



2nd
International
Model United Nations
Conference
Leirion

The issue of No Citizenship of Undocumented Children
United Nations Human Rights Council (UNHRC)

Marianna Generali, National and Kapodistrian University of Athens, History and
Philosophy of Science

Ioanna Politi, Sciences Po, Political Science

Stavroula Sargenti, Ionios School

Secretariat Guidance: **George Laios**, Leibniz University Hannover, Computer Engineering

Academic Supervision: Dr. phil. habil. **Wolfgang S. Heinz**

May 20 – 22, 2022

Athens, Greece

Leirion Alternative Library – Art Place

Contents

Introduction.....	2
General Information.....	3
Definition of Key Terms.....	5
Why is this issue important?	6
Barriers to acquiring nationality at birth	8
Discrimination against undocumented immigrants	8
Gender discrimination in acquiring nationality at birth	8
What is being done to address this part of the issue?	9
Questions that will aid you	10
Hardships caused by a statelessness	12
Accessing services.....	12
Socioeconomic status.....	12
Psychological effects.....	13
What is being done to address this part of the issue?	13
Questions that will aid you	13
Immigration policies regarding undocumented children and their families	15
Family reunification	15
The issue of granting citizenship to children	16
Questions that will aid you	17
Helpful links	18
Bibliography.....	18

Introduction

All around the world, there are millions of children with an undocumented status, residing irregularly in foreign countries, who are either born to undocumented parents, or migrated with their families or by themselves. Children will usually inherit their parents' "undocumented" status, rather than acquiring citizenship or a residence status based on their birth in a country. Those born abroad to undocumented parents, but also undocumented children travelling alone, often find themselves at risk of statelessness because of the circumstances which surround their status. Numerous risks can arise either from practical issues concerning an irregular migration or residence status, or from systematic discrimination in civil registration and difficulty accessing services, due to the hardships that nationality procedures create for those undocumented across the world. Furthermore, this discrimination exposes children to poverty and further human rights abuses, creating a series of difficulties in their lives.

General Information¹

Research has shown that in the U.S. an estimated 25 percent of all children live with at least one immigrant parent, putting into perspective the magnitude of the situation. These children, and many more around the world in similar situations, suffer the consequences of irregular immigration policies and strict enforcement practices. We can examine the way these policies directly and indirectly affect children, families and communities, by taking into account their actions which include separating parents and children across borders for indefinite time periods, exposing vulnerable children to dangerous situations, and complicating individual situations due to varying legality between family members.

In the United States there is currently in effect a mass deportation system, which was propelled by immigration policies passed between the mid-1980s and mid-1990s. In 1996 the Immigration Reform and Immigrant Responsibility Act expanded the list of crimes for which immigrants, including legal permanent residents, could be deported, exposing unaccompanied children. These laws connected immigrant offenses to criminal ones; crimes that were normally addressed as misdemeanors were reclassified as “aggravated felonies,” and the process of “expedited removal” was created. Additionally, previously deported immigrants would now face bans for readmission into the country for up to 10 years. We can undoubtedly conclude that these immigration policies and their enforcement not only affect the immigrants but also create massive difficulties for their families both in the U.S. and abroad.

In numerous countries where irregular residence is no longer an administrative offence, but rather a criminal one, it is a civil duty to report undocumented migrants to the relevant authorities, effectively negating undocumented and stateless persons access to civil registration, which can include birth registration procedures. In the long haul, restrictive policies such as these and those relating to health care, including maternity services, leave children with a stateless status at birth and difficulty acquiring one afterwards. In these situations, even if there is no legal connection between civil registration procedures and immigration enforcement, people residing with an irregular status might fear interacting with any state authority or public service provider, as the communication may cause an arrest, detention, deportation and/or family separation.

