

Joint Submission to the Human Rights Council at the 39th Session of the Universal Periodic Review

IRELAND

Introduction

1. The Immigrant Council of Ireland (Immigrant Council), European Network on Statelessness (ENS), and Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Ireland. The co-submitting organisations also made a joint submission on the right to a nationality and statelessness, during the Second Cycle, in advance of the 25th Session of the UPR.¹
2. This submission focuses on the right to a nationality and human rights challenges encountered by stateless persons (primarily in residence and migration related applications) in Ireland, with particular reference to difficulties in accessing Irish nationality as well as the legislative and procedural deficits that result in stateless persons being treated less favourably by Irish authorities than those who hold a nationality. In particular, the submission addresses:
 - I. The rights of stateless persons and access to a nationality,
 - II. Children’s right to a nationality, and
 - III. Deprivation of nationality.
3. The Immigrant Council of Ireland – Independent Law Centre (ICI)² is the leading voice in securing improved rights and protections in the area of immigration, citizenship and anti-racism in Ireland. It offers support, advice and information, while also achieving positive change through strategic legal action and engagement with lawmakers to make immigration laws fit for purpose. It is committed to supporting individuals and families often at a vulnerable stage in their life, including victims of human trafficking and stateless persons. The Council works in coalition with like-minded individuals, organisations and stakeholders to deliver genuine change at both a national and European level. The Council has contributed to a number of reports to UN and Council of Europe monitoring bodies on Ireland’s compliance with international and regional human rights instruments.
4. The European Network on Statelessness (ENS)³ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing

¹ See: <https://files.institutesi.org/IrelandUPR2015.pdf>

² <https://www.immigrantcouncil.ie/>

³ For more information about the European Network on Statelessness, see: www.statelessness.eu.

statelessness in Europe, which currently has over 160 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS’s Statelessness Index, which covers Ireland.⁴

5. The Institute on Statelessness and Inclusion 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. The Institute has made over 75 country specific UPR submissions on the right to nationality and the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review from the 23rd to the 37th UPR Sessions.⁵

Previous UPR of Ireland under the First and Second Cycle

6. Ireland was previously reviewed during the 12th and 25th sessions of the UPR in 2011 and 2016 respectively. The right to a nationality and statelessness were not directly addressed in either cycle, and no recommendations were made to Ireland to specifically address these issues.
7. During the 12th session, Ireland received the following recommendations, which are also relevant for stateless persons:
 - I. In line with the recommendations made by CERD, adopt and implement immediately legislation prohibiting any form of racial discrimination and ensure humanitarian treatment for migrants and persons of non-Irish origin [...] (Mexico);⁶
 - II. Take the necessary measures to avoid detention of asylum-seekers and to avoid situations which may equate the condition of immigrants to that of felons (Brazil);⁷
 - III. Strengthen its laws to prohibit racial profiling and strengthen its efforts to promote humane, dignified and non-selective treatment for migrants and other persons who are not of Irish origin (Honduras);⁸

Ireland accepted the first and second recommendations and noted the third.⁹

8. During the 25th session, Ireland received the following recommendations which it partially accepted:
 - I. Give the broadest possible scope, flexibility and coverage to its immigration policy (Bolivarian Republic of Venezuela); and

⁴ The Statelessness Index on Ireland can be accessed at: <https://index.statelessness.eu/country/ireland>.

⁵ For more information, see <https://www.institutesi.org/>.

⁶ A/HRC/19/9, recommendation 107.24.

⁷ A/HRC/19/9, recommendation 107.35.

⁸ A/HRC/19/9, recommendation 108.13.

⁹ A/HRC/19/9/Add.1.

II. Improve the protection of refugees, migrants and asylum seekers (China).

Ireland also received recommendations from 14 Working Group members to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Ireland confirmed that there were no plans to accede to the ICRMW. During the 25th session, the then Minister for Justice and Tánaiste referred to the introduction of citizenship ceremonies as an innovation that provides an important symbolic opportunity for the Irish State to welcome new citizens.¹⁰

9. In relation to both of Ireland's previous UPRs, the UN High Commissioner for Refugees (UNHCR) stated that the lack of a formal statelessness determination procedure meant that stateless persons may experience difficulties in realising their rights under the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention), and recommended that Ireland: (i) establish a statelessness determination procedure; and (ii) facilitate interim solutions for stateless persons prior to the introduction of such a procedure.¹¹

