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## Access to citizenship for abandoned children: how migrants' children become 'stateless' in Japanese orphanages

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### ABSTRACT

There is a gap between the legal definition of abandoned children and the ambiguous condition of migrants' abandoned children. Building on the theoretical frameworks of Mahdavi's 'legal production of illegality', and Gonzales's 'the law and the clock', this article highlights the importance of time as a factor for the legal production of statelessness. The cases of abandoned children of Southeast Asian parentage growing up in Japanese orphanages are analysed through interviews with staff members and a survey in orphanages in Japan. Two concepts are essential to analyse the role of time in the legal production of statelessness: 1) presumptive foreign nationality (attached by a local government without any confirmation from the home country), and 2) considered nationality (officials' personal opinion on whether people qualify to acquire nationality). The ambiguous abandonment of migrants' children pushes them into a limbo of nationality laws and results in their statelessness once they become adults.

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## Introduction

I really do not want to be apart from this child.  
But for now, I cannot live with him.  
I promise, I will return to pick him up, later.  
I am sorry I cannot pay my parturition expenses.  
For now, this is all I can pay.  
I promise, I will pay the rest later.  
Mother's name

A mother disappeared from a maternity ward, leaving this letter beside a newborn baby's pillow. The nurses testified that the mother was a foreigner and that the baby's father was absent. However, the mother told the nurses that she and her 'husband' were Thai, both working in Japan. They were not allowed to get married, but they would as soon as possible. The hospital staff sent the baby's birth certification to the local municipal office to register his birth. The staff used the mother's reported

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surname to fill in the baby's information. The staff gave the baby a Japanese first name, Yukito.

A few months later, the immigration bureau learned that the mother's name left in the letter was fake. After turning three, Yukito would have been able to acquire Japanese nationality as 'a child born in Japan with unknown parents'.<sup>1</sup> However, several days after Yukito's first birthday, the mother called the hospital, saying she wanted to pick up her child. The orphanage staff instructed the mother about the formal procedure and the required documents. However, contact from the mother suddenly ceased. The orphanage staff hesitated 'to make him Japanese'. The staff decided to start this procedure if the mother did not make contact again by Yukito's 'school entrance' (six years old in Japan). There was no such contact, but the father did call, saying he had his own family and was not in contact with Yukito's mother. However, he wanted to see his son's photograph. Yukito and his father exchanged letters and photographs, but the father also stopped responding. However, because of this correspondence, by six years old, Yukito was confident that he was a Thai. The orphanage staff again hesitated to 'make him Japanese'. In this way, Yukito grew up in a Japanese orphanage as a native-born stateless child.

This vignette exemplifies some important trends of the abandonment of children by the migrant parent(s) who appeared in my interviews in Japan; abandonments were lengthy. Previous studies on citizenship and migration have tended to overlook abandoned children, partly because accepting countries typically have regulations to certify the nationality rights of abandoned children. For example, Mahdavi (2016) mentioned that '(a)ccording to Kuwaiti law, an abandoned child found in a mall or on a street corner whose parents are unknown will be eligible for citizenship' (Mahdavi 2016, 124). In Japan too, the nationality law stipulates Japanese nationality '(w)hen both parents are unknown or have no nationality if the child is born in Japan'.<sup>2</sup> However, children are seldomly abandoned without any vestige of parents. Rather, migrant parent(s) abandon their 'impossible children'<sup>3</sup> (Allerton 2018, 1082) gradually, showing hesitation, regret, and attachment. This article examines how this happens and the consequences of time and gradual abandonment on children's statelessness.

This article conceptualises the gap between the legal definition of abandoned children and the reality of ambiguous abandonment in the context of the passing of time as a crucial factor in the legal production of statelessness. The analysis focusses on the function of time for people whose lives are shaped by migration and law (Mahdavi 2016, 122); they fall in a nationality limbo in childhood, resulting in statelessness in adulthood – what I call the legal production of statelessness. In doing so, I integrate scholarly debates on statelessness with two theoretical frameworks on citizenship for 'foreign-born natives' (Mahdavi 2016, 125), or citizen aliens (Boehm 2012, 136) – people born and raised as country natives but classified as foreigners. I especially rely on Mahdavi's argument on the 'legal production of illegality' (Mahdavi 2016, 122) and Gonzales's argument on 'the law and the clock' (Gonzales 2016, 17).

Policies rarely acknowledge migrants as multidimensional beings with intimate lives (Mahdavi 2016, 14). In her work on migrant mothers who abandon their children, Mahdavi argued that bad policies affect the creation of problematic situations of illegality or statelessness for migrant mothers and their children (Mahdavi 2016, 14–15). This article contributes to citizenship and migration studies showing that not only 'bad' but also 'neutral-looking' (Belton 2017, 5) policies and the affections of related people

produce statelessness in relation to time. Ordinary responses by state officials, normal common-sense attitudes by orphanage staff, typical welfare regulations to protect orphans, and neutral-looking citizenship regulations intricately result in the abandoned child's statelessness. This paper illustrates the social structure Massey identified, saying 'Differential mobility can weaken the leverage of the already weak' (Massey 1994, 150). Massey (1994) argues that the ways in which people are placed within 'time-space compression' are highly complicated and extremely varied (Massey 1994, 150). This paper illuminates how one type of labour migrants move in a complex way. Massey argues that some people move more than others, and that some have more control over others; thus, the mobility and control of some groups can actively weaken other people (Massey 1994, 150). The process of further weakening the weak can occur over generations, leading to what McAuliffe referred to as 'intergenerational exclusion and marginalization' (McAuliffe 2017, 223). This paper aims to present typical cases of the 'the weak' in those arguments.