There are an increasing number of children and young people, residing for the majority of their lives in Europe, but with an irregular status. When referring to Europe, there are 14 countries that require regular residence status of the parent and/or child for the acquisition of statelessness recognition, and in some cases even ask for a

¹ <https://www.theguardian.com/world/commentisfree/2020/aug/07/europe-undocumented-children-young-people-europe-border-migration-policies>

permanent residence status. Specifically, children can face particular difficulties because of these norms, when proving their nationality (if they have one), and acquiring the nationality of their parents or of their country of birth and/or residence. Being born in a European country is not enough to prevent a child from becoming undocumented, if they are born to undocumented parents. Furthermore, no European country grants citizenship solely based on birth in national territory.

Efforts to end child statelessness, such as the modification of immigration policies, must take into consideration and firstly address the specific aforementioned risks that children of undocumented immigrants face, in order to be comprehensive and effective. Many of these difficulties occur because of the systematic discrimination that exists internationally against irregular persons, both in civil registration procedures and in nationality laws. These must be urgently taken care of to make sure every person and in our situation child, has fair access to their unalienable rights, which are violated when children's right to protection by the state is not guaranteed.

Definition of Key Terms

In order for one to better grasp the contents of the study guide, it would be useful to first delve into the meaning of certain important terms:

- **Jus sanguinis** is defined as the determination of a person's nationality on the basis of the nationality of their parents at the time of the target person's birth and at the time of acquisition of nationality by the target person (the two points in time are different in cases of acquisition after birth).²
- **Jus soli** is defined as the determination of a person's nationality on the basis of where they were born.
- **Immigration** is defined as the process through which individuals become permanent residents or citizens of another country. Historically, the process of immigration has been of great social, economic, and cultural benefit to states.³
- **Migration** is defined as the movement of a person either across an international border (international migration), or within a state (internal migration) for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate.⁴
- A **refugee** is defined as any uprooted, homeless, involuntary migrant who has crossed a frontier and no longer possesses the protection of his or her former government.⁵

² https://ec.europa.eu/home-affairs/pages/glossary/ius-sanguinis_en

³ <https://www.britannica.com/topic/immigration>

⁴ https://ec.europa.eu/home-affairs/pages/glossary/migration_en

⁵ <https://www.britannica.com/topic/refugee>

Why is this issue important?

A young person's legal status, undoubtedly shapes their lives in a myriad of ways.

More specifically, social and legal factors, including the aforementioned immigration laws, affect immigrant integration into society as well as identity, sense of belonging, and health, which greatly affect children's growth. For undocumented students especially, these factors can affect access to education, health insurance, and public programs, alienating them from society even further. Immigration laws and policies are often shown as necessary in order to restrict undocumented immigration, yet research demonstrates that this form of deterrence is largely ineffective, particularly given that individuals crossing borders are often refugees. In the context of a continuously changing immigration policy, undocumented children and families face unique challenges that can affect their schooling experience and developmental process.

Children's rights and their wellbeing, especially when in development, must be at the forefront of government responsibilities and considered when making decisions that could greatly affect their future. It is imminent to reform the failures in systems of residence, which commonly push children and young people into an irregular situation to begin with, and also to implement procedures so that they can apply for and access a secure residence status and avoid the stateless status.

In international law, it is a child's right to have a name, a nationality and immediate birth registration.



Barriers to acquiring nationality at birth

An important obstacle when talking about the case of no citizenship of undocumented children is the barrier that they face at birth to acquire any citizenship. This leads to many cases of statelessness and further complicates the situations of children themselves. There are many occasions in which children are unable to acquire their parent's nationalities at birth, whether that is because they are unable to transmit their nationality or they are stateless themselves. Several such barriers to acquiring nationality at birth exist worldwide, with discriminatory nationality legislation existing in many countries that are the origin of undocumented immigrants. In Europe for example, there is no country in which births of all children within the territory lead to an automatic acquisition of citizenship.

