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Invisible kids: Localising children's right to a nationality

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Invisible kids: Localising children's right to a nationality

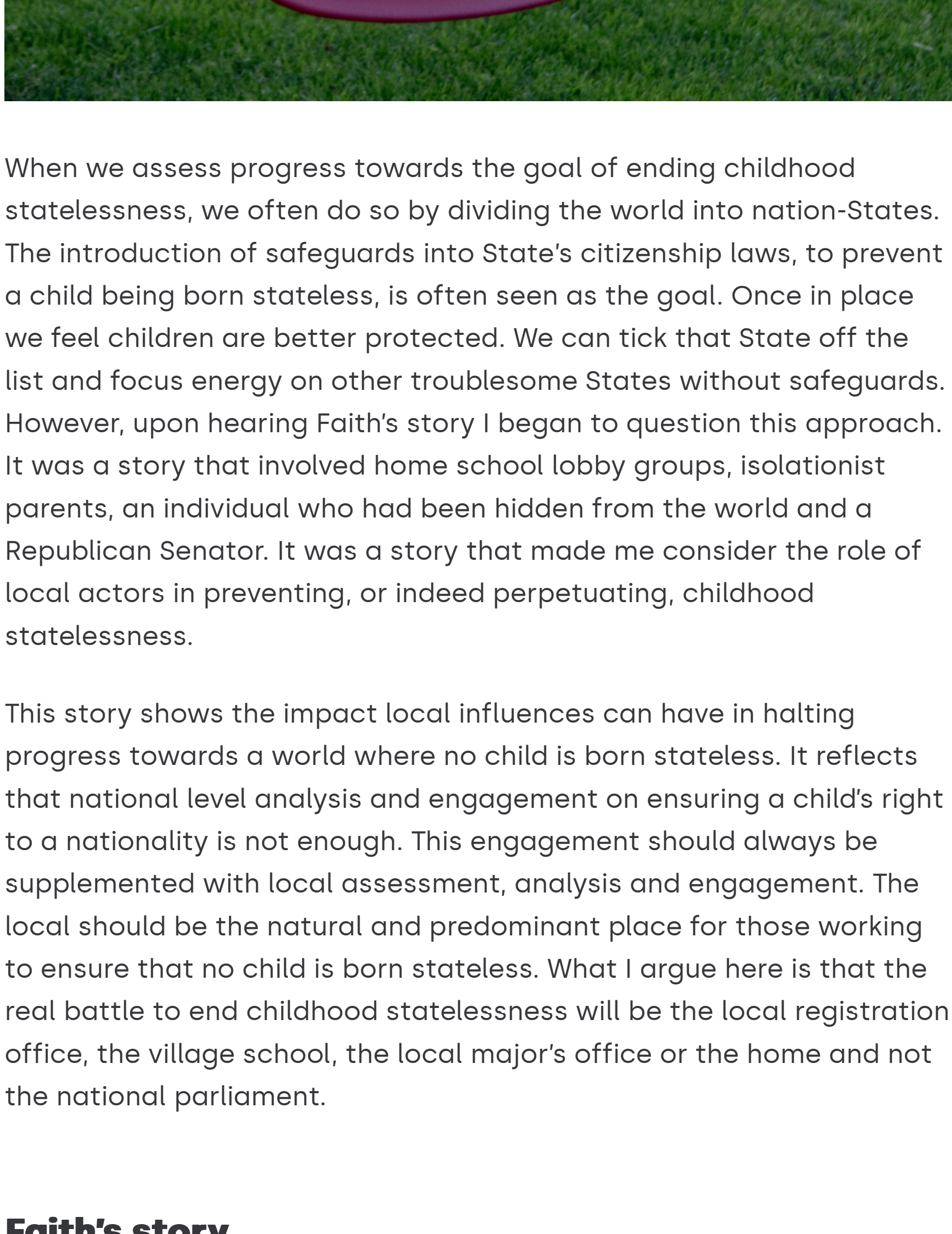


BLOG

Jason Tucker, Researcher and ENS Associate Member

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When we assess progress towards the goal of ending childhood statelessness, we often do so by dividing the world into nation-States. The introduction of safeguards into State's citizenship laws, to prevent a child being born stateless, is often seen as the goal. Once in place we feel children are better protected. We can tick that State off the list and focus energy on other troublesome States without safeguards. However, upon hearing Faith's story I began to question this approach. It was a story that involved home school lobby groups, isolationist parents, an individual who had been hidden from the world and a Republican Senator. It was a story that made me consider the role of local actors in preventing, or indeed perpetuating, childhood statelessness.