Ireland's International obligations

10. Ireland is State party to both the 1954 and 1961 Statelessness Conventions, but neither Convention has been fully incorporated into domestic law, which is required for them to have effect in Ireland. It retains a reservation to Article 29 (1) of the 1954 Convention (on fiscal charges) and, when acceding to the 1961 Convention, Ireland stated that it would retain the right to deprive naturalised Irish citizens of their nationality on grounds specified in national law.¹²
11. Ireland has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others the International Covenant on Civil and Political Rights (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (see Articles 2.2 and Article 3), the Convention on the Rights of the Child (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (see Article 5(d)(iii)) and the Convention on the Rights of Persons with Disabilities (see Article 18).¹³ Furthermore, the right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights.
12. Ireland is not a State party to the European Convention on Nationality, nor the Convention on the Avoidance of Statelessness in Relation to State Succession. Ireland

¹⁰ Intervention by the Tánaiste at the Universal Periodic Review 2nd Cycle in Geneva, 11 May 2016:

<http://www.justice.ie/en/JELR/Pages/SP16000101>.

¹¹ See UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Ireland, March 2011, available at:

<https://www.refworld.org/docid/4d8867982.html>; and UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Ireland, 2016.

¹² Revocation of a certificate of naturalisation is provided for at Section 19(1) of the Irish Nationality and Citizenship Act 1956 as amended available at <http://www.irishstatutebook.ie/eli/1956/act/26/section/19/enacted/en/html>.

¹³ See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

is party to the European Convention on Human Rights but retains a reservation in relation to the provision of free legal aid.

13. In 2020, the Committee on the Elimination of Racial Discrimination (CERD) recommended that Ireland establish a procedure for the determination of statelessness.¹⁴ CERD also raised concerns about the lack of quantitative and qualitative data on refugees, beneficiaries of international protection, asylum seekers and stateless persons. Regarding refugees, asylum seekers and stateless persons, CERD also recommended that Ireland reduce the waiting period before a person is eligible to work and remove barriers to obtaining employment, including by providing transport, and employment and training services.¹⁵
14. Ireland did not make any pledges at UNHCR's High-Level Segment on Statelessness in October 2019.¹⁶

Snapshot of Statelessness in Ireland

15. There is very limited data available on the stateless population in Ireland and there are no reliable estimates for the size of the population affected by statelessness. However, there are indicators that statelessness occurs predominantly in a migratory context and impacts primarily on people with a migrant or refugee background. It is the experience of the Immigrant Council of Ireland that those affected by statelessness include migrants and refugees from former USSR States, Rohingya Muslims and members of minority groups such as Roma and Bidoon, however, without formal data it is not possible to provide a complete profile of the stateless population in Ireland.
16. The last census, carried out in 2016, included an option to record 'no nationality' on the census form and the next census (postponed to 2022 due to COVID-19) will ask respondents about citizenship, providing the option to respond 'no citizenship'. In 2016, 1,487 respondents identified that they had 'no nationality'.¹⁷ From 2002 to 2014, the Refugee Appeals Tribunal (which assesses eligibility for refugee status) found that 82 applicants were stateless but not refugees. This indicates the existence of a group of people who may be stateless and for whom there is no clear procedure to resolve their legal status in the country.¹⁸ According to UNHCR, in 2019 there were 99 stateless persons in the country.¹⁹ In 2018, of the total of 4,797 persons who were refused permission to enter Ireland (leave to land),²⁰ 55 were recorded as 'stateless', but some may have subsequently applied for international protection (the disaggregated data is

¹⁴ Concluding observations on the combined fifth to ninth reports of Ireland, CERD/C/IRL/CO/5-9, 23rd January 2020, Recommendation 36.

¹⁵ Concluding observations on the combined fifth to ninth reports of Ireland, CERD/C/IRL/CO/5-9, 23rd January 2020, Recommendation 36.

¹⁶ See <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

¹⁷ Data obtained from search under Migration at <https://data.cso.ie/> conducted 15.02.2021 Census 2016, Profile 7 - Migration and Diversity, E7002 - Population Usually Resident and Present in the State 2011 to 2016, Nationality, No nationality.

¹⁸ Irish Times 'Living in a state of statelessness' 5 November 2014; <https://www.irishtimes.com/news/world/living-in-a-state-of-statelessness-1.1987766> <accessed on 3 February 2021>.

¹⁹ UNHCR, Global Trends Forced Displacement in 2019, June 2020: <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>.