Discrimination against undocumented immigrants

In most cases, additional requirements for acquisition of nationality include permanent residence of the parents, thus directly excluding children of undocumented immigrants. Problems oftentimes might surface for a child born in a country which neither parent is a national of. Such cases often might result in the statelessness of the child as they might not acquire automatic citizenship of that state and the parents might not agree for the acquisition of one or another of their nationalities. This limbo in which the child might find themselves is what needs to be avoided as it might lead to some complicated situations. In cases of refugee parents of a child some necessary documentation might be needed to establish the child's nationality and the state from which they have moved on from might not provide the necessary information. In such cases some degree of allowance would be ideal from the part of the state in which the child is born in by granting the child citizenship rather than leaving it stateless. Such is highlighted in Article 6.2 of the Conditions for the Acquisition and Loss of Nationality adopted by the Committee of Experts on Nationality. In the article it is provided that when a child is born on a territory of a state but cannot acquire another nationality at birth, the state concerned should grant its nationality to the child. Thus, the right to birth registration of the child should be secured explicitly in national legislation regardless of the residence status of the parents. A way to secure this would be through the need of minimal administrative requirements such as accepting declared data.

Gender discrimination in acquiring nationality at birth

Yet another important issue that poses a big obstacle in acquiring nationality at birth would be gender discrimination. Gender discrimination in laws

regarding this subject is profoundly evident, with laws in 27 countries prohibiting women from passing on their nationality to their children.



Image source: PEW RESEARCH CENTER, <https://www.pewresearch.org/fact-tank/2014/08/05/27-countries-limit-a-womans-ability-to-pass-citizenship-to-her-child-or-spouse/>

Such distinctions and limits can take the form of not only gender but racial discrimination with some laws limiting the race and ethnicities that can acquire citizenship. Numerous countries adopt national laws that either fully prohibit mothers from passing on their nationality to children such as Iran or Lebanon, or deny women the right to confer their nationality on their children on an equal basis with men with certain safeguards against statelessness such as Jordan or Libya. In such cases where one cannot acquire their mother's nationality, statelessness might be the only outcome as the child might not be able to adopt the nationality of the other parents. This might be due to a number of reasons such as the inability to establish a legal relation with the other parent, unwillingness on the part of the other parent to assist in the acquisition of nationality, lack of official identity documentation or the statelessness of the other parent themselves.

What is being done to address this part of the issue?

There are many national and international actors and mechanisms that attempt to provide more security for children across the globe. An example of internal national actions that address such problems regarding the barriers of acquiring nationality at birth would be the case of Italy.

In 2009, a change in national immigration law would be introduced, which would make it necessary for a residence permit to be shown in order for someone to register a birth. Naturally, this would create a barrier when it comes to undocumented immigrants. After numerous advocacy efforts, the Ministry of Internal Affairs removed this requirement a day before the updated law went into force. In international matters, there are many mechanisms that advocate for the end of statelessness and the amelioration of the situation of children worldwide. The Office of the High Commissioner on Human Rights for example provides technical advice on nationality laws so that it is ensured that they uphold the international human rights standards. reform of discriminatory nationality laws against women is highly advocated from the OHCHR, supporting numerous campaigns that have been launched such as the “UNHCR's Campaign to End Statelessness”.

More international instruments that are used in limiting the barriers in acquiring nationality at birth are conventions that have been promoted such as the “Convention on the Rights of the Child” that details the elimination of “discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race” etc.

Moreover, a plethora of general conventions also address the aforementioned issues, such as the one of gender discrimination that is addressed in the “Convention on the Eliminations of All Forms of Discrimination Against Women” where it is explicitly stated in Article 9(2) that “State Parties shall grant women equal rights with men with respect to the nationality of their children”. What is more many regional protocols are adopted to more closely monitor and fight the problem such as the “Arab Declaration on Belonging and Legal Identity, endorsed at the Arab League Ministerial Conference on Belonging and Identity” or the “Declaration of the International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness”.

Questions that will aid you

The following questions are meant to inspire you into coming up with meaningful solutions to the issue at hand and to guide you in the right direction during debate on the topic:

- How can we ensure the elimination of the aforementioned barriers through international instruments?
- Can international standards be applied when nationality laws fall strictly within the jurisdiction of each state?
- Which organisations/(government) agencies would be most appropriate when dealing with national laws concerning nationality?

