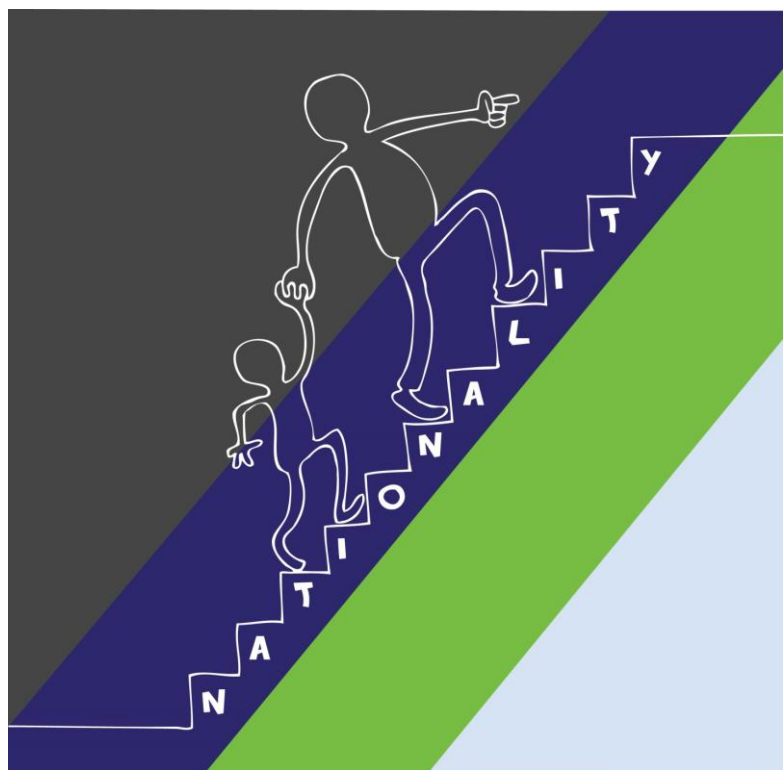


Addressing the Right to a Nationality through the Convention on the Rights of the Child

A Toolkit for Civil Society

Section 3: About engaging with the Committee on the Rights of the Child



3. About engaging with the Committee on the Rights of the Child

The CRC – with 196 States Parties - is the most widely ratified international treaty through which civil society actors can address the right to a nationality and the prevention of statelessness. Article 7 is clear and unambiguous in its affirmation of every child's right to acquire a nationality, and of every state's obligation to protect children from statelessness.

The Committee on the Rights of the Child works closely with civil society actors as well as State Parties and UN Agencies, in monitoring the implementation of the Convention. As such it is an extremely relevant and important framework through which to promote every child's right to acquire a nationality.

What is the Committee's mandate?