²⁰ See Department of Justice and Equality, Immigration in Ireland: Annual Review 2018: <http://www.inis.gov.ie/en/INIS/Immigration-in-Ireland-Annual-Review-2018.pdf/Files/Immigration-in-Ireland-Annual-Review-2018.pdf>.

not fully available by nationality/statelessness).²¹ Due to the lack of reliable data, it is not possible to quantify how many people are impacted by statelessness in Ireland nor accurately identify the extent of the issue and the underlying causes.²²

17. The legal and policy framework related to the right to a nationality, and the rights of stateless persons in Ireland has, on paper, some positive aspects. Nationality law provides for accelerated naturalisation of stateless persons and the waiver of fees. However, as will be discussed in para. 33-35, practical challenges exist in relation to facilitated naturalisation due to the lack of a statelessness determination procedure. Although statelessness may be examined in the context of other administrative procedures, determination of statelessness is not the explicit objective of any of these procedures, and they do not lead to adequate protection and rights under the 1954 Convention.
18. Further, national law does not contain a definition of a stateless person, and the national legal framework does not allow for direct application of the 1954 Convention definition without incorporation into domestic law.
19. There are some safeguards to ensure children's right to a nationality in Ireland, but there are gaps in law and practice for some children born stateless on the territory. Further, it is unclear how a child's nationality may be determined if they are not entitled to apply for an Irish passport, resulting in a risk of statelessness in some cases.²³
20. International law prohibits the arbitrary deprivation of nationality, as well as nationality deprivation which is discriminatory or results in statelessness. As this submission will elaborate, nationality deprivation practices in Ireland lack adequate safeguards in this regard.
21. International law also prohibits arbitrary detention. Without adequate safeguards, stateless people can be at particular risk of arbitrary immigration detention.²⁴ Immigration detention is generally the exception rather than the norm in Ireland. Stateless people are not routinely detained, but there are some gaps in legal protections against their arbitrary detention. For example, there is no requirement for a country of removal to be identified in deportation orders and statelessness is not proactively considered in decisions to detain. The law does not explicitly provide that detention should only be used as a measure of last resort after all alternatives have been exhausted and legal aid is not guaranteed. People released from immigration detention are not issued with identification documents nor do they have specific rights unless they have applied for international protection.

²¹ Eurostat, Third country nationals refused entry at the external borders - annual data (rounded) online data code:

https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIRFS_custom_568286/default/table?lang=en.

²² A 2014 UNHCR scoping paper on statelessness in Ireland concluded that there was an absence of reliable data to estimate the size of the affected population. UNHCR Scoping Paper: Statelessness in Ireland, 2014:

<https://www.refworld.org/pdfid/5448b6344.pdf>.

²³ See paragraphs 37-41 below.

²⁴ European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, 2017:

https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf; European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners, 2017: https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf.

Issue 1: The rights of stateless persons and access to a nationality

Identification and determination of statelessness

22. Identifying stateless people in the country is a necessary first step to providing them a secure legal status, and protecting and ensuring their enjoyment of basic human rights. Without early identification and formal determination of statelessness, stateless persons cannot enjoy their rights under human rights treaties and the 1954 Convention, including access to economic, social, civil, and political rights, the right to administrative assistance, and exemption from requirements which by their nature a stateless person is incapable of fulfilling. Given the barriers that stateless people face in accessing their human rights, it is important to determine statelessness to ensure that laws and policies do not directly or indirectly discriminate against stateless persons in the enjoyment of such rights.
23. Identifying statelessness is also essential to protecting everyone's right to a nationality. While stateless migrants and refugees in Ireland may have had their right to a nationality denied or deprived by another country, Ireland is obligated under the 1954 Convention to facilitate the naturalisation of such persons. Although this obligation does not require Ireland to guarantee Irish nationality to all stateless persons (some may not fulfil naturalisation criteria for example), identifying stateless persons, determining their statelessness in a formal procedure, and thereby granting them access to facilitated naturalisation (among other rights) is often the only pathway to solve statelessness, and ensure that stateless migrants and refugees can enjoy their right to a nationality, as secured under international human rights law.
24. As will be addressed in the next section, Ireland is further obligated to ensure that no child is born stateless in the country. It is essential to have safeguards in place to determine the child's nationality or whether a child would otherwise be stateless as soon as possible after birth. In this context, determining statelessness of adults also facilitates the identification of children born in the country who are at greatest risk of statelessness.
25. The determination of statelessness is best fulfilled through a dedicated statelessness determination procedure (SDP) with the necessary safeguards and procedural guarantees in line with UNHCR guidelines.²⁵ The absence of a dedicated SDP in Ireland is one of the root causes of human rights violations against stateless people, the lack of adequate protection of stateless persons and, ultimately, facilitating the right to a nationality for all. Establishing a dedicated SDP also helps States understand the issue of statelessness at national level, through the collection of data and information on trends and developments, to which it can adequately respond and therefore meet its duty to protect the rights of stateless persons and reduce statelessness.
26. In the absence of a dedicated statelessness determination procedure, the authorities in Ireland may examine issues of statelessness, for example, in the context of

²⁵ UNHCR, Handbook on Protection of Stateless Persons, 2014:

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

immigration, international protection,²⁶ or nationality related procedures. This is done on an *ad hoc* basis having regard to the specific case under consideration.

