessness.

¹⁸ The statistics indicate 11,917 stateless people in 2014 and 12,569 stateless individuals in 2015. UNHCR, 'Population Statistics. Persons of concern' <http://popstats.unhcr.org/en/persons_of_concern

¹⁹ Further, the census counted 130 people with 'unclear nationality', and 35,548 individuals 'without indications'. Statistische Ämter des Bundes und der Länder, 'Bevölkerung nach Staat der Staatsangehörigkeit und Geschlecht für Gemeinden. Ergebnisse des Zensus am 9. Mai 2011' (10. April 2014) <https://www.destatis.de/DE/Methoden/Zensus/_Downloads/2G_BevoelkerungStaatsangehoerigkeitGeschlecht.zip;jsessionid=8D5B65AC5F90329D878D6D66135185F3.cae4?__blob=publicationFile

²⁰ It should be noted that data between 1967 and 1989 only refer to former West Germany. In other cases, like naturalization, data may only be available between 2000 and 2016.

²¹ GENESIS-Online Datenbank <https://www-genesis.destatis.de/genesis/online/data;jsessionid=A81B519B7B39EEC8B7EB6534EB2AF1D9.tomcat_GO_1_3?Menu=Willkommen

GENESIS is the main database of the Statistische Bundesamt. Its data rely on the Central Register of Aliens (*Ausländerzentralregisters* - AZR).

²² Code 12: Population > Code 125: Naturalisation of Foreigners > Code 12511: Naturalisation of Foreigners; §2 Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit Gesetz zur Verminderung der Staatenlosigkeit (Gesetz zur Verminderung der Staatenlosigkeit), BGBl 1977 I, 1101 [Implementing Law to the Convention of 30 August 1961 on the Reduction of Statelessness and to the Convention of 13 September 1973 on the Reduction of Cases of Statelessness (Law on the Reduction of Statelessness)].

²³ Code 12: Population > Code 125: Naturalisation of Foreigners > Code 12511: Naturalisation of Foreigners; §8, §10 Abs 1, 3-7 Staatsangehörigkeitgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 3 des Gesetzes vom 11.10.2016 (BGBl I 2016, 2218) [Nationality Act].

²⁴ Code 12: Population > Code 12521: Statistics of foreigners.

²⁵ Information is provided on the type of protection ground, average processing time, sex, and country of origin in *Kleine Anfrage* or *Große Anfrage* on Asylstatistik. Bundestag, 'Drucksachen' <http://www.bundestag.de/dokumente/drucksachen/>

²⁶ Das Bundesamt in Zahlen; Geschäftsstatistik.

²⁷ Bundesamt für Migration und Flüchtlinge, 'Das Bundesamt in Zahlen 2016. Asyl, Migration und Integration' (2017) 19.

²⁸ See eg Thomas Öchsner, 'Große Lücken im Ausländer-Register' (*Süddeutsche Zeitung*, 4 August 2017) <http://www.sueddeutsche.de/politik/asylpolitik-grosse-luecken-im-auslaender-register-1.3615716>

Lack of Protection for Stateless Persons in Germany

14. As stated above, a number of existing administrative provisions and procedures in Germany are relevant to stateless persons, but there is no dedicated mechanism through which statelessness is identified and stateless persons protected in line with the 1954 Convention. As the existing provisions are limited to immigration procedures within a decentralised administrative system with a high burden of proof on the applicant, it is difficult to understand how immigration authorities deal with statelessness when it arises.²⁹ In practice, many cases of statelessness appear to be identified if a case proceeds to the Administrative Court. A judicial determination of statelessness is not an acceptable alternative to an administrative procedure for several reasons: only a few cases can proceed to the courts, depending on the resources and access to legal aid of the applicants; the time to obtain a decision becomes considerably longer; and access to the courts in general is more complicated than access to administrative procedures.
15. There is little awareness of statelessness within Germany's international protection procedures and it is not clear if adequate guidance and discretion has been afforded to decision makers, to protect stateless persons through the granting of any form of 'stateless status' (or subsidiary protection) should statelessness arise and refugee protection be refused. For people affected, it appears that there is limited information available. Current publications in several languages by the BAMF focus on the asylum system and its steps.
16. One concern is that a combination of a high burden of proof on the applicant and a tendency within the BAMF to not grant statelessness status, applicants are often assumed to have a nationality which they are unable or unwilling to confirm. The fall-back option tends to be for individuals to be categorised as having 'unclear' nationality. This status remains with them, with no protection attached, despite the fact that many of these people may be stateless with an entitlement to protection under international law.
17. Under German law, all foreigners who enter or stay in the country have a duty to provide their passports or identity papers. If a foreigner does not possess such a document, they have the obligation to cooperate (*Mitwirkungspflicht*) with the authorities, and to take all reasonable measures to provide substantive proof of identity and origin. A failure to cooperate can lead to fines. Importantly, requiring a foreigner to repeatedly approach the embassy of their presumed country of nationality is unreasonable, if it is clear that this would be unsuccessful due to previous failed attempts.
18. While the burden of proof is with the individual, in instances where some facts, such as impossibility to leave, may be difficult to establish, or some documents difficult to obtain, the burden of proof is shared between the applicant and the government.³⁰

