

# Beyond International Law

## *The Role of Multinational Corporations in Reducing the Number of Stateless Children*

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### Abstract

Despite the proliferation of international law designed to eradicate statelessness, the United Nations estimates there are approximately 12 million stateless individuals worldwide, many of which are the children of migrant workers employed in industries connected with multinational corporations. Over the past few decades, corporate governance codes and corporate social responsibility standards have reoriented to consider a broader range of stakeholders. Against this background, multinational corporations have significant opportunities to raise awareness of the issue of statelessness in the societies in which they operate, to ensure their policies and procedures (and those of their supply chains) minimise the factors that contribute to statelessness, and to assist their employees and those within their supply chains in avoiding statelessness. This paper will explore how multinational corporations may help further the goals of international law seeking to eradicate statelessness while simultaneously developing more sustainable practices toward their employees, local communities, and other stakeholders.

### Keywords

stateless – children – corporations – corporate governance – corporate social responsibility – sustainability

### 1 Introduction

While reliable figures are impossible to obtain, the United Nations ('UN') High Commissioner for Refugees estimates that there are approximately 12 million

stateless people worldwide,<sup>1</sup> many of which are children. The institution of citizenship provides the mechanism by which citizens derive their rights and obligations vis-à-vis the authority granting citizenship. The nature of such rights and obligations vary from state to state, reflecting particular cultural, historical, and political influences. However, Member States of the UN are all bound to basic notions of human rights as enshrined in the Universal Declaration of Human Rights and the International Covenants on Human Rights. Regardless, non-citizens of host states often enjoy substantially fewer rights than those of citizens, while stateless individuals fare even worse. In the case of children, the legal uncertainty associated with statelessness is complicated by children's lack of legal capacity.

There is an ever-growing body of academic literature regarding international human rights and stateless persons. Likewise, a proliferation of international treaties, covenants, agreements, and other commitments by states to combat the problem of statelessness address the plight of stateless individuals. Yet, the number of stateless children continues to grow. By recognising the limits of international law, this paper identifies the opportunity for multinational corporations to commit to policies and actions to ensure that they and their partners in their supply chains help eradicate the causes of statelessness within their spheres of influence.

## 2 Background

### 2.1 *Legal Framework*

Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons defines 'stateless person' as one 'who is not considered a national by any State under the operation of its law.'<sup>2</sup> A range of international treaties and agreements establish the minimum legal standards to which all persons should be entitled, including the Universal Declaration of Human Rights,<sup>3</sup> the International Covenant on Civil and Political Rights,<sup>4</sup> the

1 UNHCR, 'Stateless People: Searching for Citizenship' <[www.unhcr.org/pages/49c3646c155.html](http://www.unhcr.org/pages/49c3646c155.html)> accessed 14 September 2013.

2 UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117.

3 Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GOAR, 3d sess., Supp. No. 13, U.N. Doc. A/810 (1948).

4 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966).

International Covenant on Economic, Social and Cultural Rights;<sup>5</sup> the Convention on the Elimination of All Forms of Discrimination Against Women;<sup>6</sup> the Convention on the Elimination on All Forms of Racial Discrimination;<sup>7</sup> the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;<sup>8</sup> and the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>9</sup> A number of UN treaties contain specific provisions offering protection against statelessness, such as the 1948 Universal Declaration of Human Rights,<sup>10</sup> the 1954 Convention Relating to the Status of Stateless Persons,<sup>11</sup> and 1961 Convention for the Reduction of Statelessness.<sup>12</sup> Regarding children in particular, several UN treaties address statelessness, including the 1966 International Covenant on Civil and Political Rights,<sup>13</sup> the UN Convention on the Rights of the Child,<sup>14</sup> and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>15</sup>

## 2.2 *The Child Statelessness Problem*

While a patchwork of international treaties provide for a child's right to a nationality, statelessness remains a persistent problem throughout the world.<sup>16</sup>