This story shows the impact local influences can have in halting progress towards a world where no child is born stateless. It reflects that national level analysis and engagement on ensuring a child's right to a nationality is not enough. This engagement should always be supplemented with local assessment, analysis and engagement. The local should be the natural and predominant place for those working to ensure that no child is born stateless. What I argue here is that the real battle to end childhood statelessness will be the local registration office, the village school, the local major's office or the home and not the national parliament.

Faith's story

The US is one of those States that has been ticked off the list. For children born on their territory they benefit from the provision of ***jus soli*** in the ***nationality law***: Being born in the US makes you a US citizen. At a national level all seems well, no children can be born stateless on the territory.

However, on the 9th of February 2015 Alecia 'Faith' Pennington, who was born and raised in the US, published a short ***YouTube video*** explaining how she, through no fault of her own, could not prove her US citizenship. Faith's situation arose due to a combination of decisions made by her parents and insurmountable requirements in the local legislation. ***Faith's story*** begins with her birth at her family home in Texas. Her parents did not register her birth, secure any birth record or apply for a social security number for her. Faith was home schooled and never visited a hospital when she was growing up. Her parents took active steps to ensure that their children were outside of the system, that they did not legally exist. As Faith had little to no interaction with the outside world, she left no administrative paper trail of her existence.

However, this all changed when Faith chose to leave the family home around her 19th birthday. She decided that she wanted to start a new life with her grandparents. As she began her new life, her legal and administrative invisibility began to become more apparent. Being unable to meet the requirements to confirm her citizenship, Faith was unable to attend school, rent an apartment, open a bank account, travel or get a driving licence. All of these activities required that she had a social security number, something Faith could not get without proof of birth.

It was at this point that Faith began her battle to be recognized as legally existing. Her first step was visiting the Bureau of Vital Statistics to check if she had a birth certificate or any birth records. She didn't. She was advised her to go to court to get a delayed birth certificate. Local legislation in Texas required that to secure a delayed birth certificate her mother would have to sign a sworn statement of birth, as well as providing two other pieces of evidence. While she secured the sworn statement, she could not provide the other pieces of evidence. Faith was stuck. The Federal Government did not recognise Faith's birth; thus she was not born in the US. With no country of origin Faith couldn't be considered an immigrant either.

The legislative reform resulting from Faith's case: shifting the burden of responsibility

Faith did not give up. She published a YouTube video calling out for help in resolving her situation, which was viewed nearly 1.5 million times. Following the huge response rate, a social media campaign was established. This lead to local government officials hearing about the case of the girl who was born and raised in Texas, who didn't legally exist. Faith's case was taken up by a local Texan politician, Marsha Farney, who successfully campaigned for legislative changes. The legislative reform introduced in ***Farney's bill*** implemented measure that would make it easier for people in Faith's position to have their case heard in the county court, have greater access to legal representation and introduced penalties for parents who failed to sign the sworn statement of birth.

Interestingly the legislative reform did not guarantee that the *jus soli* principle in the citizenship law was enforced or upheld. Parents could still raise their children 'off the grid', hiding them from the local and Federal Government if they so wished. The legislation simply sought to allow those who had been raised in such a way to more effectively address their situation later on in life.

Citizenship in the US is a matter of Federal law. However, local government have been charged with birth registration and the enforcement related to it. While this may seem normal, we should consider that local government is influenced by various actors, including civil society, lobby groups and their electorate. While the role of lobby groups, and their influence over the contents of Farney's bill cannot be measured, lobby groups for and against home schooling did weigh in on the debate. As senators are elected officials, one can also assume that public opinion would have had an influence on the legislation.