In this article, I first discuss two theories on the legal production of illegality and the relationship between the law and the clock, which together produce the legal production of statelessness. Then, I contextualise the female migration flow from Southeast Asia to Japan and focus on children left in Japanese orphanages. Next, I examine the statelessness of abandoned children through the lens of the legal production of statelessness, focusing on time.

The vignettes<sup>4</sup> below show that, whereas presumptive foreign nationality (which a local government assigns without confirmation from the assumed home country) and considered nationality (the personal opinion provided by officials about people's nationality) render children's statelessness invisible, their status gradually shifts from *de facto* statelessness – individuals who cannot seek assistance from the state to which they may be formally attached by nationality (Blitz 2006, 455) – to *de jure* statelessness – people without any nationality, the 'literally' stateless (Bhabha 2011, 1). I highlight two pathways through which the passing of time pushes abandoned children into legal limbo. Finally, after examining the combination of the analytical frameworks of the 'legal production of illegality' (Mahdavi 2016, 122) and 'the law and the clock' (Gonzales 2016, 17), I conclude that there is a gap between the legal definition of abandonment and the reality of abandonment experienced by the stateless children – ambiguous, time-consuming abandonment.

## Sociological perspectives on abandoned children

Abandoned children have been understudied despite their potential place in citizenship and migration studies. A few studies on abandoned children's statelessness have recently appeared (e.g. Mahdavi 2016). Mahdavi argued in her book, *Crossing the Gulfs*, that such children's lives have been shaped by the complexities of migration through the two interconnected approaches of 'perverse integration' and theories about 'the legal production of illegality' (Mahdavi 2016, 122). One of her approaches, the 'legal production of illegality' (Mahdavi 2016, 122), is an analytical framework considering how illegality is created by laws that define people as citizens or noncitizens (Boehm 2012, 136; Coutin 2007, 26).

Building upon studies on illegality, unauthorised status, and statelessness of children 'living in the uncertain legal status and caught in the legal limbo of Temporary Protected Status (TPS) (Gonzales 2016, 9)', this article illuminates abandoned children's status as an

important discussion arena for citizenship, statelessness, and migration. Gonzales (2016), who wrote about the experiences of Mexican-American children caught in an uncertain legal status, highlighted how some Mexican-American children are temporarily protected and build a feeling of belonging to the host society during their childhood (Gonzales 2016, 7–9). Such children then experience a ‘transition to illegality’ by experiencing exclusion from possibilities they believed were theirs as they transition to adulthood (Gonzales 2016, 12–13).

This article integrates the two aforementioned theoretical frameworks, arguing how abandoned children’s transition to statelessness occurs as time passes during their childhood, following two main routes – presumptive foreign nationality and considered nationality.

The analyses herein are based on studies of children from mixed-status families (Castañeda 2019), forcibly deported youth (Coutin 2007; Dreby 2015), left-behind children from migrant homes without their parent(s) (Parreñas 2005), multigenerational transnational migrant families (Allerton 2018; Ball, Butt, and Beazley 2017), children born to non-citizen migrant mothers (Constable 2014; Suzuki 2015), and abandoned children (Mahdavi 2016).

### *The legal production of illegality*

The ‘legal production of illegality’ (Mahdavi 2016, 122) is an analytical framework considering how illegality is created by laws that define people as citizens or noncitizens (Boehm 2012, 136; Coutin 2007, 26; De Genova 2004, 161). The approach was first put forward by scholars such as De Genova (2004), who argued on the historical specificity of contemporary Mexican migration to the US. He argued that it is the disciplinary operation of an apparatus for the everyday production of migrant ‘illegality’, *deportability*, and not deportation *per se*, that has historically rendered Mexican labour as a distinctly deportable commodity (De Genova 2004, 179). Mahdavi (2016) proposed the framework based on the work of Boehm (2012) and Coutin (2007), who explored Mexican mixed-status families and young people in such families in the U.S. Mahdavi applied this notion to children born to unmarried noncitizen mothers in Kuwait (Mahdavi 2016, 124). Boehm studied undocumented migrant children who, in particular circumstances, are *de facto* members of a nation with complex ties with U.S. communities (living in neighbourhoods, attending school, working, shopping, eating out, going to parks and public spaces, and interacting with community members daily) who are not state-recognised citizens (facing threats of deportation, an inability to move freely, and lack of access to health care) (Boehm 2012, 136; Coutin 2007, 27). Investigating the cases of youth who emigrated from Mexico to the U.S. as infants, Boehm and Coutin illustrated the legal production of (il)legality (Boehm 2012, 136; Coutin 2007, 26), arguing that for young people who engage in identical daily activities as their American counterparts, the U.S. state constructs their illegality, defining individual migrants as ‘aliens’ who are ‘legal’ or ‘illegal’.