Legal status and residence permits

27. The consequence of a person being determined to be stateless under a dedicated SDP must be to guarantee access to the rights stateless persons are due under international law. Importantly, statelessness determination should result in secure legal status through the granting of a residence permit, which is essential to provide adequate protection to stateless persons and prevent further human rights violations. It is through access to a residence permit that stateless people are able to access their rights in Ireland. UNHCR recommends that States grant recognised stateless people a renewable residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability.
 28. While stateless persons are not prohibited from making applications for residence permission under existing administrative or statutory schemes, there is no published guidance or policy on how such applications are handled. Evidence of identity, including a passport, must be provided in support of an application for a residence permit submitted to the Minister of Justice. While this requirement may be waived in practice, there is no published guidance on the evidentiary requirements to be provided by applicants, nor information on how to address issues related to statelessness.
 29. When the Minister for Justice is considering the imposition of a deportation order there is no requirement to consider statelessness as a relevant factor, but regard must be had to humanitarian considerations and any representations made.
 30. If residence permission is granted (either following an application to the Minister or following the Minister's determination that a deportation order should not be made) this is set out in a decision letter. The decision letter that grants residence permission does not typically explain the basis of the decision, it will not state that the individual is a stateless person and may record a nationality that the individual asserts they do not hold. While a residence permit granted by the Minister for Justice can be renewed, it is at the Minister's discretion whether it should be renewed and on what terms.
 31. The decision letter granting residence permission typically directs the individual to attend the local immigration office with evidence of identity in order to obtain a certificate of registration (Irish Residence Permit card). Although the requirement to produce evidence of identity can be waived in practice, the decision letter does not always set this out. Even where certain requirements are waived by one State authority it may not be accepted by other State authorities as definitive evidence that a person is stateless and does not have a nationality. Aside from applications for international protection, all residence permission and nationality applications are written applications, relying on representations and documentary evidence and sometimes a specific application form. This means that a stateless person may be required to repeatedly make the same representations to different State authorities or even to different units of the Department of Justice. Consequently, even though it may
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have implicitly been accepted that the applicant cannot produce evidence of identity and is stateless, this is not confirmed in writing and gives rise to ongoing difficulties for the individual following the grant of residence permission in trying to deal with other State bodies that may require evidence of identity (for example, to issue public service cards, social security, or driving licences).

32. Stateless refugees are granted rights akin to nationals, including a right to employment, education, social security, healthcare, renewable residence of at least three years, a travel document, and family reunification. Stateless people granted residence outside of international protection proceedings are usually provided with terms and conditions by the Minister for Justice on an administrative basis and rights are not set out in law. These usually include a residence permit for a minimum of 12 months (renewable on certain conditions) and access to the labour market. They can also usually access social security and healthcare but may face barriers in practice due to the lack of identity documents. Travel documents may be granted on a discretionary basis to stateless persons, although processing times can be lengthy (currently six months or longer).

Facilitated access to naturalisation

33. According to the 1954 Convention, States should facilitate, as far as possible, the naturalisation of stateless persons.²⁷ This is key to the reduction of statelessness and ensuring the right to a nationality for stateless persons. Stateless people should be exempted from requirements such as citizenship or integration tests, language testing, application fees, or minimum income requirements and previous criminal convictions or 'good character' requirements should not unreasonably prevent stateless people from acquiring nationality.
34. Naturalisation is the primary pathway for migrants and refugees who are resident in Ireland and who have no prior ties to Ireland to acquire Irish nationality.²⁸ Nationality is granted at the discretion of the Minister for Justice and is subject to the applicant satisfying certain conditions.²⁹ Certain naturalisation requirements may be waived at the discretion of the Minister for Justice for certain naturalisation applicants, including stateless persons.³⁰
35. Although Irish law establishes a facilitated route to naturalisation for stateless people, in practice, without any mechanism to identify and determine statelessness, it is very difficult for a stateless person to prove their eligibility for naturalisation and meet the relevant requirements. Refugees and stateless persons may, in theory, apply for facilitated naturalisation after a reduced minimum residence period of three years (in comparison to five years) but granting of nationality is discretionary. Naturalisation may be refused on the basis of the stateless person being unable to prove their statelessness due to the lack of an SDP and lack of recognition by the authorities of their statelessness. The Minister for Justice has granted Irish nationality to some individuals who have asserted they are stateless and the INIS has waived the

²⁷ Article 32 of the 1954 Convention relating to the Status of Stateless Persons.

