

CHILDHOOD STATELESSNESS AND THE COMMITTEE ON THE RIGHTS OF THE CHILD

Nationality plays a fundamental role in the life of a child. Without a nationality, children can have difficulty exercising their rights and struggle with the sense of identity and belonging. The Convention on the Rights of the Child (CRC) clearly articulates the right to a nationality of every child (Articles 7 and 8) and obligates states to take measures to avoid and resolve cases of childhood statelessness. The other rights contained in the CRC must also be available to all children, irrespective of their nationality, immigration status or statelessness. Through its monitoring role, the Committee on the Rights of the Child (CRC Committee) is uniquely placed to enhance the visibility of childhood statelessness as a human rights issue, improve the enjoyment of rights by stateless children and ensure every child's right to a nationality.

State party reviews and recommendations by the CRC Committee, 2010 - 2020

TOTAL

210

CHILD'S RIGHT TO NATIONALITY AND/
OR THE RIGHTS OF STATELESS CHILDREN

126*

DIRECT REFERENCE TO STATELESSNESS

113

BY THEME

THE CHILD'S RIGHT TO NATIONALITY

119

IMPLEMENTING MEASURES

110

THE RIGHTS OF
STATELESS CHILDREN

38

** The total number of relevant CRC Committee recommendations for the 2010-2020 period reaches 180 recommendations if we include those relating to birth registration. However, birth registration is a separate process that facilitates the realisation of the right to nationality, but does not always result in the acquisition of nationality. Therefore to avoid conflating the two issues, birth registration recommendations are not included in this figure.*

KEY TAKEAWAYS



Consistency is key! Childhood statelessness issues must be raised within the work of the CRC Committee until they are resolved. In 2010, Belgium received a recommendation to establish a dedicated Statelessness Determination Procedure (SDP) and accede to the 1961 Statelessness Convention. In 2014, Belgium acceded to the 1961 Statelessness Convention. In 2019, Belgium did not receive a relevant recommendation. So far, it has not introduced a dedicated SDP.



Language matters! Concrete and detailed recommendations lay a clear foundation for implementation and follow up. In 2016, the CRC Committee urged South Africa to regulate access to nationality for otherwise stateless children. Alongside the CRC Committee's engagement, the State's High Court further ordered the publication of such regulations. South Africa's inaction to date is met with concerted national and international advocacy efforts focused on effecting this legislative change.



Identity rights intersect! The rights to a name, nationality, birth registration and family relations interact and monitoring implementation of articles 7 and 8 CRC requires a holistic approach. The CRC Committee is increasingly engaging with these issues in parallel as in its 2016 recommendation to Haiti and is helping to promote a rights-based approach to legal identity target SDG 16.9 by connecting the two complementary frameworks.



Teamwork makes the dream work! International human rights monitoring mechanisms are most effective when collaborating amongst themselves and with civil society. After numerous recommendations by multiple human rights mechanisms including CEDAW, and robust civil society engagement, the Madagascar Nationality Code was amended to allow women to confer their nationality to their children on equal terms with men.

GRANTING NATIONALITY TO CHILDREN WHO WOULD OTHERWISE BE STATELESS

The Committee has clarified that Article 7 of the CRC requires states to grant nationality to all children born on their territory if they would otherwise be stateless regardless of their or their parents' legal status, background or their parents' past opinions or activities.

60 states have no safeguard for otherwise stateless children born in the territory, nor a more generally applied jus soli-based provision for children born in the country. Many more have inadequate provisions in their nationality laws, with safeguards that cover only certain children (like the Netherlands where additional residence criteria apply); or a safeguard that is not implemented (as in Syria) or not well implemented in practice (as in the example of South Africa). Although the CRC Committee has raised the issue of ensuring access to a nationality for otherwise stateless children, it has done so in only 27 of its Concluding Observations, while many other states with no or poorly functioning safeguards have not received any recommendations on this critical issue.

ENSURING THE RIGHT TO NATIONALITY FOR ABANDONED CHILDREN

Gaps in law, like failing to ensure access to nationality for an abandoned child – a 'foundling' – can also cause childhood statelessness. Across the globe, 27 States do not have a provision in their nationality laws to grant nationality to children of unknown origin found in their territory, nor a more generally applicable jus soli provision. At least 50 States have inadequate foundling provisions in their nationality laws. However, since 2010, the CRC Committee has issued only four recommendations on this issue.