29 Bianchini, K, A Comparative Analysis of Statelessness Determination Procedures in 10 EU States, International Journal of Refugee Law, Volume 29:1, 2017, pp.42–83

³⁰ §3 Abs 1; §48 Abs 3; §49 Abs 3 Aufenthaltsgesetz vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Juli 2017 (BGBl 2017 I, 2780) [Residence Act]; §56 Abs 1-3; Aufenthaltsverordnung (AufenthV) vom 25.11.2004 (BGBl 2004 I, 2945), zuletzt geändert durch Artikel 1 der Verordnung vom 20.12.2016 (BGBl 2016 I, 3074) [Residence Regulation]; Rechtslupe, 'Identitätsfeststellung – und die Aufforderung zur Vorsprache bei der Botschaft' (2014) <https://www.rechtslupe.de/verwaltungsrecht/identitaetsfeststellung-und-die-aufforderung-zur-vorsprache-bei-der-botschaft-379549>; §98 Abs 2 Satz 3; Aufenthaltsgesetz vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Juli 2017 (BGBl 2017 I, 2780); [Residence Act]; 25.5.4 ; 48.3; 49.3; Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]; BVerwG, Urteil v 17.03.2004 - 1 C 1.03; VG Saarland v 18.07.2008 – 6 K 0106/06; BVerwG v 15.06.2006 – 1 B 54.06, Buchholz 402.242, §25 AufenthG, Nr 4. See also, Dr. Friedrich Schoch in Schoch, Schneider, Bier, *Verwaltungsgerichtsordnung. VwGO* (32. EL, CH Beck 2016) § 123 recital 97; VGH München, Urteil v 9.07.2012 - 20 B 12.30003; BVerwG, Urteil v 16.04.1985 - 9 C 109/84, BVerwGE 71, 180ff; Prof. Michael Dawin in Schoch, Schneider, Bier, *Verwaltungsgerichtsordnung. VwGO* (32. EL, CH Beck 2016) §86 recital 19ff.

19. If refused international protection, stateless persons in Germany can be issued a ‘toleration certificate’ (*Duldung*) for a limited period of time.³¹ ‘Tolerated’ persons may access the labour market after a specified time, and depending on their qualifications, but toleration does not confer any right of residence and the status must be renewed frequently. Furthermore, the ‘tolerated person’ has an obligation to take ‘necessary and reasonable steps’ to leave the country.³² Stateless persons are issued toleration certificates only for a few months at a time, which may be renewed for many years without granting access to any legal status or rights, leaving people in a situation of legal limbo.³³
20. After a period of ‘tolerated stay’, a person can obtain a temporary residence permit as long as they continue to face obstacles to return to their country of origin (*Aufenthaltserlaubnis*).³⁴ The temporary residence permit may be issued when removal is impossible in the foreseeable future through no fault of the applicant. If removal has not taken place within 18 months, this permit should be issued, but, in practice, this provision is not always implemented. Additionally, the temporary permit can be withdrawn if removal becomes possible at any point, if the impossibility to leave ceases to exist, or through readmission agreements.³⁵ Germany has entered into readmission agreements with many countries, some of which stipulate the return of persons who have simply transited through them, even if they are stateless, and they fail to guarantee any right of residence.³⁶
21. If a stateless person is granted a temporary residence permit for a total period of five years, they may apply for settlement if other conditions, such as having passed the German language test and not being in receipt of social security, are also met. However even in these cases, statelessness is not identified, and such failure can then present barriers to accessing travel documents under the 1954 Convention and naturalisation.³⁷ Therefore, the aforementioned provisions cannot be considered as adequate protection for stateless persons. The procedures do not identify stateless persons and the rights attached to the statuses granted do not guarantee the rights provided for in the 1954 Convention.
22. While the 1954 Convention does not explicitly prescribe how stateless persons should be identified, it implicitly requires states ‘to identify stateless persons in order to accord them appropriate standards of treatment under the Convention’.³⁸ A formal statelessness determination procedure would offer the most effective means to protect the rights of stateless persons who do not have the right to German nationality.³⁹ It would also allow Germany to better understand the extent of statelessness on its territory and to better monitor the status and treatment of stateless persons.⁴⁰
23. In order to determine statelessness in full accordance with the 1954 Convention, a statelessness determination procedure should, according to the UNHCR Handbook on Protection of Stateless Persons, be simple, accessible to everyone within the territory, and be fair and efficient.⁴¹ The procedure should be formalised in law and observe due process guarantees.⁴² In compliance with these standards, the