- 5 International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).
- 6 Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 19 I.L.M. 33.
- 7 International Convention on the Elimination of All Forms of Racial Discrimination, 7 January 1966, 5 I.L.M.
- 8 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, 10 December 1984, 23 I.L.M. 1027, modified 24 I.L.M. 535.
- 9 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 277.
- 10 Art 15, Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GOAR, 3d sess., Supp. No. 13, U.N. Doc. A/810 (1948).
- 11 Convention Relating to the Status of Stateless Persons, 26 April 1954, 189 U.N.T.S. 150.
- 12 UN High Commissioner for Refugees, Objectives and key provisions of the 1961 Convention on the Reduction of Statelessness (1 October 2001) <[www.unhcr.org/3bd7d3914.html](http://www.unhcr.org/3bd7d3914.html)> accessed 14 September 2013.
- 13 ICCPR, Art 24(3).
- 14 Convention on the Rights of the Child, G.A. Res. 44/25, Art 1(3) (10 November 1989), available at <[www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx)> accessed 14 September 2013.
- 15 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art 29.
- 16 Jay Milbrandt, 'Statelessness' (2011) 20 Cardozo J Int'l & Comp L 75, 89.

Without the benefit of a sovereign to grant, guarantee, and protect rights, stateless children often lack the ability to obtain the most basic social, economic, and civic privileges. A number of factors contribute to statelessness among children. For example, many stateless children have inherited their legal situation from their parents who are also stateless when the state has failed to safeguard the children's right to a nationality. Additionally, parents may emigrate from a country where citizenship is only conveyed *jus soli* (i.e., based on birth within a geographic area) to one where it is transferred solely by *jus sanguinis* (i.e., based on parentage).<sup>17</sup> If the child's parent or legal guardian neglects to register the child at birth or within prescribed legal limits,<sup>18</sup> statelessness may result if other factors such as migration or state succession prevent the child from acquiring citizenship. In the event a child's birth record is lost or destroyed, no other means may be available to link the child with a particular country. In addition, inequitable laws of a host state may prevent a woman from passing her citizenship to her child who might have no other claim to citizenship.<sup>19</sup> Likewise, states may engage in other forms of discrimination, such as withholding nationality based on race<sup>20</sup> or physical or mental incapacities.<sup>21</sup>

As a consequence of their precarious legal status, stateless children face a number of legal and practical challenges, including a lack of legal identity, denial of healthcare and public education, limited access to social welfare and child protection systems, deficient assistance during emergencies, inadequate protection from violence and abuse, and exploitation through child labour. To illustrate the complexity, widespread nature, and severity of the problem, the following discussion will highlight child statelessness in the Dominican Republic and Malaysia. While child statelessness exists across the entire world, this paper examines these two examples since each country possesses particular industries exploited by multinational corporations that have the opportunity to adopt policies and exert pressure to help alleviate child statelessness.

17 Such a scenario is particularly apt to occur with refugees. See generally Won Kidane, 'Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPS Convention' (2011) 44 Vand J Transnat'l L 1, 27-28.

18 Yamilée Mackenzie, 'The Campaign for Universal Birth Registration in Latin America: Ensuring All Latin American Children's Inherent Right to Life and Survival by First Guaranteeing Their Right to a Legal Identity' (2009) 37 Ga J Int'l & Comp L 519, 526.

19 Stephanie Palo, 'Still Citizens after Marriage: Exploring Violations of Women's Nationality Rights' (2009) 30 Women's Rts L Rep 673, 684-85; See also Kif Augustine-Adams, 'Gendered States: A Comparative Construction of Citizenship and Nation' (2000) 41 Va J Int'l L 93.

20 Peter J. Spiro, 'A New International Law of Citizenship' (2011) 105 Am J Int'l L 694, 726-727.

21 Ibid 726.

The Dominican Republic hosts a large population of stateless persons, many of whom are the children of Haitian immigrants who work in the sugar cane industry. According to a 2011 report by the US Department of Labor, 'Approximately 1 million undocumented immigrants live in the Dominican Republic and an estimated 13 percent of all children younger than age 15 have no birth documents.'<sup>22</sup> While the 2002 Dominican Republic Constitution provides for citizenship based on *jus soli* (except for the children of diplomats and workers 'in transit') the Migration Law 285-04 of 2004<sup>23</sup> expanded the definition of 'in transit' to include non-residents, including migrant workers. Although constitutional revisions in 2010 attempted to address this problem, subsequent legal developments essentially mean that many migrant Haitians or those of Haitian descent have been unable to obtain registration of their children born in the Dominican Republic.<sup>24</sup> Without birth certificates, such children are effectively stateless unless they can otherwise prove their nationality.<sup>25</sup> Ultimately, undocumented migrant workers in the Dominican Republic will pass along their undocumented status to their children,<sup>26</sup> thereby increasing the number of stateless children.