In cases within Japan, these arguments on the citizenship, legality, and illegality of children born to migrant mothers in Japan have also been also discussed (Celero 2012; Suzuki 2015). These arguments have been made in pursuit of how to certify Japanese nationality for children born to foreign mothers fathered by Japanese men (Suzuki 2015). Children born to foreign migrant parent(s) without any testimony of a tie to Japanese fathers

have remained understudied. This topic, which has been left in limbo from earlier studies, is the focus of this research.

### *The law and the clock*

Whereas most studies on citizenship and statelessness examine the ambiguity, complexity, and fluidity of diverse statuses between full citizen and statelessness in relation to legal systems (Levin 2018, 31; Sigona 2016, 275), few have examined the ways in which the passage of time determines a legal limbo that finally leads to statelessness. Among scholars who have looked at the experiences of undocumented children (Ball, Butt, and Beazley 2017; Dreby 2015), Gonzales (2016) highlighted how ‘the illegality-belonging dynamic is profoundly shaped by time’ (Gonzales 2016, 17), focussing on the experiences of Mexican-American children caught in an uncertain legal status. He further argued that they are temporarily protected through childhood (such as being allowed to attend school), then experience a ‘transition to illegality’ in adulthood (Gonzales 2016, 13). This is what Menjívar called the Temporary Protected Status (TPS) (Menjívar 2006, 1012), as mentioned by Gonzales. Through childhood, given their TPS, individuals’ identities and feelings of belonging to the host societies are developed (Gonzales 2016, 7–9). However, as they come of age, their experiences change – time expels them from protected categories and legalisation channels (Gonzales 2016, 18). They dramatically experience increasing legal, and often cruel exclusions (Gonzales 2016, 12). They realise they are excluded from possibilities they believed were theirs while their peers’ lives expand in work, education, autonomy, and relationships as they enter adulthood (Gonzales 2016, 12). Gonzales called this ‘awaking nightmare’ a ‘transition to illegality’ (Gonzales 2016, 13).

This framework, symbolised by Gonzales’s phrase ‘the law and the clock’ (Gonzales 2016, 17), is useful for analysing the abandoned children cases herein. The ‘awaking nightmare’ accurately describes the statelessness of abandoned children of Southeast Asian parentage growing up in Japanese orphanages. This is deeply entangled with the ‘lived reality’ (Mahdavi 2016, 15) of child abandonment, which differs from abandoning children outright and happens, instead, gradually through parents’ hesitation, regret, and love. This article shows the different pathways leading to children’s statelessness, exploring (1) the involved actors, (2) the role of state policies, and (3) how societal factors (e.g. gender, racial stigma) influence outcomes. This paper shows how these factors interact, resulting in children’s citizenship slipping through the cracks.

## **Sociological context of migrants and orphans in contemporary Japan**

### *Migration and Japan*

Soon after Japan became economically developed, the female migration stream from the Philippines and Thailand to Japan started, partly as a legacy of the Vietnamese war. Truong discussed that when foreign troops withdrew, the Vietnamese war left what Suzuki (2015) called the ‘stigmatized nightlife industry’ in surrounding Asian countries (Truong 1990, 160). Western European countries and some Asian countries, including Japan, were then target consumers to fulfil the return of international investments for

entertainment and hotel facilities (Truong 1990, 167). This opened the service sector, not only tourism, to the international market (Truong 1990, 167). In the 1970s, Japan experienced economic growth and started supplementing labour shortages with cheap foreign labour. One industry that suffered from a labour shortage was, just as Choo mentioned about Korea, the nightlife industry (Choo 2016, 13). Although the Japanese government did not formally accept unskilled migrant labour until 2019, ‘entertainer visas’ were issued to Filipino ‘professional bands’ during the Vietnamese war era.<sup>5</sup> In the late 1970s to early 1980s, this entertainer visa began to be issued to female Philippine migrants. Thai female migrants followed – Thailand experienced severe social impact from foreign soldiers, and international investments towards entertainment and hotel facilities were boosted during the stationing of foreign troops during the Vietnamese war (Truong 1990, 167). Thus, in the late 1970s to early 1980s, partly as one of the legacies of proxy war in Asia, a female migration flow from the Philippines and Thailand to Japan was observed. This flow peaked around the mid-2000s and decreased afterwards.<sup>6</sup> The inflow has been intricately intertwined with female migrants with spousal visas and other visas (Celero 2012; Faier 2009).

However, this feminised migration flow also brought intimate relationships that resulted in the birth of children between migrant women and local men (Suzuki 2010, 34). The encounters tended to be as customers and service workers in night life service industries (Faier 2007, 148), under what Massey calls the *power geometry* of time–space compression – different social groups are differently placed in the compressed space (Massey 1994, 149). Under that schema, local men are often disregarded when it comes to the responsibility of caring for a child, including securing the child’s nationality (both legally and socially). It is socially acceptable for local men to abscond their responsibility, stigmatisation, and guilt as fathers. This is in sharp contrast to the migrant women who are already in precarious situations, as they tend to be exposed to responsibility, stigmatisation, and guilt as mothers (Butt, Ball, and Beazley 2016, 796; Constable 2014, 9).