³¹ Toleration is not a residence title. §60a Abs 2 Satz 2 Aufenthaltsgesetz (AufenthG), in der Fassung der Bekanntmachung vom 25.02.2008 (BGBl I 2008, 162), zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Juli 2017 (BGBl I 2017, 2780) [Residence Act].

³² §60 Abs 3 Aufenthaltsgesetz in der Fassung der Bekanntmachung vom 25. Februar 2008 (BGBl I 2008, 162), zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Juli 2017 (BGBl I 2017, 2780)

³³ Ibid; and Bianchini, K, A Comparative Analysis of Statelessness Determination Procedures in 10 EU States, *International Journal of Refugee Law*, Volume 29:1, 2017, pp.42–83

³⁴ Bianchini, K., On the Protection of Stateless Persons in Germany, *Tilburg Law Review*, Vol. 19:1-2, 2014, pp. 35-51

³⁵ Ibid.

³⁶ Bianchini, K, The implementation of the Convention relating to the status of stateless persons: procedures and practice in selected EU States. PhD thesis, University of York, 2015.

³⁷ Ibid.

³⁸ UNHCR, *Handbook on Protection of Stateless Persons*, 2014. Available at: <http://www.refworld.org/docid/53b676aa4.html>

³⁹ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>, p. 2.

⁴⁰ UNHCR, *Global Action Plan to End Statelessness, Action 6*, 4 November 2014, available at:

<http://www.refworld.org/docid/545b47d64.html>; UNHCR, *Mapping Statelessness in Austria*, January 2017, available at:

<http://www.refworld.org/docid/58b6e5b14.html>, para 125.

⁴¹ UNHCR, *Statelessness Handbook*, paras. 63, 68 and 69.

⁴² Ibid, para 71.

statelessness determination procedure should provide for a shared burden of proof, the standard of proof should be reduced and applicants should be offered an individual interview.⁴³ Moreover, information and counselling about the procedure should be widely disseminated in order to facilitate access to the procedure.⁴⁴ Additional procedural and evidentiary safeguards for child applicants should be put in place, including ‘priority processing of their claims, provision of appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State’.⁴⁵ Government officials who may come in contact with stateless persons through their regular work (for example, social services or immigration control) should be trained to identify potential applicants and should refer them to the determination procedure.⁴⁶ Finally, authorities involved in the identification of stateless persons should be provided with training on statelessness and the human rights of stateless persons.⁴⁷

Prevention and Reduction of Statelessness in Germany

24. As a party to the UN Convention on the Rights of the Child (Article 7), Germany is obliged to immediately register all new-borns on its territory. However, there is evidence that new-borns of refugee parents living in initial reception facilities and emergency shelters in the country are not receiving birth certificates.⁴⁸ According to article 9 para 2 of the Civil Status Act, they can be issued a birth certificate; or in situations where documentation required to issue birth certificates is lacking (such as the parents documents), a certified extract from the birth registry can be issued upon the parents taking an oath.⁴⁹ However, the decision is at discretion by the officer. Refugees and undocumented migrants face problems to certify the birth of their child due to missing documents (marriage certificate, birth certificate etc.). Though birth registration is not synonymous to statelessness, it is fundamental to acquiring a nationality and preventing statelessness.
25. Moreover, if parents cannot provide the required documents, such as a marriage certificate, the child is only registered with the mother’s name on the birth certificate. There have been incidents in which parents have rejected such birth certificates or extracts, as the nationality laws of their home country require the father’s name to be registered in the birth certificate.⁵⁰ As discussed below, for Syrian refugees for example, due to the gender discriminatory nature of Syrian nationality law, the non-inclusion of the father’s name on the certificate is likely to result in the child being denied Syrian nationality.
26. A further major barrier to birth registration for undocumented or irregular migrants is the requirement of civil registry officials to communicate the identification of such persons to the immigration authorities. Many undocumented migrants therefore fear contacting birth registry officials due to their insecure immigration status. Barriers to birth registration in practice for some groups in Germany has been raised by the Committee on the Rights of the Child.⁵¹

⁴³ Ibid, paras. 71, 89-93.