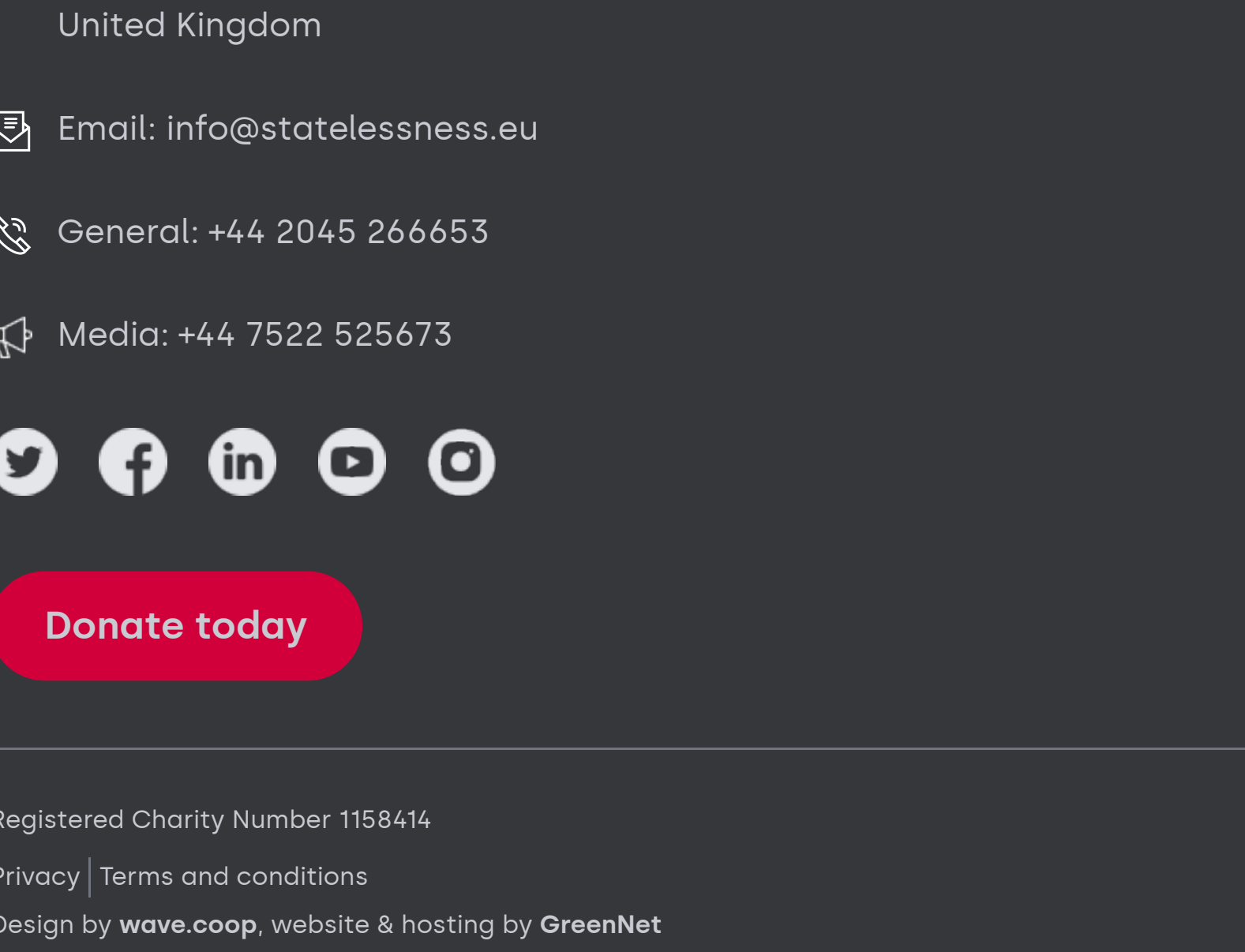
Local influences may have been the reason that Farney's bill pushed responsibility of implementing the principle of *jus soli* onto the individual themselves. It was only when, upon challenging their parents actions that lead to the situation where they needed to confirm their birth, that the law sought to penalise the parents lack of cooperation. However, up until that point the parents were considered to have done nothing illegal. Therefore, parents in Texas can still choose whether or not to violate their ***child's right to a nationality***. A violation that local legalisation does not address, and arguably even facilitates though its silence on the matter.