The Malaysian State of Sabah has faced significant problems with respect to statelessness among the children of migrant workers primarily from Indonesia and the Philippines who work in the palm oil industry.<sup>27</sup> Without documentation to prove nationality, stateless children will not be able to access government services, including healthcare, and education.<sup>28</sup> According to the Asia Foundation, there were approximately 52,000 stateless children as of late

22 United States Department of Labor's Bureau of International Labor Affairs, 2011 Findings on the Worst Forms of Child Labor, 188.

23 Dominican Republic General Law on Migration (No. 285-04) of 2004.

24 Open Society Justice Initiative, 'Dominican Republic Court Ruling Raises' Mass Statelessness Threat' (2 October 2013) <<http://www.opensocietyfoundations.org/press-releases/dominican-republic-court-ruling-raises-mass-statelessness-threat>> accessed 20 October 2013. See also Polly Price, 'Statelessness in the United States: Current Reality and a Future Prediction' (2012) 46 Vand J Transnat'l L 443, 457-458.

25 Stacie Kosinski, 'State of Uncertainty: Citizenship, Statelessness, and Discrimination in the Dominican Republic' (2009) 32 B C Int'l & Comp L Rev 377, 383.

26 Childs Rights International Network, Dominican Republic: Children's Rights in the UN Special Procedures' Reports (25 April 2012) <[www.crin.org/resources/infodetail.asp?ID=28255](http://www.crin.org/resources/infodetail.asp?ID=28255)> accessed 14 September 2013.

27 Anthea Mulakala, Sabah's Stateless Children, IN ASIA: WEEKLY INSIGHT AND ANALYSIS FROM THE ASIA FOUNDATION (8 December 2010) <[asiafoundation.org/in-asia/2010/12/08/sabahs-stateless-children/](http://asiafoundation.org/in-asia/2010/12/08/sabahs-stateless-children/)> accessed 14 September 2013.

28 Ibid.

2009.<sup>29</sup> Malaysian citizenship law requires that children born in Malaysia must have at least one parent who is a Malaysian citizen in order to obtain Malaysian citizenship.<sup>30</sup> While either Indonesia or the Philippines may recognise some of these children as nationals, the extent of statelessness among children of migrant workers in the supply chains of multinational corporations is a complex question that deserves further attention.

Despite the substantial body of international law designed to alleviate the problem, child statelessness remains a growing problem globally despite the unprecedented growth in the accession of countries to international conventions addressing statelessness. Based on 'past precedent (...) it seems historically unlikely that states will take further significant action on the issue of statelessness (...) without intense international pressure.'<sup>31</sup> Moreover, while 'international law provides the right to nationality, and a large number of countries have ratified (...) [international laws addressing statelessness], the problem persists, even among countries that have ratified (...) conventions against statelessness.'<sup>32</sup> Accordingly, new solutions should be encouraged to combat child statelessness.

### 3 The Role of Multinationals

Since there are limited options for compelling states to comply with their obligations under international treaties,<sup>33</sup> other actors can play an important role in creating and strengthening international norms that reduce the number of stateless children. Whether in the form of corporate governance standards, voluntary policies, codes of conduct, or other 'soft law', multinational corporations may effectively address many of the issues in which international law has been ineffective. In particular, multinational corporations have the opportunity to adopt and follow policies that may reduce the number of stateless children among their employees and the employees of firms within their supply chains.

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<sup>29</sup> Ibid.

<sup>30</sup> Refugees International, Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness (June 13 2007) <[www.refworld.org/docid/47a6ee98d.html](http://www.refworld.org/docid/47a6ee98d.html)> accessed 14 September 2013.

<sup>31</sup> Milbrandt (n 16) 97.

<sup>32</sup> Ibid 89.