- Are such barriers inherently connected with discriminatory trends against refugees and immigrants?
- If such barriers are eliminated, what is the next step in combating statelessness?

Hardships caused by a statelessness

A stateless person can be defined as ‘someone who is not considered as a national by any state under the operation of its law’. In other words, a stateless person has no recognized nationality and an undocumented child is not able to prove who they were born to, or where they were born. More than two decades of common EU migration policies have been led by a hardline policing approach to irregular migration, focusing on border controls, detention and deportation, at the expense of children’s rights, which otherwise should be unalienable. A study following 150 undocumented young people in Los Angeles for 12 years found that they experienced chronic headaches, toothaches, sleeping disorders and suicidal thoughts, due to the constant stress of living with irregular status. Therefore, we can acknowledge that living with an irregular status or even the fear of one, can cause severe challenges, firstly to the cognitive development of children and later on in socioeconomic aspects of their lives.

Accessing services

Parents with no recourse to documentation are caught in what could be described as “limbo”, seeing as they are not able to document their child. Children without birth certificates that cannot prove their citizenship, can furthermore not enroll in school and are thus denied their right to basic education. Also, access to healthcare becomes increasingly difficult especially as the child gets older. Other than that, once the child becomes eighteen years of age, they are liable to detention and/or deportation.

Socioeconomic status⁶

Undocumented children tend to come from families with modest incomes, further increasing the difficulty they face in their life. For example, nearly 40 percent of undocumented children in the U.S. live below the federal poverty line, while for native-born children it is 17 percent. Numerous studies have shown that poverty is associated with a range of negative outcomes for children’s physical health, cognitive development including language, academic achievement, as well as mental, emotional, and behavioral health. Contextual risks associated with undocumented status include low wages, labor exploitation and poverty, which have direct implications for immigrants and their children.

⁶ <https://education.uconn.edu/2018/07/23/issue-brief-the-impact-of-undocumented-status-on-childrens-learning/#>

Psychological effects⁷

These young people are often pushed to the margins of society, which undoubtedly has heavy consequences on their mental health. Studies also find significant cognitive, developmental and psychological effects on children of undocumented parents. The danger of having a parental figure deported and the stress having to mask their legal status can undeniably have direct consequences on children's mental wellbeing, especially when these already live in fear of authority and have been pushed to the margin of society. Such worries lead to high rates of anxiety, depression, fear, attention problems and sometimes rule-breaking behaviors, which can ultimately lead to violence and crime. Furthermore, the effects of poverty are cumulative; consequences at one stage in a child's development can hinder development at a later stage.

What is being done to address this part of the issue?

Fortunately, there are steps being taken in order to assist undocumented and stateless children. In France, immigrants and migrants are now entitled to full health coverage free of charge, without any administrative requirements, except proof of identity.

In Spain, the law specifically states that undocumented children can go to school, access subsidies for low-income families, and participate in internships.

Ireland does not detain any children for immigration purposes.

The European Union itself has also taken several important steps: two policy documents in 2017 which focused specifically on the rights of children in migration, setting out actions to promote their rights at EU and national level. Two EU strategies – the Migration and Asylum Pact and the Child Rights Strategy – are major opportunities for the EU to bring these commitments in from the sidelines and meaningfully promote policies that are inclusive of all children, regardless of status.

However, there are European countries such as Poland and Hungary, that do not assist immigrants and their children and have not hitherto shown any disposition to do so.

Questions that will aid you

- Is it possible to ensure meaningful access to all levels of education and social services?

⁷ <https://www.apa.org/pi/families/resources/newsletter/2016/11/undocumented-status>

- How can we provide further help for stateless children worldwide?
- What can governments do to develop and implement accessible permanent mechanisms for children of undocumented migrants in order to assist them?
- How can equal access to health care, including maternity care, be ensured?
- How can psychological trauma be avoided and/or alleviated because of fear of deportation?
- Is it possible to assist immigrants and migrants economically to avoid them living below the poverty line?
- How can their human rights be ensured when entering a more conservative country?
- Should children of undocumented parents be offered special educational help?
- How can societies be more accepting of undocumented persons, and especially children of small ages?
- Is it possible to create new, or re-implement old policies, that assist stateless children?