²⁸ Sarah Groarke and Róisín Dunbar, 'Pathways to citizenship through Naturalisation in Ireland': https://www.esri.ie/system/files/publications/RS116_2.pdf <accessed on 3 February 2021>.

²⁹ Section 15 of the Irish Nationality and Citizenship Act, 1956.

³⁰ Section 16(1)(g) of the Irish Nationality and Citizenship Act, 1956.

requirement to provide evidence of identity during the application process. However, the fee waiver for stateless people was not applied, as the applicant could not produce a certificate proving their statelessness, which the Minister for Justice refuses to issue to stateless persons.

Issue 2: Children’s right to a nationality

36. The right to a nationality is ‘essential for the protection of every child’.³¹ As a signatory to the Convention on the Rights of the Child (CRC), Ireland must implement Article 7 to provide for the right of every child to be registered immediately after birth and acquire a nationality “in particular where the child would otherwise be stateless”, and Article 8 to respect the right of the child to preserve his or her identity, including nationality. As a State party to the 1961 Convention on the Reduction of Statelessness, Ireland has further obligations to prevent and reduce statelessness.³² Obligations deriving from the 1961 Convention require Ireland to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.³³ This includes the underlying principles of non-discrimination (Article 2 of the CRC), and that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration (Article 3).

Risk of statelessness for children born on the territory

37. The Irish Nationality and Citizenship Act 1956 (the “**Citizenship Act**”) governs the acquisition of nationality in Ireland.³⁴ Under Section 6(3), a person born in Ireland is an Irish national from birth if they are ‘not entitled to citizenship of any other country’.³⁵ However, there is no published guidance on how this provision should be implemented. The wording of the law leaves a gap for children who may be entitled but cannot acquire the nationality of one of their parents (for example, if parents are refugees and cannot meet a requirement to register with consular authorities as such contact may expose them to a risk of persecution or serious harm and even lead to the

³¹Institute on Statelessness and Inclusion, Statelessness Essentials Booklet on Childhood Statelessness, 2018: <https://files.institutesi.org/childhood-statelessness.pdf>, Institute on Statelessness and Inclusion, Statelessness Essentials Booklet on The Convention on the Rights of the Child, 2018: <https://files.institutesi.org/statelessness-and-CRC.pdf>, Institute on Statelessness and Inclusion, World’s Stateless Report: Children, 2017: <https://files.institutesi.org/worldsstateless17.pdf>, Institute on Statelessness and Inclusion, Toolkit on Addressing the Right to a Nationality through the Convention on the Rights of the Child, 2016: https://files.institutesi.org/CRC_Toolkit_Final.pdf, UNHCR, Ensuring the right of all children to acquire a nationality, 2018: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/52206aa54.html>.

³² 1961 Convention; UNHCR, 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, 21 December 2012, HCR/GS/12/04: <https://www.refworld.org/docid/50d460c72.html>; European Network on Statelessness, No Child Should Be Stateless, 2015: https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf; Institute on Statelessness and Inclusion, World’s Stateless Report: Children, 2017: <https://files.institutesi.org/worldsstateless17.pdf>.

³³ UNHCR, 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, 21 December 2012, HCR/GS/12/04: <https://www.refworld.org/docid/50d460c72.html>

³⁴ Consolidated version of the Irish Nationality and Citizenship Act, 1956 (as amended):<http://www.inis.gov.ie/en/INIS/Irish%20Nationality%20and%20Citizenship%20Act%201956%20-%202011%20informal%20consolidation.pdf/Files/Irish%20Nationality%20and%20Citizenship%20Act%201956%20-%202011%20informal%20consolidation.pdf>

³⁵ Section 6(3) of the Irish Nationality and Citizenship Act, 1956 (as inserted by section 3 of the Irish Nationality and Citizenship Act, 2001) which provides that “A person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country.”

cancellation of their protection status). If the child's mother is unable to pass on her nationality to her children – due to gender discriminatory nationality laws of her own country of nationality – and the father is unknown, uncontactable, or unable to transmit his nationality, the child may also be unable to evidence that they are not entitled to citizenship of any other country.³⁶ This can also arise where the parents' nationality is unknown or undetermined. The safeguard under Section 6(3) of the Citizenship Act creates a high evidentiary burden, difficult to comply with in practice, that may place children at risk of statelessness and prevent them from realising their right to a nationality.