Under such migration schema, stigmatised and gendered images of people from the Philippines and Thailand have prevailed, and these immigrants tended to be marginalised in Japanese society (Celero 2012, 8; Pongponrat and Ishii 2018, 136). Children born to these migrants are often typically stigmatised (Ishii 2013, 175; Suzuki 2015, 119).

### **Children of foreign parentage left at Japanese orphanages**

Since the early 1990s, children have been abandoned by migrant parent(s) at orphanages in Japan. Although few recent studies focussed on statelessness in Japan (Chen 2016; Komai and Azukisawa 2009; Seki and Odagawa 2017), newspapers have reported on this topic (e.g. Asahi 1993; Nihon Keizai Shimbun 1991; Yomiuri 1994). The Japanese Federation of Bar Associations reported that, although no statistical data were available, the number of (*de facto*) stateless children increased in the late 1990s, as the number of unauthorised migrants increased (Japan Federation of Bar Associations 1997, 67–68). Indeed, the number of unauthorised immigrants receiving deportation orders increased from 17,157 in 1989–64,697 in 1995 (Immigration Bureau of Japan 2005).

Two surveys (Okuda 2002; Ishii and Azukisawa 2019) examined the nationality statuses of abandoned children in Japanese orphanages, revealing that some children abandoned by migrant parent(s) had ambiguous nationalities. In 2000–2001, the ‘International Social

Service Japan' survey found that there were 241 children of foreign parent(s) under the protection of child guidance centres in Japan (Okuda 2002, 25–27). In 2017, the nationality of 166 children in 72 orphanages was 'ambiguous'; this represented 24% of all orphanages (300 facilities) replying with valid responses (Ishii and Azukisawa 2019, 24–25).

This study focusses on children abandoned in Japan by inter-Asian migrant parent(s) (19 of the 24 interviewed abandoned children had parent(s) from East/Southeast Asia, namely China, Korea, the Philippines, and Thailand). The children of inter-Asian migrant parent(s) were classified as abandoned (8) or deported (11). Abandoned children were left behind by their parents, losing contact with them. Deported children's unauthorised migrant parent(s) were deported by the Immigration Bureau, and such children were sent to orphanages while their parents stayed at detention centres. Usually, these children's nationalities were registered in their parents' home country and they were deported with their parents. Amongst those two types of stateless children found at orphanages, this paper will focus on abandoned children. Issues of deported children (children who are found with their unauthorised migrant parents, recover their nationality, and are deported to their country of nationality) will be discussed in another paper.

## Materials and methods

This study used interviews with staff members in Japanese orphanages who described and compared the situation of two different pairs of siblings whose statelessness was not realised until it was too late. This article uses field data collected in two phases between October 2017 and January 2018 from registered orphanages in Japan ( $n = 602$ ).<sup>7</sup> In phase one, questionnaires inquiring about the children of migrant parent(s) who may be stateless were mailed to all 602 orphanages registered with the Japanese National Council of Homes for Children (Ishii and Azukisawa 2019, 37–38). A total of 599 questionnaires reached the orphanages (three were returned for incorrect addresses), and 303 orphanages responded. A total of 300 responses were deemed valid (three were excluded for invalid [contradicting and outdated] information). In phase two, semi-structured interviews were conducted in nine orphanages, spread over five prefectures in three districts in eastern and central Japan (Kanto, Tokai, and Koshinetsu), that agreed to participate. Of these, one is in a major Japanese city with a population of over 10 million; two in the suburbs of major cities; and six in rural and coastal areas in and around small and mid-sized towns with populations ranging between 10,000 and 200,000. Interviews were conducted with 12 staff members: nine full-time care staff members, two vice-directors, and one director. Of them, ten directly cared for children who fit this study's scope. Twenty-four detailed cases of abandoned children were collected.

The key structures that result in the statelessness of abandoned children, as gleaned from the interviews, were roughly divided into two categories according to how the children lost the opportunity to acquire citizenship. The first category (9/24) includes children whose foreign parent(s) asked someone (often a Japanese maternal hospital staff or Japanese municipal office staff) to send their children away for care, later losing contact. In these cases, no parent(s) immediately abandoned their children, but gradually lost contact as the parent(s) moved to new destinations, developed new life stages (especially new families with new partners), and so on. Migrant parent(s), particularly female migrants, often resort to migrating again to escape criticism, condemnation, and stigma



– what Constable called the migratory cycle of atonement (Constable 2014, 9). This tendency was also confirmed in my interviews. Children belonging to this category – here, I call them abandoned children, building on Constable’s ‘abandoned baby’ (2018, 170) – gradually lose their chances to acquire nationalities through their childhood and acknowledge their statelessness in adulthood. Gonzales and Chavez noted that undocumented 1.5-generation Latino immigrants who grew up in U.S. society became aware of their lack of legal residency later (2012, 267). This also happened to the abandoned children mentioned in my interviews.