Immigration policies regarding undocumented children and their families

International migration is a global phenomenon that is growing in complexity, scope and impact. Today, most countries are simultaneously countries of origin, destination and transit of migrants, so that countries in both less and more developed regions face various challenges and opportunities associated with migration. In recent decades, U.S. immigration policy has restricted access and pathways to citizenship for undocumented immigrants, those individuals who live in a country without legal authorization to do so. Migration policies are responsible for determining the flows, conditions and consequences of international migration. They help maintain the migrants entering a country and they protect their rights as well.

Family reunification

Migration for family reunification mostly involves the migration of family members considered “dependent”, usually the spouse and minor children, even if the spouse is not financially dependent. Family reunification is not recognized as a universal right and it is even prohibited in some countries, but most countries have laws that allow an individual to reunite themselves with their migrant family. The migration laws of each country are the ones to determine the policies on the right for family reunification.

More specifically, any law regarding the number of migrants entering a country is the basis for these policies. Most destination countries allow migration for the purpose of family reunification under certain conditions for example, certain countries do not allow family reunification for migrant workers who enter the country for a short period of time. In spite of that, many destination countries have family reunification as their major basis for immigration over the years.

In Western Europe, the government has limited the amount of family members entering a country. This is because the costs of healthcare, education and other basic services for the migrants themselves is too much – more than the government can afford. Another reason for the limitation of the family members entering a country is the potential abuse through fake adoptions and marriages, a phenomenon prevalent in several destination countries.

In November 2011, the European Commission launched a broad consultation on the issue of family reunification. The Commission considered various factors when it came to assessing the conditions of residence and entry for non-EU family members.

As per the United Nations' findings⁸: *“Of the 161 countries with data on immigration policies for family reunification in 2011, an overwhelming majority of governments (83%) had policies aimed at maintaining their current level of immigration for family reunification purposes or did not intervene to influence it. Only 9% of governments (14 countries) had policies to reduce immigration for family reunification and 9% had policies to increase it.*

While a similar proportion of governments in more and less developed regions intended to maintain current levels of immigration for family reunification (64% and 62%, respectively), the proportion that did not intervene was much higher in less developed regions (26% 100), especially in least developed countries (59%), than in more developed regions (4%).”

The issue of granting citizenship to children

As migration increases rapidly, we have more undocumented children come into destination countries – yet they remain without citizenship. The reason behind this is that they do not meet the conditions that are required in order to be considered legal citizens of said countries.

Before we proceed, however, it is important that one understands the difference between citizenship and nationality.

The word “nationality” refers to where a person (or at least their parents). Your nationality cannot change, nor can you acquire a new one. Having no nationality (usually) means you have no citizenship as well.

“Citizenship”, on the other hand, can be granted to a person by a state, provided that certain requirements are met – quite an arduous process. Let us delve into the matter with a concrete example: In the US, in order to obtain citizenship, the child would have to meet the following conditions:

1. The child has to have at least one United States citizen parent (by birth or naturalization);
2. The child has to be under 18 years of age; and
3. The child has to reside in the United States in the legal and physical custody of the US citizen parent, pursuant to a legal admission for permanent residence.

In the case of adopted children, this process becomes even more complicated, with additional regulations. It is therefore evident that this process is difficult

⁸https://www.un.org/en/development/desa/population/publications/pdf/policy/InternationalMigrationPolicies2013/Report%20PDFs/h_Ch_2.pdf (Page 39)

and time consuming – immigrant families who are undocumented cannot complete this process, so their children will remain with no citizenship!