⁴⁴ Ibid, para 68; UNHCR, *Good Practices Paper – Action 6*, p. 5.

⁴⁵ UNHCR, *Statelessness Handbook*, para 119.

⁴⁶ UNHCR, *Good Practices Paper – Action 6*, p. 4.

⁴⁷ Although Colombia only granted statelessness status to one individual in 2016, it is of note that Colombia’s provision of a three-year travel document to those it identifies as stateless surpasses the one-year travel document duration suggested in the 1954 Convention.

⁴⁸ Deutsches Institut für Menschenrechte, *Die Politik muss dafür sorgen, dass Kinder von Geflüchteten Geburtsurkunden erhalten*, 1 June 2016. Available at: <http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/die-politik-muss-dafuer-sorgen-dass-kinder-von-gefluechteten-geburtsurkunden-erhalten>

⁴⁹ §9 Abs 2; §55 Abs 1 Punkt 1, 4; Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122), zuletzt geändert durch Artikel 2 Absatz 2 des Gesetzes vom 20. Juli 2017 (BGBl 2017 I, 2787) [Civil Status Act]

⁵⁰ Deutsches Institut für Menschenrechte, *Die Politik muss dafür sorgen, dass Kinder von Geflüchteten Geburtsurkunden erhalten* (Press release, 1 June 2016) <<http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/die-politik-muss-dafuer-sorgen-dass-kinder-von-gefluechteten-geburtsurkunden-erhalten/>; BT-Drucksache 18/9163 of 13 July 2016

⁵¹ Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Germany*,

27. It is also important to note that Germany has obligations under Article 7 of the Convention on the Rights of the Child to respect every child's right to acquire a nationality and to

“ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”⁵²

28. In this regard, it must be noted that while Germany has a safeguard in its nationality law to ensure that otherwise stateless children would have access to nationality, this safeguard is not comprehensive, meaning that some children can fall through the cracks. One of the limitations of the German safeguard, is that it imposes a residence status requirement on the parents. In other words, the law requires that the parents of the child are legally resident in the country, for the child to benefit from this status.⁵³ This requirement is contrary to the CRC, with the Committee consistently recommending that all children born on a state's territory who would otherwise be stateless, should be able to acquire nationality, irrespective of the legal status of their parents.⁵⁴

29. It is also important to note, that in the context of the large refugee population being hosted by Germany, the failure to register the birth of refugee children, or to grant them documents only in the mother's name, can undermine their right to acquire nationality, particularly if their parents are Syrian nationals. This is because Syrian nationality law is gender discriminatory, and women cannot pass on their nationality to their children. Therefore, it is extremely important that Germany assesses the risk of statelessness of all refugee children born in the country, and ensures that those who would otherwise be stateless are granted German citizenship.

Recommendations

30. Based on the content of this submission, the Institute on Statelessness and Inclusion and the European Network on Statelessness urge reviewing states to make the following recommendations to Germany:

- I. Gather and make publicly available comprehensive national data to improve the protection of stateless persons in the country and facilitate the monitoring of its international obligations in relation to statelessness.
- II. Put in place a dedicated statelessness determination procedure at federal level that meets international standards, good practice and procedural safeguards as outlined in UNHCR's Handbook on Protection of Stateless Persons.
- III. Take urgent steps to guarantee the right of every child born on its territory to be registered, irrespective of the status of its parents, including by registering the names of both parents on a birth certificate and removing the obligation on registry officials to communicate the presence of irregular migrants to the immigration authorities.
- IV. Ensure that the right of every child to acquire a nationality, as set out in CRC Article 7 is respected, and that all – otherwise stateless – children born in Germany, irrespective of the legal status of their parents, are granted German citizenship.

UN Doc CRC/C/DEU/CO/3-4, 6, 25 February 2014

⁵² Article 7.1 of the Convention on the Rights of the Child

⁵³ Ileen Verbeek, *Ending Childhood Statelessness, A comparative study of safeguards to ensure the right to a nationality for children born in Europe*, European Network on Statelessness, 2016, available at:

http://www.statelessness.eu/sites/www.statelessness.eu/files/file_attach/ENS_1961_Safeguards_Stateless_children.pdf

⁵⁴ See for example, UN Committee for the Rights of the Child, 'Concluding Observations Switzerland' (30 January 2015)

CRC/C/CHE/CO/2-4