The second category (14/24) includes children found by the immigration bureau when their parent(s) were discovered as undocumented migrants and sentenced to be deported (1/24 was exceptional and difficult to categorise) (Ishii and Azukisawa 2019, 25). As their parents were sent to detention centres, the children lived in orphanages until deportation. Such children are stateless in the orphanage but usually acquire their passport/nationality from their parents’ home countries. The children belonging to this category legally or officially recover their nationality and escape statelessness.

Based on these results, two possible examination targets are found – *abandoned children* and *children deported to unknown homelands*. Abandoned children are those who were left behind in the midst of their migrant parents’ migration trajectories and later lost contact with their parents. Deported children are those found with unauthorised migrant parent(s) who temporally stayed at orphanages while their parents were at detention centres prior to deportation. Such deported children tended to be de facto stateless at the time of discovery as well as during their stay at the orphanages. However, officials of both countries (departing country and receiving country) pursue procedures to recover the nationality of these children from their parent(s)’ home country and to prepare passports for deportation. While such children in orphanages seem to be stateless, they recover their nationality later and are deported to that country of nationality, where they have never been. Herein, I focus on abandoned children and examine the legal and social structures that prevent them from acknowledging the risk of statelessness during their childhood and make them realise it only when it is too late (nearing adulthood).

In this paper, I present two vignettes illustrating abandoned children’s typical trajectories, analysed because the research results were highly sensitive for children and their parent(s). It was almost impossible to obtain informed consent from all the individuals related to the children. Children do not always understand their situation precisely (as described below). Presumably, this is also because the reality of their ‘situation’ is not, in fact, clear to anyone. These interviews provide additional data that could not be obtained through the questionnaires, especially information on what happens to abandoned children after they reach adulthood.

Although scholars have recently emphasised the importance of child-centred research (Hoang et al. 2015, 274), this study’s data were collected through orphanage staff members who dealt directly with nationality issues. The children’s perspectives (Alipio, Lu, and Yeoh 2015, 258), agency (Allerton 2016, 6), emoscapes (Chakraborty and Thambiah 2018, 583), and emotions (Beazley, Butt, and Ball 2018, 591) have been illuminated in recent studies. However, during my empirical studies, direct access to abandoned children was denied by orphanage regulations for privacy reasons. This paper does not attempt to analyse the children’s perceptions of their situation. Instead, it uses interviews and records

kept by the orphanages to highlight these children's existence and emphasises the legal, political, and social systems implicated in their statelessness.

Orphanages maintain copies of documents such as birth certificates and original letters left by mothers certifying that they were foreign nationals. Orphanages have no legal obligation to certify children's legal statuses because welfare regulations presume that orphaned children are Japanese nationals, and there are no items in the Child Welfare Act of Japan relevant to certify orphans' legal statuses (Japanese Law Translation 2009). However, orphanages maintain all registration records issued by the Immigration Bureau, copies of nationality request application documents, and replies from the Ministry of Justice and embassies. To protect children's privacy, pseudonyms are used in the vignettes instead of real names (with the exception of Andrew, a child whose identity was revealed by the news media and whose mother provided informed consent).

### **Time and the legal production of statelessness**

The nationality law regulates how to prevent Japanese-born children from becoming stateless. Why, then, does statelessness still happen among children born in Japan? Two different pathways lead to this situation, described below, emphasising the role of time, with a special focus on the gap between legal regulations and the reality of abandonment that appeared in my interviews, which ignores the reality of the long time that is required for child abandonment. In other words, legal regulations tend to secure the rights of nationality for children, so people's (de facto) statelessness tends to be made invisible during their childhood; people realise their (de jure) statelessness only when they finish their childhood. The first happens when children miss opportunities to undergo formal procedures to acquire citizenship during childhood because of presumptive foreign nationality placed by local officers on their local ID cards. The second pathway occurs when children miss opportunities to undergo formal procedures to acquire citizenship during childhood because of the considered nationality that foreign embassy staff members attribute to the child considering him/her as a national (of their own country). In both cases, children and those who surround them, including orphanage staff, realise their statelessness too late.

#### ***Presumptive foreign nationality***

Some abandoned children miss the opportunity to complete the formal procedures to register their nationalities because they and their legal guardians mistakenly believe that the child already has foreign nationality. This misunderstanding is caused as the children have a designation on their Japanese government-issued ID cards even though no one has confirmed the registration of their nationality with a foreign country. Building on Saito's work (1997, 80), I call this 'presumptive foreign nationality'. The vignette of Hiroto and Ayaka, presented below, represents how abandoned children miss crucial opportunities to register their nationalities because of their presumed foreign nationalities.

The quotes below came from interviews with orphanage staff members between December 2017 and April 2018. Hiroto and Ayaka were siblings born to a Japanese father and Filipina mother who used to live together in Japan. Their mother was what

Hochschild (2009, 25) called a ‘female, mobile service worker’ engaged in ‘stigmatized nightlife industries’ (Suzuki 2015, 114). When the second child (Hiroto) was born, the mother told her maternity clinic nurse that she could not care for the children because she had to return to work. Soon after, both Hiroto (newborn) and Ayaka (three years old) were sent to an orphanage.

