

Risks of childhood statelessness for the children associated with alleged ‘foreign fighters’ detained in Syria and Iraq

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About the research

Thousands of [children](#) associated with alleged ‘foreign fighters’ are currently detained in Syria and Iraq. They live in dire conditions and are unable to access basic rights and services. Civil society and international organisations have called on States to repatriate families in line with their international obligations. International and regional law protects every child’s right to a nationality, legal identity, and immediate birth registration. Overarching principles such as non-discrimination and the primacy of the best interests of the child should guide State law and policy. This policy report sets out to better understand an often-neglected issue faced by many of these children: the risk of statelessness. To be stateless is not to have any nationality. The definition of a ‘[stateless person](#)’ is someone ‘not considered as a national by any State under the operation of its law.’ Country experts analysed the law, policy, and practice of three European States to better understand the risks of statelessness faced by these children. Three key risk factors were identified and are explored in this briefing: lack of civil documentation, barriers to establishing nationality through family links, and derivative deprivation of nationality.

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The term ‘child’ means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

[United Nations \(1989\)](#)



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Research findings

Most European States, such as the three under review, have opted for a 'case-by-case' approach to repatriation. In practice, this has meant primarily repatriating orphans and children otherwise deemed 'extremely vulnerable'. Considering the [life-threatening conditions](#) in which these children are living, any assessment of degrees of vulnerability creates an arbitrary distinction between children who are all in urgent need of repatriation. This research identified three key issues relating specifically to the risks of statelessness facing these children, which are explored in this briefing: lack of documentation, barriers to establishing nationality through family links, and deprivation of nationality. These risks are exacerbated by the fact that children's rights and their best interests are not adequately considered in States' policies and practices in relation to children associated with alleged 'foreign fighters'.

Lack of documentation and lack of recognition of documents issued by non-State actors

Birth registration and certification to prove the place of birth and family links of a child is central to establishing nationality and accessing rights attached to the status of national. Without civil documentation, children are at [risk of statelessness](#). Under the *ius sanguinis* principle (acquisition of nationality by descent), children born abroad usually acquire the nationality of their parents by operation of the law.¹ In practice, our research showed that in the case of children associated with alleged 'foreign fighters', their nationality often remains undetermined due to the lack of birth registration and documentation to prove nationality.

Many of the children concerned were born in conflict-affected areas of Iraq and Syria. Some received birth registration [documents issued](#) by [non-State actors](#), such as Daesh and Hayat Tahrir al Sham, which are not widely recognised. In many cases, these documents were lost, confiscated, or destroyed during the conflict. Furthermore, most European embassies and consulates in Syria closed during the conflict, removing the possibility of having birth registration confirmed and documentary proof of nationality issued by the country of nationality.

If children are repatriated, this lack of documentation could continue to affect the child's rights and wellbeing on return to the country of nationality. For example, some French children repatriated to France have reportedly been attributed 'temporary civil status' pending confirmation of parentage through DNA analysis. This process can sometimes be lengthy, [creating barriers](#) to accessing their basic rights, [such as education](#).



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Challenges to establishing parentage and nationality

The second issue highlighted by the research is the difficulty in establishing the nationality of these children. Without birth certification, as seen in the French example above, establishing parental filiation to confirm acquisition of nationality by descent is often done through DNA testing. There are also fewer exclusions among these groups.

For children detained in Syria and Iraq, there are significant obstacles to establishing nationality, including varying practices and approaches by (European) countries of nationality. In the case of the Netherlands, our research showed that although Dutch Courts have previously relied on DNA evidence to establish the nationality of children born abroad, the Dutch Government currently deems North-eastern Syria too dangerous to send staff to provide consular services. Therefore, it is very difficult (if not impossible) for DNA testing to be carried out while officials cannot access the children and families concerned. Nevertheless, there has been at least [one case](#) in which a child has been repatriated to the Netherlands with their mother prior to establishing their Dutch nationality. Reports suggest [other countries](#) have taken different approaches, including carrying out systematic DNA testing within camp/detention settings in Syria and Iraq. Our research uncovered reports that France has taken a more flexible approach to establishing the nationality of children born to alleged 'foreign fighters' abroad. According to [media reports](#), to assess whether a child could be repatriated, French authorities have taken into consideration the age of the child, nationality of their (supposed) parent(s), and factual information collected by French intelligence services both in Syria and from relatives in France, with further DNA tests being carried out upon return to France.