“ *Amend Act No. 61-415 to automatically grant nationality at birth also to children who cannot acquire the nationality of their parents or who are abandoned on the State party's territory.*”

CRC Committee
Recommendation to Cote d'Ivoire

BIRTH REGISTRATION

According to the most recent [UNICEF data](#), a quarter of all children under age 5 have never had their birth recorded officially. Lack of birth registration can prevent access to a nationality (because birth registration provides official evidence of key facts relating to a child's birth, including birthplace and parentage), while stateless children are often excluded from accessing birth registration and proof of legal identity. There is a dynamic interaction between the right to birth registration and to acquiring and preserving nationality, as protected in articles 7 and 8 of the CRC. Although the Committee addressed the issue of birth registration in 141 of its Concluding Observations, it rarely connects access to birth registration with the need to actively ensure a pathway to citizenship for all children. Just 40% of the Concluding Observations that raise birth registration also address the right to nationality or the rights of stateless children. A more holistic approach to the different elements of the child's right to a nationality and the interaction between them would be valuable.

“ *Take all necessary measures to systematically register Roma children so as to provide equal access to health services and to avoid statelessness.*”

CRC Committee
Recommendation to Serbia

MYANMAR INDIA JORDAN CYPRUS
BANGLADESH KENYA KUWAIT

have **NO** safeguard for otherwise stateless children born in the territory but have **NOT** received a relevant recommendation, when reviewed by the CRC Committee.

Nationality and statelessness issues addressed by the CRC Committee

THE CHILD'S RIGHT TO NATIONALITY

- Access to nationality for (otherwise) stateless children
 - Born on territory
 - Born abroad
- Access to nationality for foundlings
- Birth Registration
- Adoption/Surrogacy & access to nationality
- Nationality Deprivation
- Discrimination & access to nationality
- Forced migration & access to nationality

RIGHTS OF STATELESS CHILDREN

- Enjoyment of (other) rights
- Statelessness Determination Procedures
- Remedy
- Detention

IMPLEMENTING MEASURES

- International Instruments
- Childhood Statelessness Data

NATIONALITY DEPRIVATION

Recent years have seen an alarming increase in interest in citizenship stripping. One in five countries have introduced powers to deprive nationality on grounds of disloyalty, national security or terrorism since September 11, 2001. Today, 70% of countries have such powers in their legislation and many frame them broadly, without exempting children. In 76 countries, the law provides for the possibility of derivative loss of nationality from the child, in conjunction with the deprivation of nationality from a parent. In the 2010-2020 period, the Committee has issued just 10 recommendations on this issue.

“

Revoke the December 2015 amendments to the Citizenship Act that allow for children under 18 years of age to lose their Australian citizenship if they engage in or are convicted of certain foreign fighting or terrorism-related conduct.”

**CRC Committee
Recommendation to the Australia**

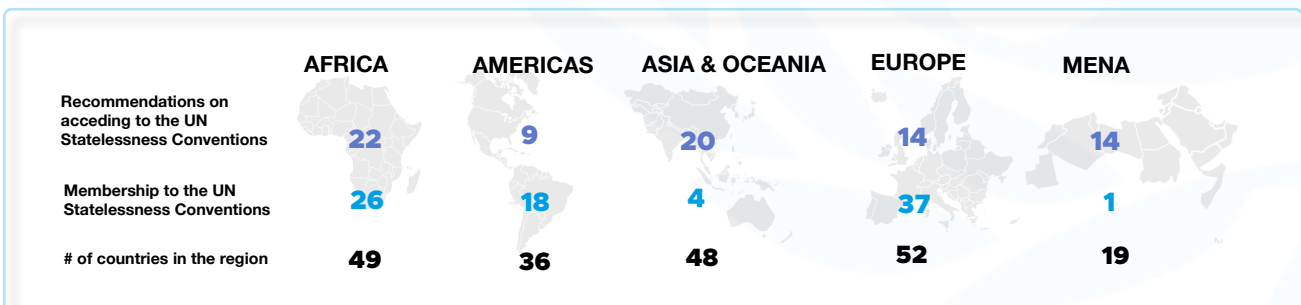
RIGHTS OF STATELESS CHILDREN

Statelessness affects more than 15 million people, across all regions of the world. Stateless children are particularly vulnerable to consequential human rights violations, caused or aggravated by a lack of nationality. However, the Committee has raised issues stateless children face in only 38 out of 126 recommendations and failed to address the treatment of stateless children in countries with significant stateless populations like Malaysia, Kenya, Thailand, Latvia and Nepal. The establishment of statelessness identification and determination procedures (SDP) can be a critical step to providing stateless children adequate protection and rights in line with international law. However, this issue has scarcely been raised by the CRC, even though only around 15% of all States have an SDP at place.