At this stage, presumptive foreign nationality was first attached to the children. The officers at the child guidance centre discovered that the children’s nationality had not been officially registered in either Japan or the Philippines, their parents had not registered their marriage, and their Japanese father had not legally acknowledged his children. The officer registered the children with the Japanese authorities as Philippine nationals with visas that had ‘special permission to stay in Japan’. No one confirmed whether the children were registered as nationals in the Philippines or even checked their mother’s passport, ‘as everyone knew the mother’s passport had expired anyway’ (orphanage staff member, December 26, 2018). People saw the children as Filipinos ‘because everyone knew their mother was Filipina’ (orphanage staff member, 26 December 2018). Thus, Hiroto and Ayaka were officially considered Philippine nationals in Japan. However, as they were unregistered in the Philippines, the children were *de facto* stateless. Growing up with a foreigner’s residence card<sup>8</sup> with ‘Filipino/Filipina’ in the nationality column, they identified as Philippine nationals.

There were opportunities to register Hiroto and Ayaka’s potential nationalities until they were six years old. At the time, both their parents lived near the orphanage, and their mother sometimes visited. If their mother had registered them in the Philippines, they might have been able to acquire citizenship. If that application had been rejected, they would have been able to apply for Japanese nationality as stateless children born and residing in Japan (Ministry of Justice 2019). However, no one encouraged the parents to register the children’s nationalities. The orphanage staff remembered thinking that ‘the children were officially acknowledged as Filipino, meaning that the children would have been able to acquire a Philippine passport anytime they needed’. They could not imagine that the Japanese authorities’ acknowledgement of foreign nationality did not have a parallel meaning for the Philippine authorities.

Over the next decade, the children gradually lost the opportunity to certify their nationalities. However, no one recognised this, including the children. Some years after the children arrived at the orphanage, their mother reported that she did not live with their father anymore, saying simply, ‘He has just disappeared’. The children’s mother abruptly returned to the Philippines seven years later, although she continued to call her children occasionally. However, three years later, her mobile phone number suddenly was disconnected, and for unknown reasons, she no longer contacted her children. Afterwards, Hiroto and Ayaka were sent to a Japanese orphanage with a presumptive Philippine nationality. They did not have any official identity information issued by the Philippines nor any official identity information issued by Japan. The adults caring for the children were aware that the children’s status had gradually shifted from *de facto* to *de jure* statelessness, although the children themselves were unaware.

When the children were in their early twenties, they found themselves stateless. However, by then, it was ‘too late’. Ayaka left the orphanage when she turned 18 years old. A couple of years later, she conceived a child with a Japanese partner. They decided to get married, and a municipal officer instructed Ayaka to submit an ‘affidavit

of competency to marry' issued by her home country. Ayaka was informed by the Philippines' embassy that she was not Filipina. Although she produced her Japanese residency card, which stated 'Philippine, as the officially acknowledged nationality', the Philippine officers confirmed that she was not registered in the Philippines. The nationality listed on her official Japanese documents was a case of presumptive foreign nationality with no legal basis in the Philippines. This could have been avoided if the children's mother had registered their nationality soon after their births. However, Ayaka had lost all contact with her Filipina mother and had no means to acquire any documents certifying her mother's nationality. If the children had learned that they could not acquire Philippine nationality earlier, they could have applied for Japanese nationality based on birth. Japanese nationality law enables this for 'one who was born in Japan and has had no nationality since the time of birth, and has had a domicile in Japan for three consecutive years or more since then' (Ministry of Justice 2019, Article 2, [iii]). Ayaka found herself *de jure* stateless.

Ayaka and Hiroto's vignette reveals what some scholars on migration and citizenship called the ambiguity of statelessness. Scholars have argued that the citizenship rights people enjoy range between full citizenship and complete statelessness (Allerton 2014, 30) and they are negotiated on the ground in local contexts (Choo 2013, 465, 2016, 10; McCargo 2011, 846; Redclift 2013a, 87–88, 2013b, 318). This is especially true for children like Ayaka and Hiroto living in the 'liminal legal space' (Redclift 2013a, 170; 2013b, 317; citing Willen 2005, 78). Ayaka's and Hiroto's situation exemplifies the 'semi-citizenship' (Cohen 2009) and ambiguous statelessness (Belton 2015, 909) that exist between a fully inclusive legal status and fully excluded statelessness (Friedman 2010, 74; McCargo 2011, 846; Mezzadra and Neilson 2012, 62). This situation is relevant to the discussions on transcending the legal/illegal dichotomy that anchors immigration policy (Glenn 2011, 16), citizenship as fluid entities (Bhabha 2009, 413; Redclift 2011, 36), unclear statuses (Redclift 2013a, 174; Weissbrodt and Divine 2015, 870), and graduated statuses (Friedman 2010; Ong 2006, 78–79), revealing that children's legal statuses are ambiguous during childhood, making it difficult for them to realise their risk of becoming stateless.