<sup>33</sup> While the various international conventions and bodies dealing with statelessness may have individual enforcement and supervisory mechanisms, a discussion of such falls outside the scope of this paper.

As shareholders, consumers, and other stakeholders demand greater accountability and heightened ethical behaviour, multinational corporations that operate 'simply in compliance with the law and leave it to governments to deal with social issues and the public interest'<sup>34</sup> have been punished by negative media attention that damages their public image and reputation. A number of firms have learned that '[r]eputational damage could quickly affect bottom-line profits, while investments in social responsibility could reap long-term benefits.'<sup>35</sup> Moreover, activist shareholders, consumer pressure, and greater interest in ethical investment indices all suggest that multinational corporations that ignore their social obligations do so at their peril. While an extended discussion is beyond the scope of this paper, the following suggestions for engaging multinational corporations are intended to identify some of the opportunities the private sector may have to help alleviate child statelessness.

The international initiatives to engage multinational corporations that currently exist should further work to encourage firms to consider the roles they can play in alleviating the problem of child statelessness in their realms of influence. In view of the important role the Organisation for Economic Co-operation and Development has played in enhancing international corporate governance, the organisation could also revise its corporate governance guidelines to address the problem of child statelessness. While current corporate governance standards emphasise greater investor protection as well as better disclosure and enhanced transparency in multinational corporations,<sup>36</sup> stakeholders also are increasingly demanding higher levels of corporate social responsibility. In response, '[c]orporations are increasingly making verifiable public commitments and playing documented positive roles for a variety of reasons.'<sup>37</sup> Given these considerations, corporate governance standards could provide an incentive for companies to ensure they and the actors in their supply chains have effective policies that could help eradicate statelessness among the children born to their employees. In particular, new corporate governance standards could require, where appropriate, that companies provide for assistance with birth registration in geographic areas where data shows there is an

34 Sol Picciotto, 'Rights, Responsibilities and Regulation of International Business' (2003) 42 *Colum J Transnat'l L* 131, 140.

35 *Ibid* 139-40.

36 Mark K. Brewer, 'Global Capital Markets', in *Encyclopedia of Corporate Social Responsibility* (2013) 1227.

37 Joe W. (Chip) Pitts III, 'Corporate Social Responsibility: Current Status and Future Evolution' (2009) 6 *Rutgers J L & Pub Pol'y* 334, 365.

increased risk of statelessness of the children of workers in the supply chains of multinational corporations. Similarly, standards could require the employment of documented workers only. Moreover, corporate governance regulations could even prohibit multinational corporations from engaging in business in jurisdictions that persistently and routinely deprive children of citizenship.

Additionally, the United Nations Global Compact provides an excellent platform for such initiatives since it invites companies to adopt core values relating to human rights, labour standards, the environment, and anti-corruption.<sup>38</sup> The Global Compact contains specific guidelines for corporations to 'support and respect the protection of internationally proclaimed human rights.'<sup>39</sup> In addition, the Global Compact provides that companies should 'make sure that they are not complicit in human rights abuses,'<sup>40</sup> meaning essentially that companies or individuals acting on behalf of companies should not facilitate, legitimise, assist, or encourage an abuse of human rights nor have knowledge of such. In addition, the World Business Council for Sustainable Development<sup>41</sup> as well as other nongovernmental organisations could provide other platforms for encouraging their members to adopt particular policies and guidelines for addressing and eliminating the problem of child statelessness among their employees, partners, and suppliers.

Finally, multinational corporations should be encouraged to adopt policies that recognise the impact they can exert on addressing and eliminating child statelessness as part of their overall sustainable development initiatives. In particular, multinational companies that are active in regions with significant numbers of stateless children should take particular steps to monitor and address the problem. For example, the Dominican Republic has faced much criticism over practices in its sugar cane industry. This complex industry is often associated with poor working conditions at the production level, including child labour.<sup>42</sup> Some of the world's best-known multinational corporations rely on refined sugar (and the supply chains that produce it) as a key ingredient in their products. These multinational corporations occupy a pivotal position

38 United Nations Global Compact <[www.unglobalcompact.org](http://www.unglobalcompact.org)> accessed 14 September 2013.

39 Ibid 'The 10 Principles, Principle 1'.

40 Ibid 'Principle 2'.

41 World Business Council for Sustainable Development <[www.wbcsd.org/home.aspx](http://www.wbcsd.org/home.aspx)> accessed 14 September 2013.

