

Children's Right to Nationality

The most important international legal instrument protecting children's right to nationality is the *Convention on the Rights of the Child*, given that nearly every country around the globe has signed and ratified it. Article 7 of the *Convention* guarantees the right of all children to acquire a nationality.¹ Although the right itself is clear, the way it operates, and in particular, the obligation to implement, are not.

The Committee on the Rights of the Child therefore has a crucial role to play in clarifying states parties' obligations towards stateless children. There are two crucial ways in which the Committee may go about achieving this:

- a) by issuing a General Comment on Articles 7 and 8 of the *Convention*; and
- b) by systematically inquiring about statelessness during its Constructive Dialogues with states parties, in particular with respect to states where this problem is widespread and well documented.

The Open Society Justice Initiative recommends:

1. The Committee should issue a General Comment on Articles 7 and 8 which address among other things:
 - i) **Article 7 and 8 read in conjunction with the best interest of the child principle** firmly establish that all children have a right to a nationality, that no children shall be arbitrarily deprived of their nationality, and that states must actively seek to reduce and prevent statelessness among children.
 - ii) The right to nationality for children must at a minimum include that **every child has a right to nationality in the state of birth if he or she would otherwise be stateless**. Article 7(2) suggests that the obligation to implement the right to acquire a nationality is particularly important in cases where the child would otherwise be stateless. It is moreover beyond doubt that it is in the best interest of the child not to be stateless. Thus, in order to provide a meaningful right to nationality for children, the Committee should stress that states parties must grant their nationality to stateless children born on their territories. This obligation is in line with regional standards in Europe, Africa and the Americas.

¹ States Parties shall ensure the implementation of these rights [rights to a name, nationality, and to know and be cared for by parents] in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

- iii) Children shall have a **right to acquire a nationality on a non-discriminatory basis**, without regard to their race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Further, the law must not permit discrimination with regard to acquisition of nationality between children born in and out of wedlock.
 - iv) States have an **obligation to register immediately after birth all children** born in its territory, and where applicable provide them with documents necessary to prove their nationality
 - v) National constitutions and nationality laws should provide for an **explicit right to nationality from birth (of origin) on the basis of an appropriate connection to the country**, such as birth in the territory or having a father or mother who is a citizen.
 - vi) States shall **accord equal rights to men and women** with respect to the nationality of their children.
 - vii) The law should provide that a child found in the territory of the state shall, in the absence of clear proof to the contrary, be **considered to have been born within the territory of parents possessing the nationality of that state**.
 - viii) States have an obligation to provide a **clear and expedited path to nationality for stateless children who are not born but habitually resident on its territory**. States may require a period of habitual residence prior to application for nationality, but the required period may not extend beyond five years.
2. The Committee should systematically address issues related to statelessness and the right to acquire a nationality in its Constructive Dialogues with state parties and in its Concluding Observations. In particular, the Committee shall enquire about
- i) Children's right to acquire a nationality under the laws of the state concerned, and especially the right to nationality for stateless children;
 - ii) Practices with respect to birth registration, documentation and proof of nationality;
 - iii) Efforts to prevent and reduce statelessness among children;
 - iv) The right of women to confer nationality to their children;
 - v) Laws and practices with respect to deprivation of children's nationality.

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