Our research showed that children born in Iraq and Syria to fathers alleged to be ‘foreign fighters’ may also be at risk of statelessness due to discriminatory nationality laws. Syria and Iraq are two of the 25 countries worldwide to retain gender discriminatory laws that [deny women equal rights](#) with men to confer their nationality to their children. If a child’s mother is Syrian or Iraqi and the father is deceased or detained, it can be very complex in practice to acquire proof of paternity (including DNA testing) to establish and ensure the child acquires a nationality from their father. Moreover, the nationality laws of some countries, including [the Netherlands](#), discriminate against fathers in their ability to confer their nationality to foreign-born children. To confer Dutch nationality, a Dutch father must be legally married to a foreign mother if the child is born outside of the Netherlands. Parents married in Syria, under the authority of non-State actors such as Daesh or Hayat Tahrir al Sham, may be unable to prove the legality of their marriage.

The term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.

[United Nations \(1954\)](#)

Deprivation of nationality without regard to the rights and best interests of children affected

Law and practice regarding deprivation of nationality on national security grounds also risk impacting on the nationality rights and risks of statelessness for children associated with alleged ‘foreign fighters’ in Syria and Iraq. Under international law, States are required to [introduce legal safeguards](#) to ensure that deprivation of nationality does not impact on [family members or dependents](#). States must also ensure that deprivation of nationality does not lead to statelessness, and should therefore conduct a full determination of whether deprivation would result in statelessness prior to depriving a person of their nationality.² In this assessment, States should also take into consideration the impact on the individual’s right to respect for private and family life and the best interests of their children.

Children whose parents have been deprived of their nationality can face significant obstacles to establishing their nationality.

All three countries examined in this research have provisions in law that permit deprivation of nationality on national security grounds with legal safeguards to prevent statelessness. How the law is implemented in practice, however, and, in particular, failings in how statelessness is identified and determined, can leave both the individuals concerned and their children at risk of statelessness. The United Kingdom has deprived individuals of their British citizenship [while abroad](#) without adequate procedural safeguards to prevent statelessness. If parents are rendered stateless in this way, their children born subsequently may be born stateless and have no recourse to their parents’ former nationality. In [one reported case](#), a pregnant British woman was deprived of her nationality leaving her unborn child at risk of statelessness. French law only permits deprivation following a criminal conviction and prison sentence and only applies to dual nationals, so this is unlikely to lead to a risk of statelessness for children associated with alleged ‘foreign fighters’. Dutch nationals, including children aged 16 and over, can be deprived of their nationality while abroad if they have joined ‘proscribed organisations’.³ Although Dutch legislation includes a safeguard to prevent statelessness, there is a real risk that children aged 16 and 17 are left stateless if the risk of statelessness is not adequately identified prior to issuing a deprivation order. Any children born subsequent to a deprivation order against their parents taking effect may also be at risk of statelessness.



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Policy Recommendations:

- States must remove practical and legal obstacles to registration and the provision of documentary proof of identity. Prompt, effective, and accessible mechanisms to confirm and document the identity and nationality of all children in conflict (and post-conflict) affected areas should be established.
- States must uphold the principle of the best interests of the child by conducting individual assessments and seeking to establish parentage using all evidence at their disposal.
- States should take steps to facilitate the confirmation, recognition, and documentation of parental/family links of all children of their nationals born abroad including through simplified registration of those born abroad and recognition of documents issued by non-State actors.
- States must take steps to prevent derivative deprivation of nationality and ensure that children are not arbitrarily deprived of their nationality. They must ensure effective and appropriate remedies for all persons whose right to a nationality is under threat. In decisions to deprive individuals of their nationality, States must respect private and family life and the best interests of their children.



Photo: Unsplash

Further information

1. In some countries, direct acquisition of nationality through jus sanguine can be restricted to first generation children, ie children who were born abroad of parents who were not themselves born abroad.
2. On this issue, see ENS and The AIRE Centre, 'Written submissions on behalf of the interveners in Pham v. UK' (19 April 2021) https://www.statelessness.eu/sites/default/files/2021-04/Pham_v_UK-TPI_AIRE-Centre-ENS-Apr_2021.pdf.
3. See State Gazette notice of list of 'proscribed organisations': Staatscourant 2017, 13023 | Overheid.nl > Officiële bekendmakingen (officielebekendmakingen.nl)

For more information see: [Statelessness Index | Assessing law, policy and practice in Europe.](#)

Find out more about the [European Network on Statelessness.](#)

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