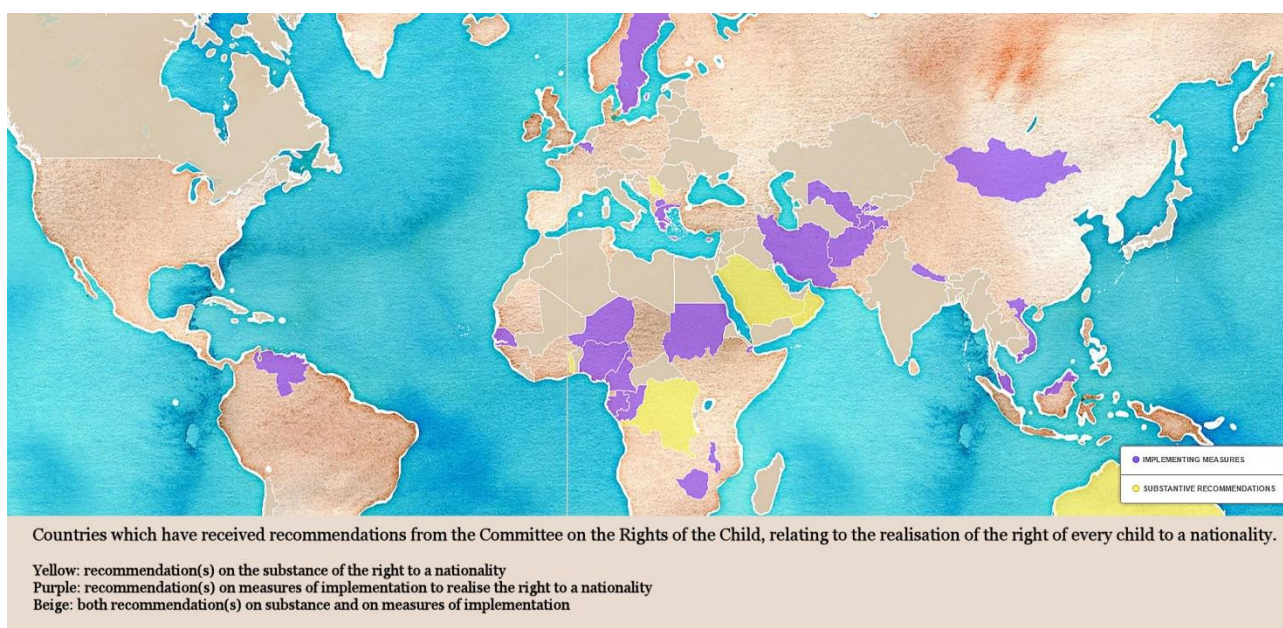
The Committee is the body of 18 independent experts that monitors the implementation of the CRC and its optional protocols by States Parties. Under this mandate, it issues authoritative guidance on the content of CRC provisions through the publication of "General Comments" on particular articles or thematic issues. The Committee also organises "Days of General Discussion", on a biennial basis, to further the understanding of specific child rights issues. Moreover, with the entry into force of the Third Optional Protocol on a communications procedure (OPIC), in April 2014, the Committee is also able to consider individual complaints alleging violations of the Convention.

As the UN treaty body mandated to interpret and monitor States Parties' compliance with the CRC, the aforementioned work of the CRC Committee is central to gaining a better understanding of States Parties' obligations under Article 7 of the Convention. To date, the child's right to acquire a nationality has yet to be the subject of a General Comment, Day of General Discussion or any individual complaints.¹ Nevertheless, the interpretation of Article 7 CRC has been addressed as part of the regular monitoring of States Parties' implementation of their Convention obligations and the subsequent "**Concluding Observations and Recommendations**" issued to States Parties by the Committee.

How has the Committee addressed the child's right to nationality?

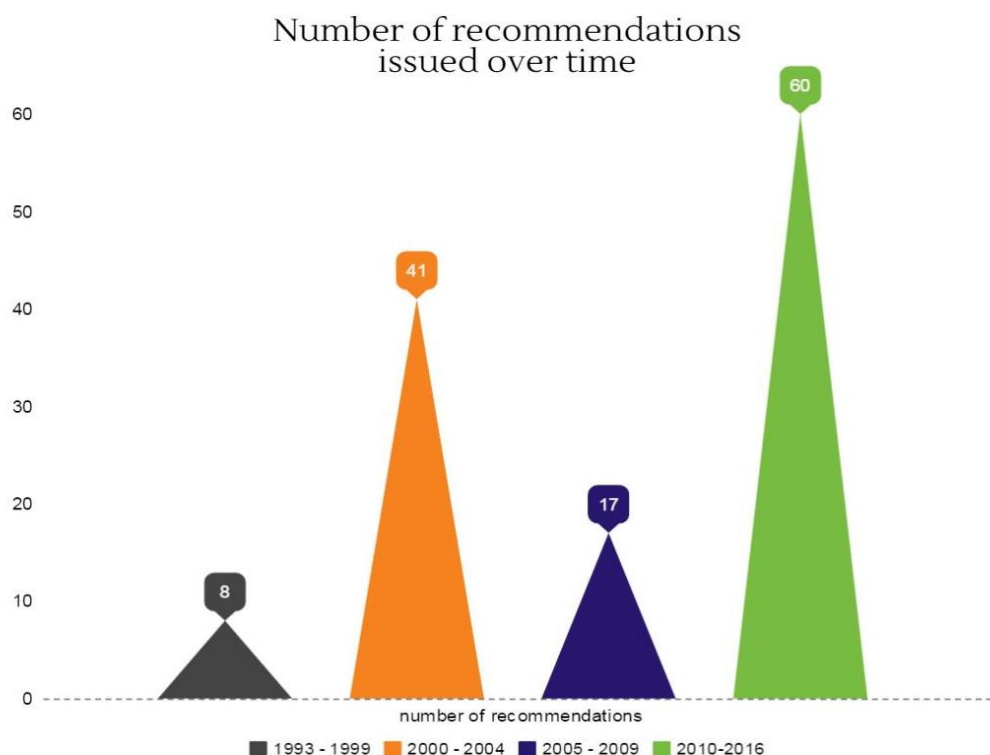
In the 23 years of Committee reviews of State Party reports (until mid-2016), the Committee issued 126 recommendations on the content of children's right to acquire a nationality. An additional 226 recommendations have been made on measures of implementation that States should take in order to improve the protection of children's right to acquire a nationality. In total, 89 different States have received relevant recommendations from the Committee.