### Considered nationality

Both Japanese and foreign authorities (often those of the mother's home country) can cause abandoned children to 'misunderstand' that they have a foreign nationality. Considered nationality includes personal opinions, usually of an official, implying that a stateless person is legitimately qualified for nationality without requiring official registration procedures. Bhabha (2009) argues that these 'considered nationals' lack legal identity and the ability to prove legal identity; thus, they may lose access to key state protections (Bhabha 2009, 412–413). Some abandoned children in this study were told by foreign embassy staff members that they were 'considered to be a national (of our country)', which instilled a false sense of security that they would be able to prove their nationality in the future. As a result, they missed crucial opportunities to formally register or prove their national identity during their childhood.

The next vignette illustrates how considered nationality functions. Masato and Naoto are brothers born in Japan to a Japanese father and Thai mother in the early 1990s. Their parents could have registered their nationality as Thai via their mother or as

Japanese as stateless persons born and raised in Japan. However, their parents did not attempt neither. The orphanage staff who took care of their case recalled that, although the father loved his wife and children, he seemed to have avoided registering the children because he was afraid his wife's undocumented status would be discovered. As a result, Masato and Naoto were *de facto* stateless.

At six and four years old, respectively, Masato and Naoto believed their considered nationality was Thai. According to the orphanage staff, when Naoto was five and Masato was three, their mother suddenly 'left home', and their father approached the child guidance centres, claiming that he could not care for them because of work. Soon after, they moved to the orphanage, and child protective service officials discovered that both children and their parents' marriage were unregistered. The officials approached the Thai consul in Japan, submitting a copy of the mother's expired Thai passport. Until 2008, if Japanese fathers did not complete the official procedure of 'before birth acknowledgement' for a child born to a foreign national partner with whom they were not married, the child had almost no legal means to acquire Japanese nationality (Suzuki 2015). After several months, 'they finally received good news' (orphanage staff member, January 1, 2018). The Thai consul official told the Japanese child protective services that, according to the documents that were sent, the children were Thai nationals. The orphanage staff thus 'felt great knowing their Thai nationality was acknowledged by their government' (interview, January 1, 2018). After that, Masato and Naoto 'became Thai' both by their identification and via official documents issued by the Japanese government. The orphanage staff did request the children's passports from the Thai consulate 'simply because both children did not have any plan to go abroad' (orphanage staff member, January 1, 2018). The staff believed that 'the embassy staff says they are Thai. So, they could receive them anytime they apply, anyway' (orphanage staff member, January 1, 2018). In reality, although Masato and Naoto believed themselves to be Thai, they were not registered as Thai nationals in Thailand.

Until their mid-twenties, because they believed themselves to have a national identity, Masato and Naoto continued to miss opportunities to register their nationalities, and their status shifted over time from *de facto* to *de jure* stateless. The children's father, who visited them regularly, died five years after they moved to the orphanage. According to Japanese law, this presented an opportunity for them to acquire Japanese nationality if they had applied for it within three years of their father's death (Ishikawa 1991). However, Masato and Naoto believed they were Thai, and the adults caring for them and surrounding them did not consider applying for Japanese nationality, as they also believed the children to be Thai (orphanage staff member, January 1, 2018).

After almost two decades of separation from their parents, Masato and Naoto suddenly found themselves stateless. At 22, several years after leaving the orphanage, Masato was arrested for fighting and possessing illegal drugs. The Japanese government revoked his visa and ordered his deportation to Thailand. However, the Thai authorities did not accept Masato because he was not a Thai national. Masato ultimately recognised that his status depended on the testimony of an unknown officer from two decades ago, which lacked any formal authority in Thailand.

As Masato and Naoto's ties with their mother had been severed for decades, there was no way to certify their Thai nationality. At 22 years old, Masato could not claim a child's right to Japanese nationality. The only way he could acquire Japanese nationality was

through naturalisation (Ministry of Justice 2019). Certain stipulations must be considered for naturalisation, including ‘upright conduct’ (Item 3), the capacity to ‘secure a livelihood by one’s own property or ability’ (Item 4), and proof that one ‘has no nationality, or the acquisition of Japanese nationality will result in the loss of foreign nationality’ (Item 5). As Masato had a criminal record, there was a conflict with Item 3; he could not work because he was to be deported, which conflicted with Item 4. Moreover, he could not provide any documents to certify the loss of his foreign nationality or his statelessness, which excluded the possibility of Item 5. At this stage, he found himself *de jure* stateless.

This case shows the invisibility of statelessness (Acciaoli, Brunt, and Clifton 2017, 245; Levin 2018, 31; Willen 2005, 78) among immobilised individuals (Lubkemann 2008, 455). Presumptive foreign nationality made their statelessness ‘hidden from view’ (Redcliff 2013a, 170). Critically, stateless people are found in the social spaces of liberal, democratic nation-states (Sigona 2016, 266) rather than during crises, such as wartime or refugee migration (Belton 2017, 117). Indeed, as the vignette shows, statelessness is publicly invisible upon presumptive foreign nationality in liberal democracies, without clear awareness of citizens or migrants, or being framed as an emergency or crisis (Agamben 1998, 181; Kingston 2019, 85; Sassen 2001; Sigona 2016, 266).