38. It is not clear whether the provision in Section 6(3) of the Citizenship Act is automatic as there is no published guidance relating to the statutory provisions. As any person who claims to be Irish may apply for a certificate of nationality to the Minister for Justice, an application for such a certificate can be made on behalf of a child. At least one case has been reported of a stateless child born in Ireland who was issued a certificate of nationality through this route.³⁷ The typical procedure for a child to assert an entitlement to Irish nationality is to apply for a passport providing documentary evidence to support their birth-right entitlement. There is no reference to stateless children in the Passports Act nor guidance on applying for a passport in the scenario provided for in Section 6(3). It is likely that any request for a certificate of nationality or passport would be scrutinised closely and evidence required of the child's inability to acquire another nationality, but practice is unclear.
39. According to Section 6A of the Citizenship Act, individuals born in Ireland are Irish from birth provided they have at least one parent who: (i) is an Irish citizen, entitled to be an Irish citizen, or British citizen; (ii) has been lawfully resident in Ireland for at least three of the past four years; or (iii) has the right to live in Ireland or Northern Ireland without any restriction on their period of residence.³⁸ As explained above, Ireland lacks a dedicated statelessness determination procedure leading to a dedicated protection status, and stateless persons may not succeed in acquiring a residence permit on other grounds. Without a residence permit, parents will not be able to comply with the residence requirements provided under Section 6A of the Citizenship Act. Furthermore, if they cannot prove that their children are 'not entitled to citizenship of any other country',³⁹ there is a risk that children will remain stateless throughout their childhood.
40. Positively, Irish law contains an explicit safeguard to prevent statelessness in the case

³⁶ UNHCR, UNICEF & Global Campaign for Equal Nationality Rights, Gender Discrimination and Childhood Statelessness, 2019: <https://www.unhcr.org/ibelong/wp-content/uploads/Gender-discrimination-childhood-statelessness-web.pdf>; UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2020, 2020:

<https://www.refworld.org/docid/5f0d7b934.html>. Countries that discriminate against mothers in their ability to confer nationality on their children include The Bahamas, Bahrain, Barbados, Brunei, Burundi, Eswatini, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Togo, United Arab Emirates. For further information see also the Global Campaign for Equal Nationality Rights: <https://equalnationalityrights.org/the-issue/the-problem>.

³⁷ Berkeley solicitors, 'Stateless child born in Ireland granted a certificate of nationality', 28 August 2020: <https://berkeleysolicitors.ie/stateless-child-born-in-ireland-granted-a-certificate-of-nationality/>.

³⁸ Section 6A of the Irish Nationality and Citizenship Act, 1956 (as inserted by section 4 of the Irish Nationality and Citizenship Act, 2004).

³⁹ Section 6(3) of the Irish Nationality and Citizenship Act, 1956 (as inserted by section 3 of the Irish Nationality and Citizenship Act, 2001) which provides that "A person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country".

of foundlings.⁴⁰ However, it is unclear if the safeguard applies to older children and at what stage a child is no longer considered 'newborn'.

Risk of statelessness for children born abroad

41. Irish legislation contains a safeguard to prevent statelessness in the case of adopted children⁴¹ and children born abroad to Irish nationals.⁴² Children born abroad are entitled to Irish nationality if one of their parents is Irish. However, the lack of regulation of all forms of assisted human reproduction can lead to increased risks of statelessness for some children, particularly for children born abroad to same-sex couples and if the Irish parent is not a birth parent. Although the statutory provisions are gender neutral and refer to 'parent', there are some possible risks arising in practice due to the lack of comprehensive regulation of all forms of assisted human reproduction, including surrogacy and reciprocal IVF.⁴³

Issue 3: Deprivation of nationality

42. Under international law, while States have broad discretion to regulate nationality matters, they do not have absolute discretion. Certain international standards and principles must be respected and complied with. The Principles on Deprivation of Nationality as a National Security Measure,⁴⁴ and the UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality⁴⁵ provide important guidance on the question of deprivation of nationality; the former, from a wider international law perspective, and the latter, more specifically in relation to the 1961 Convention. Accordingly, State discretion in this area is subject to the individual right to a

⁴⁰ Section 10 Irish Nationality and Citizenship Act 1956 (as amended).

⁴¹ Section 11 Irish Nationality and Citizenship Act 1956 (as amended).

⁴² Section 7 Irish Nationality and Citizenship Act 1956 (as amended).