42 Fairtrade Foundation, 'Fairtrade and Sugar' (January 2013), 13 <[http://www.fairtrade.org.uk/includes/documents/cm\\_docs/2013/F/Fairtrade%20and%20Sugar%20Briefing%20Final%20Jan13.pdf](http://www.fairtrade.org.uk/includes/documents/cm_docs/2013/F/Fairtrade%20and%20Sugar%20Briefing%20Final%20Jan13.pdf)> accessed 21 October 2013.



in which they could play an important role in eradicating the problem of child statelessness by monitoring the issue and engaging the various actors in their supply chains in policies and procedures that combat the problem. The Dominican Republic has monitoring and enforcement mechanisms in place to detect and punish child labour,<sup>43</sup> although the government does not publish 'the number of convictions and prosecutions related to exploitative labor.'<sup>44</sup> No such monitoring efforts appear to be in place to prevent statelessness among the migrant workers in the Dominican Republic. Multinational corporations often have the resources and ability to establish such monitoring mechanisms where the host state does not. Regarding Malaysia, the palm oil industry was responsible for eight percent of its overall exports in 2012,<sup>45</sup> with Malaysia accounting for forty-four percent of global exports and thirty-nine percent of the global palm oil production.<sup>46</sup> Multinational corporations that source palm oil from Malaysia should adopt policies that assist their employees and those of their suppliers to register children of migrant workers as well as adhere to policies and procedures that minimise the number of stateless children in their supply chains.

While requiring multinational corporations to adopt policies that include a commitment to combat statelessness may appear ambitious, many companies have already proven their ability to conform to responsible policies with respect to the environment.<sup>47</sup> Multinational corporations, including Unilever, Burger King, and General Mills have already shown their potential to improve the corporate social responsibility in industry through their demands for more sustainably sourced palm oil.<sup>48</sup> Admittedly, multinational corporations can have an immediate and direct impact on the environment with their activities, whereas only states can recognise a person as a national or not. Nevertheless, multinational corporations can help their employees and the employees in their supply chains navigate the relevant procedures to safeguard citizenship; they can also exert pressure on host governments. Given the extreme nature of

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43 United States Department of Labor (n 22) 190.

44 Ibid.

45 Malaysia External Trade Development Organization, *Top 10 Major Export Products*, 2012, <[www.matrade.gov.my/en/malaysia-exporters-section/33/1944-top-10-major-export-products-2012](http://www.matrade.gov.my/en/malaysia-exporters-section/33/1944-top-10-major-export-products-2012)> accessed 14 September 2013.

46 Malaysian Palm Oil Council (MPOC), *Malaysian Palm Oil Industry* <[www.mpoc.org.my/Malaysian\\_Palm\\_Oil\\_Industry.aspx](http://www.mpoc.org.my/Malaysian_Palm_Oil_Industry.aspx)> accessed 14 September 2013.

47 Don Mayer, 'Corporate Citizenship and Trustworthy Capitalism: Co-Creating a more Peaceful Planet' (2007) 44 Am Bus L J 237, 283-84.

48 Reuters, *UPDATE 1-General Mills makes palm oil pledge* <<http://uk.reuters.com/article/2010/09/22/generalmills-oil-idUKN2210535420100922>> accessed 14 September 2013.

child statelessness and its connection with employment of migrant workers by multinational corporations, such firms should undertake efforts to combat this problem as well.

#### 4 Conclusion

While international law forms a substantial framework for the protection against statelessness, these legal norms have not translated into real world solutions as the number of stateless individuals continues to increase. As this paper argues, multinational corporations should play an active role in adopting policies designed to eradicate the statelessness among their employees and the employees of their supply chains. Increasingly, stakeholders demand that companies consider the social impacts of their operations. This growing discourse on the social context in which businesses operate challenges multinational corporations to ensure transparency and accountability while generating maximum value for shareholders with little or no impact on social or environmental harm. Seen through this perspective, multinational corporations should realise their duty to contribute to solving problems of child statelessness in the areas where they may exert influence.