## Discussion

As the vignettes above show, time is crucial for the legal production of abandoned children’s statelessness in Japan. When abandoned children gradually lose ties with their parent(s), they unknowingly lower the possibility of legally registering their nationality. With each passing year, the time left to apply for citizenship diminishes. By the time the abandoned children and their guardians become aware of the children’s unstable legal status in their adulthood (Gonzales and Chavez 2012, 267), it is often too late to legitimise their nationality anywhere. Oftentimes without knowing, abandoned children spend their childhood with their status fluctuating between that of included citizens and excluded stateless people.

Statelessness is fluid, complicated, and graduated, just as citizenship studies depict citizenship as fluid (Glenn 2011, 3), complicated (Somers 2008, 21), and graduated (Ong 2006, 78). Although the abandoned children discussed in this paper were born and raised in developed, liberal democratic states (Sigona 2016, 266), they lived in nationality limbo. Belton calls this being ‘displaced in situ’ (2017, 117). This phenomenon also shows that both a person’s country of origin and their new country, after immigration, tend to neglect the cost of reproductive labour for multigenerational migrant workers. This is what Parreñas calls ‘the government’s neglect of backlogs (children of immigrants, overlooked second generation)’ (2005, 158). As Parreñas notes, the invisibility of statelessness is crucial because ‘[t]heir invisibility mirrors the social disapproval attached to their families’ (2005, 54). The resultant statelessness is in part an act of commission, in addition to the clearly identified acts of omission. McAuliffe refers to this structure as ‘intergenerational exclusion and marginalization’ (2017, 223).

## Conclusions

This article focused on the role of time in the legal production of statelessness, emphasising the gap between the legal definition of abandoned children and the lengthy status of

their abandonment. Whereas nationality law defines abandoned children as children without any trace of parents, the real condition of abandonment includes decades of uncertainty about whether the children have been abandoned. Migrant parent(s) abandon their children gradually, showing hesitation, regret, and attachment. This unintentionally results in pushing the children into citizenship limbo. Because local men do not face the same child care responsibilities and stigmatisation that migrant women face, as mentioned earlier in this paper, the parent who is most able to secure the child's nationality is the least likely to do so. The above vignettes show how citizenship regimes sometimes reinforce the notion that 'mobility can weaken the leverage of the already weak' (Massey 1994, 150). The complicated application of nationality law delegitimises people, and it is difficult for marginalised and stateless people to interpret the 'language of legality' (Levin 2018, 31) and understand how time affects the legal production of statelessness.

## Notes

1. Item 3, Article 2 ('Acquisition of nationality by birth') of the Nationality Law of Japan, <http://www.moj.go.jp/ENGLISH/information/tnl-01.html>. Accessed 12 March 2020.
2. See appendix I, an excerpt from Article 2 ('Acquisition of nationality by birth') of the Nationality Law of Japan.
3. The term 'impossible children', in this article, refers to what Allerton discusses in her paper (Allerton 2018); children of migrants with a particular experience of illegality and exclusion distinctively configured for such children (Allerton 2018, 1082).
4. Each vignette is composed of two to three cases from 24 cases of children whose parent(s) are assumed to be Southeast Asia and East Asian migrants and who appeared in interviews.
5. Interview with wives of ex-bandmen who stayed in Japan in the early 1970s in Manila (21–27 August 2008); Ministry of Justice, Japan. 1968. Table 3 'Visa category of legitimate foreigner by nationality (Kokuseki betsu seiki nyukoku gaikokujin no zairyu shikaku)' *Immigration Statistics, Annual Report (Shutsunyukoku kanri tokei nenpo Showa 43 nen)* pp. 18–19; Ministry of Justice, Japan. 1968. Table 8 'Age and Gender of legitimate foreigner by nationality (Kokuseki betsu seiki nyukoku gaikokujin no nenrei oyobi danjyo)' *Immigration Statistics, Annual Report (Shutsunyukoku kanri tokei nenpo Showa 43 nen)* pp. 60–61.
6. Ministry of Justice, *Statistics on the Foreigners Registered in Japan [(Zairyu Gaikokujin Toukei)]* [http://www.moj.go.jp/housei/toukei/toukei\\_ichiran\\_touroku](http://www.moj.go.jp/housei/toukei/toukei_ichiran_touroku). Accessed 16 April 2020.
7. The list of orphanages is available at <http://www.zenyokyo.gr.jp/list/list.htm> (last accessed: 26 February 2020).
8. The Immigration Service Agency of Japan provides a residence card for foreign nationals aged 16 years or over residing in Japan as mid- to long-term residents (interpreted by the author as referring to residents who stay for more than 90 days). The residence card contains a photograph of the resident and records the resident's name, birth date, gender, nationality/region of origin, address, status of residence, period of stay, and whether or not they can work (Immigration Service Agency of Japan 2019).

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## Appendix I: Article 2 ('Acquisition of nationality by birth') of the Nationality Law of Japan

A child shall, in any of the following cases, be a Japanese national:

- (1) When, at the time of her/his birth, the father or the mother is a Japanese national;
- (2) When the father who died prior to the birth of the child was a Japanese national at the time of his death;
- (3) When both parents are unknown or have no nationality if the child is born in Japan.