Less than a third of the CRC Committee’s Concluding Observations address the rights of stateless children.

IMPLEMENTING MEASURES

State parties to the CRC are required to develop General Measures of Implementation to fulfil the rights set out in the Convention. These measures are all about “making reality of the human rights of children”. They are the “how” rather than the “what” in terms of states’ obligations under the CRC. In the recommendations it has issued, the CRC Committee has outlined a wide range of implementing measures that states may be required to put in place, as relevant, to realise the right of every child to a nationality – such as acceding to the UN Statelessness Conventions (86 recommendations). However, as can be seen from the infographic below, there is inconsistency in the engagement of the CRC Committee on accession to these instruments - regions with a low rate of ratification do not necessarily show a correspondingly high trend in relevant recommendations.



ASSESSING IMPACT: SOUTH AFRICA

Daniella was born in South Africa but was stateless for the first eight years of her life. Her Cuban parents had been away from Cuba for a long period of time and were barred from transferring their citizenship to their daughter. While Daniella’s legal efforts to obtain a court order declaring her to be a citizen of South Africa by birth was still pending, South Africa came under review by the CRC Committee. Lawyers for Human Rights (LHR), a civil society organisation which initiated the legal proceedings, submitted a report to the CRC Committee, with the Institute on Statelessness and Inclusion, supplementing its national advocacy and litigation with international engagement. The CRC Committee issued several strong and concrete recommendations on the child’s right to nationality: calling on South Africa to ensure birth registration for all children within its jurisdiction and to address challenges regarding the granting of nationality to otherwise stateless children. In the same month, LHR’s litigation resulted in the Supreme Court ordering the authorities to implement the legal safeguard against statelessness for Daniella and to grant her citizenship. According to LHR attorney, Liesl Muller, “Partnering with the Institute to make a submission to the CRC helped us fulfil our mandate to effect legislative change in South Africa and to raise awareness on the subject”.

EVOLVING ENGAGEMENT BY THE CRC COMMITTEE ON NATIONALITY AND STATELESSNESS

In the period 2010-2020, the CRC Committee engaged with the child's right to a nationality and childhood statelessness in over 70% of its recommendations. A closer look at its earlier sessions (2010-2015) reveals that most recommendations referred to birth registration, that the language used was rather broad and that there was less engagement with specific childhood statelessness/nationality issues in the countries reviewed. However, recommendations from the CRC Committee's later sessions (2015-2020) demonstrate an evolution in style and language: providing more concrete and detailed direction on the action required and showing a clearer understanding of and interest in childhood statelessness/nationality issues. The CRC Committee starts to use more specific language and engages with a wider range of issues directly relating to childhood statelessness and the child's right to a nationality, such as access to nationality for stateless children, (gender) discrimination in nationality laws, nationality deprivation and a broad array of implementing measures to prevent or address statelessness.

EVERY CHILD'S RIGHT TO A NATIONALITY AS A CROSS-CUTTING HUMAN RIGHTS ISSUE: ENGAGEMENT BY OTHER UN HUMAN RIGHTS BODIES

The CRC is not the only UN human rights instrument to protect the child's right to a nationality. For example:

- ICCPR article 24 affirms every child's right to acquire a nationality
- CMW article 29 protects the right to nationality for children of migrant workers
- CEDAW article 9 provides for the child's right to access nationality on an equal basis from mother or father

Recommendations by other UN Treaty Bodies, 2010-2020			
	CEDAW	ICCPR	CMW
CHILDREN	88	56	27
SAFEGUARDS FOR CHILDREN BORN ON TERRITORY	11	5	6

Within the Universal Periodic Review (UPR), measures to protect and fulfil the child's right to a nationality have also been promoted. Across the three UPR cycles completed to date, 624 relevant recommendations have been issued to states. Of these, 40 recommendations explicitly address the question of access to nationality in the state of birth for otherwise stateless children. Those topics that have received less attention, to date, from the CRC Committee have also drawn limited interest from other UN human rights bodies. There are just 2 UPR recommendations and one from the Human Rights Committee on protecting the right to nationality for foundlings; and similarly, only 2 UPR recommendations addressing the right to nationality for children in situations of adoption. Greater engagement by the CRC on these issues can have a positive knock-on effect on the wider human rights mechanism system and catalyse stronger uptake of neglected topics.

As a cross-cutting issue, other Treaty Bodies also monitor states' implementation of the child's right to nationality. They have actively engaged in making recommendations on children's nationality rights and have also paid attention to key issues, such as ensuring that adequate safeguards are in place to grant nationality to children born in the territory of the state if they would otherwise be stateless.