⁴³ See Court of Justice of the European Union, Case C-2/21: a referral from a Polish Court concerning a child born to a Polish and Irish couple in Spain; and media reports highlighting difficulties in asserting nationality of children born through donor-assisted human reproduction to same sex couples: [Getting IVF abroad: 'Our daughter is stateless, she doesn't exist' \(irishtimes.com\)](https://www.thejournal.ie/parental-rights-legislation-limbo-noteworthy-5148504-Jul2020/), <https://www.thejournal.ie/parental-rights-legislation-limbo-noteworthy-5148504-Jul2020/>.

⁴⁴ Principles on Deprivation of Nationality as a National Security Measure, March 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>.

⁴⁵ UNHCR, Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05: <https://www.refworld.org/docid/5ec5640c4/html>. The Guidelines provide guidance on the interpretation of Articles 5 – 9 of the 1961 Convention on the Reduction of Statelessness. They draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1 November 2013 ("Tunis Conclusions") and the Expert Meeting on Developments related to Deprivation of Nationality held in Geneva, Switzerland on 5-6 December 2019.

nationality,⁴⁶ the prohibition of arbitrary deprivation of nationality,⁴⁷ the prohibition of discrimination⁴⁸ and the obligation not to render a person stateless.⁴⁹ Further, the impact of nationality deprivation must be taken into consideration when assessing the legality of nationality deprivation. This includes, among other rights, the right to private and family life, legal personhood, and the rights of the child.⁵⁰ Any measure to deprive nationality must also comply with due process safeguards and the right to a fair trial.⁵¹

43. Irish law provides that Irish nationality granted by naturalisation may be revoked under certain conditions. Such conditions include where the Minister for Justice and Equality is satisfied that the certificate of naturalisation was obtained by fraud, misrepresentation or concealment of material facts or where a naturalised person has failed in a duty of fidelity and loyalty to the State.⁵² As such, the law in effect creates two tiers of citizenship – those whose citizenship is secure, and those whose citizenship can be revoked, raising concerns of discrimination. Further, there is no explicit safeguard if the revocation of citizenship would result in statelessness. There have been several proposals to revoke Irish nationality of naturalised nationals issued in recent years, but the determination of those cases had effectively been suspended awaiting the outcome of the test case of *Ali Charaf Damache v the Minister for Justice and Equality* challenging the procedure for revocation.⁵³ In the *Damache* case, the Supreme Court of Ireland ruled that the procedure which allows the Government to revoke the Irish nationality of naturalised citizens under Section 19 of the Citizenship Act is unconstitutional, and that “the process by which citizenship may be lost must be robust and at the very least [...] must observe minimum procedural standards in order to comply with the State’s human rights obligations”.⁵⁴ Procedural safeguards must be introduced to ensure that a decision to revoke a certificate of naturalisation will not result in the person becoming stateless.

44. In addition to the statutory provisions for revocation of Irish nationality granted by naturalisation, there are also statutory provisions relating to the refusal to issue an

⁴⁶ 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).

⁴⁷ Principles on Deprivation of Nationality as a National Security Measure, March 2020: <https://files.institutesi.org/PRINCIPLES.pdf>, Principle 7. See also, the Draft Commentary to the Principles: https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

⁴⁸ *Ibid.*, Principle 6.

⁴⁹ *Ibid.*, Principle 5.

⁵⁰ *Ibid.*, Principle 9., See in particular Principles 9.7 and 9.8 noting that: “States must protect the rights of the child 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” and that “the derivative deprivation of nationality is prohibited” under international law.

⁵¹ *Ibid.*, Principle 8.

⁵² Section 19 INCA 1956 (as amended):

<http://www.inis.gov.ie/en/INIS/Irish%20Nationality%20and%20Citizenship%20Act%201956%20-%202011%20informal%20consolidation.pdf/Files/Irish%20Nationality%20and%20Citizenship%20Act%201956%20-%202011%20informal%20consolidation.pdf>

⁵³ *Damache -v- Minister for Justice* [2021] IESC 6: [https://courts.ie/viewer/pdf/9f6e2c6d-eb77-4c9f-ad57-ffe7ffc65f6/2020_IESC_63%20\(Unapproved\).pdf/pdf#view=fitH](https://courts.ie/viewer/pdf/9f6e2c6d-eb77-4c9f-ad57-ffe7ffc65f6/2020_IESC_63%20(Unapproved).pdf/pdf#view=fitH) The appellant, Mr Ali Charaf Damache, an Algerian citizen by birth, became naturalised as an Irish citizen in 2008 through marriage. However, in October 2018 Ireland’s Minister for Justice and Equality issued Mr Damache a notice of intention to revoke his naturalisation certificate on the ground that the appellant had been disloyal to the State, after he pleaded guilty to a terrorist offence before a federal court in the United States.

