



## Technical meeting “Children’s right to nationality”

7 December 2022

Venue: European Union building  
Tallinn, R vala 4

### Background

The Universal Declaration of Human Rights establishes a general right to nationality in Article 15. International human rights treaties - including the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR) - as well as the Convention on the Reduction of Statelessness provide particular standards with respect to the right to nationality for children.

Accordingly, the Human Rights Committee has already stated with respect to Article 24 of the ICCPR in its General Comment No. 17 on the rights of the child that " States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born..."<sup>1</sup> without this necessarily imposing an obligation on States to grant their nationality to every child born in their territory, although this safeguard becomes more relevant when the child would otherwise have no nationality.

As it was set out in the Dakar Conclusions<sup>2</sup>, and subsequently in the Guidelines on Statelessness No. 4<sup>3</sup>, the rules for preventing statelessness among children contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child’s right to acquire a nationality, in particular where they would otherwise be stateless. The right of every child to acquire a nationality (CRC Article 7) and the principle of the best interests of the child (CRC Article 3) together create a presumption that States need to provide for the automatic acquisition of their nationality at birth by an otherwise stateless child born in their territory, in accordance with Article 1(1)(a) of the 1961 Convention. Thus, the Convention on the Rights of the Child is exceptionally important when it comes to the particular protection of children’s right to nationality, having been almost unanimously ratified. More recently, the Committee on the Rights of the Child has been pointing out the need to

<sup>1</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, §8. Available at: <https://www.refworld.org/docid/45139b464.html>

<sup>2</sup> UN High Commissioner for Refugees (UNHCR), *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*, September 2011, §22. Available at: <https://www.refworld.org/docid/4e8423a72.html>

<sup>3</sup> UN High Commissioner for Refugees (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, available at: <https://www.refworld.org/docid/50d460c72.html>

guarantee the right of all stateless children born in the territory of the State party or present in it to obtain nationality, irrespective of their residence status<sup>4</sup>.

Nevertheless, practice results in children being registered as of "undetermined nationality" or "unknown nationality". When this occurs, States should determine as soon as possible whether the child would be stateless so as not to prolong the child's status of undetermined nationality. Moreover, if a Contracting State has chosen to grant nationality automatically at birth to children who would otherwise be stateless, they must treat children of undetermined nationality as if they possessed the nationality of the State of birth, unless possession of another nationality is proven<sup>5</sup>.

Similarly, migration processes pose challenges to ensuring each child's right to a nationality. Thus, the EMN inform "Statelessness in the European Union 2020"<sup>6</sup> already noted that one of the main problems facing the EU as a result of the migration crisis is the large number of children who have been born during the journey from their parents' countries of origin or residence to the EU. Most of these children do not have travel documents or even birth certificates. To these children must be added those who have arrived without papers., At the same time there is little information on how states deal with these children who exist physically but not legally, besides to no Member State having a specific statelessness determination procedure tailored to these children. However, even in this context, it must be taken into consideration that it is in the best interest of the child to have a nationality and to be able to preserve it, as well as to obtain a birth certificate.

### **Purpose of the Technical Meeting**

This technical meeting, organized within the framework of the EMN Platform on Statelessness by EMN Estonia and EMN Luxembourg, aims to analyse the state of play regarding children which are without nationality and risk to become stateless. The main purpose is to bring together different actors who work in the field (e.g. civil servants, legal practitioners, NGOs involved in the subject) while providing them with in-depth knowledge about policy options, good practices and potential challenges identifying accurately whether the child has or not a nationality.

Participants are invited to exchange views as actively as possible to maximize the sharing of experience and difficulties encountered in this regard.

The meeting will also provide a platform for collaborative dialogue for sharing practical experiences and to discuss challenges and potential concerns with participants and experts.

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<sup>4</sup> UN. Committee on the Rights of the Child (89th sess.: 2022: Geneva) Concluding observations on the combined 5th and 6th periodic reports of the Kingdom of the Netherlands, § 18 (b), available at <https://digitallibrary.un.org/record/3963980>

<sup>5</sup> UNHCR *Guidelines on Statelessness No. 4*, § 22 and 23.

<sup>6</sup> European Migration Network. *Statelessness in the European Union*, EMN inform 2020, p. 13. Available at <https://emnluxembourg.uni.lu/statelessness-in-the-european-union/>