Assessing progress in preventing childhood statelessness: a local perspective

Farney's bill is only applicable in Texas. While I am not in a position to make comparisons between various US states' policy and practice on birth registration, there are numerous examples of local variations within countries regarding children's access to citizenship. A child's ability to acquire or confirm their nationality is normally dependent on the actions of a range of local actors. Municipal authorities, local judges, majors, local police, government officials, village leaders, parents... the list goes on.

Local variations are to be found so frequently that local level assessment in ensuring children's right to a nationality should be the norm. In moving forward I think it is safest to assume local variation even if there is national compliance with international standards to prevent childhood statelessness. It would seem unusual, if not rather suspicious, for States to have completely homogenous local law and practice and for no child to face any barriers in confirming their citizenship across all localities. Therefore, while the citizenship law and national level policies should be the first port of call in determining a State's compliance with international and regional law on a child's right to a nationality, local level assessments of how this is implemented should be considered an essential and natural next step.

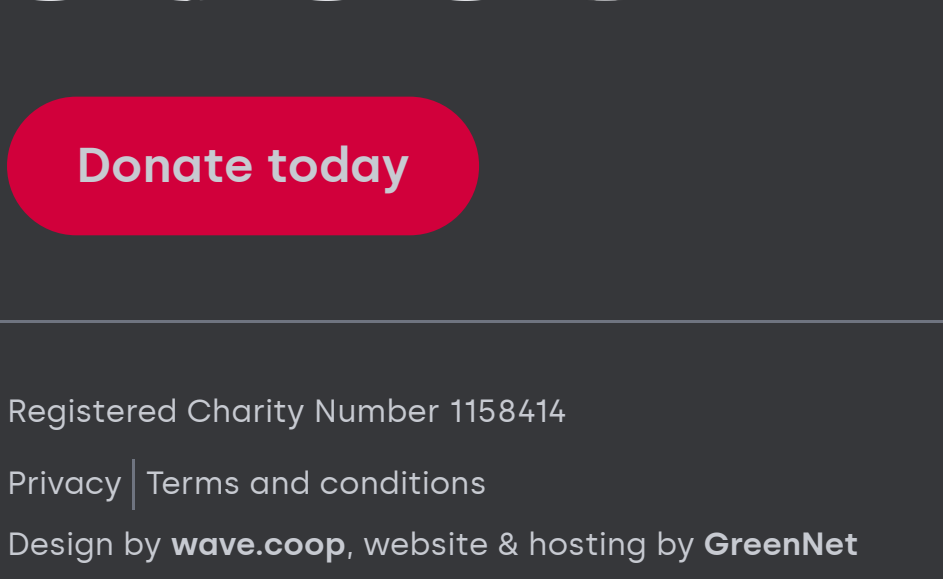
So what happened to Faith? She did manage to get a birth certificate and eventually got a passport. At the time of writing she is still waiting for a social security number.



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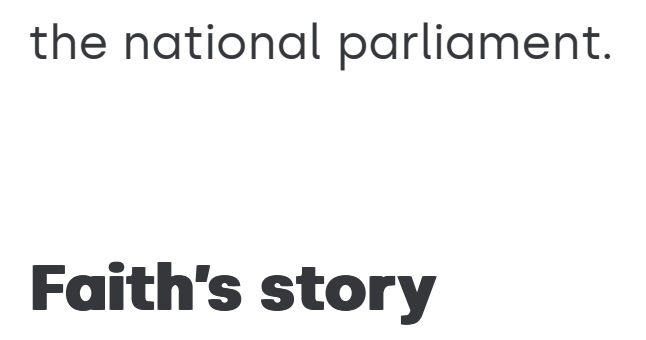
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