⁵⁴ *Damache -v- Minister for Justice* [2021] IESC 6, para. 115.

Irish passport and/or cancellation and surrender of passports that have been issued. This may happen, for example, where the Passport Office has issued a passport in error to a child born in Ireland but who did not qualify for nationality at birth as a parent was not an Irish citizen and/or did not fulfil the necessary residence criteria prior to the child's birth. Although there is an appeal procedure, there is no explicit safeguard to prevent statelessness pending the conclusion of the legal process.⁵⁵

45. A case currently before the Irish High Court relates to the derivative loss of nationality of a seven-year-old child whose father's naturalised citizenship was revoked in 2020 after he joined the so-called 'Islamic State'.⁵⁶ The father, now feared dead, was naturalised in 2010 based on marriage to a British citizen whom he subsequently divorced. His nationality was revoked in 2020 on grounds of fraud, on the basis that this was a marriage of convenience. Ireland now refuses to recognise the child as an Irish national, despite the fact that he was born in 2013, when his father was an Irish national. This case raises questions regarding the child's right to a nationality and the derivative loss of nationality. It is also illustrative of the conflation of fraud and national security related nationality deprivation practices. The child's right to acquire and retain their nationality (Articles 7 and 8 CRC), the principle of the best interests of the child (Article 3) and the prohibition of discrimination (including by association – Article 2), must inform State practice in this regard.

46. When assessed against international legal standards, as articulated in the Principles on Deprivation of Nationality, it is evident that Irish law and practice on deprivation of nationality provides no safeguards to prevent statelessness, derivative loss of nationality and childhood statelessness and can be a discriminatory measure which does not apply to birthright citizens, but is limited to naturalised nationals, i.e. those with a migrant heritage who are more likely to belong to ethnic, religious and linguistic minorities. In light of the *Damache* judgment and other factors, the co-submitting organisations are of the view that the Irish Government should review the wider nationality deprivation framework, which is both discriminatory and lacks adequate safeguards to prevent statelessness.

Recommendations

47. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Ireland:
 - I. Fully promote, respect, protect and fulfil its obligations towards stateless persons and to prevent and reduce statelessness under international human rights law.
 - II. Fully incorporate into national law and implement the Convention on the Rights of the Child, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In

⁵⁵ See *Islam v Minister for Justice* [2019] IEHC 559:

https://www.courts.ie/acc/alfresco/24a5d17f-2fd5-4d67-96b8-024524c827ac/2019_IEHC_559_1.pdf/pdf#view=fitH. The Court held that where the Minister proposes cancelling a passport, fair procedures may require that advance notice of that intention is given along with an opportunity to make representations as to why the passport should not be cancelled, e.g. if the child was to be rendered stateless by the cancellation.

⁵⁶ See: <https://www.irishcentral.com/news/dublin-born-child-alleged-isis-fighter-irish-citizenship>.

particular, fully implement Article 7 of the CRC, Article 1(1) of the 1961 Convention and the provisions of the 1954 Convention in relation to:

- i. juridical status
 - ii. gainful employment
 - iii. welfare and administrative assistance
 - iv. provisions concerning naturalisation
 - v. protection from expulsion.
- III. Collect and make publicly available, reliable data on statelessness in Ireland including disaggregated data on stateless children.
 - IV. Introduce a dedicated statelessness determination procedure and protection status that complies with international standards of due process and which follows the guidance of UNHCR and good practice.
 - V. Grant a renewable residence permission to people determined to be stateless valid for at least two years, accompanied by a travel document, the right to work, family reunification, access to healthcare and social assistance, and a route to permanent residence and facilitated naturalisation.
 - VI. Incorporate into law the 1954 Convention and customary international law definition of a stateless persons.
 - VII. Protect every child's right to acquire a nationality by amending the safeguard to ensure all otherwise stateless children born in Ireland acquire Irish nationality (by operation of the law), and adopting specific guidance on the implementation of the safeguard in practice.
 - VIII. Protect the right to a nationality and ensure Ireland meets its international obligations by introducing safeguards preventing the revocation of naturalisation certificates, especially where this would give rise to statelessness or would result in discriminatory or arbitrary revocation of nationality or would amount to derivative loss of nationality.
 - IX. Withdraw Ireland's reservations to the 1954 and 1961 Statelessness Conventions.
 - X. Accede to the 1997 European Convention on Nationality.
 - XI. Provide and measure the impact of regular training on statelessness and nationality rights, and the protection of human rights of stateless persons to State authorities.