Questions that will aid you

It is high time we improved immigration policies for such children, especially with family reunification in mind. Many undocumented children may have the right to reside in the country where they live, based on their ties to the country, and possibly to regularize their status and even become citizens.

- Could the separation of civil registration, services, protection and justice from immigration law help? Or would it perhaps create more issues?
- How could citizenship-granting systems be improved without drastically reducing the conditions that need to be met?
- Why is nationality something that cannot be acquired, unlike citizenship? What is the difference?



Helpful links

These links point to material that might assist you with your preparations for the debate. *They are also included in the bibliography.*

- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4276733/>
- <https://www.nationalaffairs.com/publications/detail/the-question-of-birthright-citizenship>
- <https://www.migrationpolicy.org/sites/default/files/publications/ChildrenofUnauthorized-FactSheet-FINAL.pdf>

Bibliography

Please note that several links to certain sources have been included as footnotes.

- “Manual on regularisations for children, young people and families by Picum.org”, https://www.picum.org/Documents/Publi/2018/Regularisation_Children_Manual_2018.pdf (No citation possible – PDF file)
- *A profile of U.S. children with unauthorized immigrant parents.* (n.d.). Retrieved May 4, 2022, from <https://www.migrationpolicy.org/sites/default/files/publications/ChildrenofUnauthorized-FactSheet-FINAL.pdf>
- American Psychological Association. (n.d.). *The effects of parental undocumented status on families and children.* American Psychological Association. Retrieved May 4, 2022, from <https://www.apa.org/pi/families/resources/newsletter/2016/11/undocumented-status>
- *COMMITTEE of EXPERTS on NATIONALITY (CJ-NA) Report on Conditions for the Acquisition and Loss of Nationality Adopted by the Committee of Experts on Nationality on the Basis of a Draft Prepared By.* 2003.
- *GENDER DISCRIMINATION and CHILDHOOD STATELESSNESS COALITION on EVERY CHILD’S RIGHT to a NATIONALITY.*
- *Immigration and Child Welfare Laws and Policies.* Child Welfare Information Gateway. (n.d.). Retrieved May 4, 2022, from <https://www.childwelfare.gov/topics/systemwide/diverse-populations/immigration/understandingimm/laws/>
- Jones, S. D. (2018, July 23). *Issue brief: The impact of undocumented status on children's learning.* Neag School of Education. Retrieved May 4, 2022, from <https://education.uconn.edu/2018/07/23/issue-brief-the-impact-of-undocumented-status-on-childrens-learning/#>
- OHCHR, “OHCHR | OHCHR and the Right to a Nationality.” 2021, www.ohchr.org/en/nationality-and-statelessness. Accessed 3 May 2022.

- Peter H. Schuck & Rogers M. Smith, Peter H. Schuck is the Simeon E. Baldwin Professor of Law Emeritus at Yale University. He is the author, Rizer, A. L., & Bowman, K. (n.d.). *The question of birthright citizenship*. National Affairs. Retrieved May 4, 2022, from <https://www.nationalaffairs.com/publications/detail/the-question-of-birthright-citizenship>
- *Risks of statelessness for children of undocumented parents in Europe* • *picum*. PICUM. (2018, February 12). Retrieved May 4, 2022, from <https://picum.org/risks-statelessness-children-undocumented-parents-europe/>
- Stacciarini, J.-M. R., Smith, R. F., Wiens, B., Pérez, A., Locke, B., & LaFlam, M. (2015, August). *I didn't ask to come to this country...I was a child: The mental health implications of growing up undocumented*. *Journal of immigrant and minority health*. Retrieved May 4, 2022, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4276733/>
- *UN - International Migration Policies - Government Views and Priorities*. (n.d.). Retrieved May 4, 2022, from https://www.un.org/en/development/desa/population/publications/pdf/policy/InternationalMigrationPolicies2013/Report%20PDFs/z_International%20Migration%20Policies%20Full%20Report.pdf
- United Nations. "Ending Statelessness." *UNHCR*, 2014, www.unhcr.org/ending-statelessness.html. Accessed 3 May 2022.