¹ Note that the Human Rights Committee has touched on the content of children's right to a nationality in the interpretation of Article 24 of the ICCPR. It has emphasised the particular importance of preventing statelessness and "*ensuring that every child has a nationality when he is born*". See Human Rights Committee, *General Comment 17: Article 24 (Rights of the Child)*, 7 April 1989, para 8. Available at: <http://www.refworld.org/docid/45139b464.html>.



Growing engagement over time

The Committee's attention to the issue of childhood statelessness and the right of every child to acquire a nationality has increased over the past two decades. The number of recommendations issued in the past five years is seven times higher to the number issued in the 1990s.²



As the graph shows, this growth in attention to the issue has not always been consistent. Even if translated into a percentage of the total number of State Party reviews for which Concluding Observations were issued, there is evidence of a slight dip during the period of 2005-2009. How much attention is paid by the Committee to the issue in any given period will necessarily also be influenced, to some degree, by which

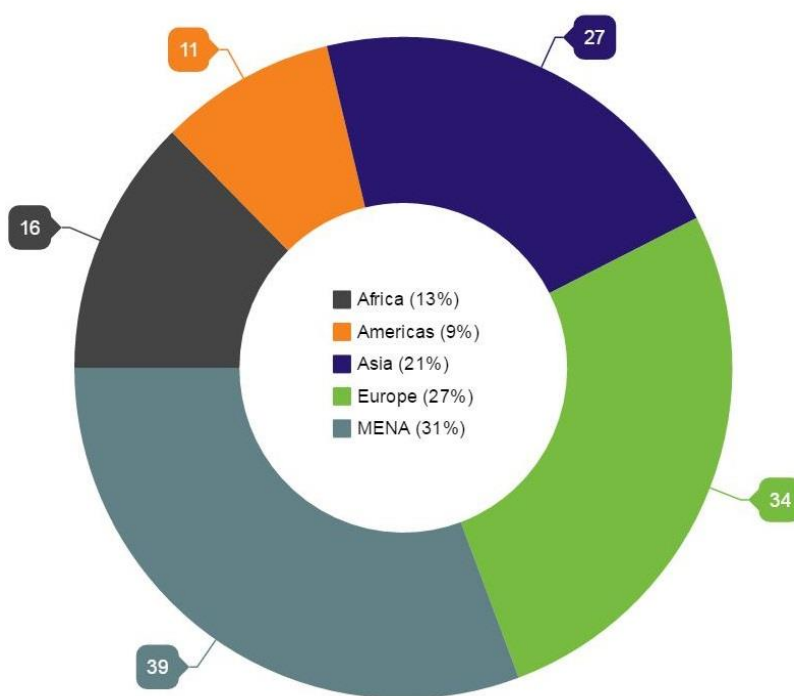
² From 8 recommendations in the 1990s to 59 recommendations in period 2010-2015.

States Parties have been reviewed during that time (the problem of childhood statelessness, for instance, is more acute in some countries than others), as well as the scope and quality of information presented to the Committee by States, civil society and UN actors. Despite this improvement, there still remains significant room for growth in terms of the attention given to the promotion of children's right to acquire a nationality. Even in the most recent five year period, only 59 of the 127 States that were reviewed received relevant recommendations whereas problems in respect of children's right to a nationality are present in the majority of countries worldwide.

Differences in engagement by region

The Committee has issued the highest number of recommendations on children's right to acquire a nationality to States in the Middle East and North Africa (39) and Europe (34), followed by the Asia and Pacific region (27). The following chart shows the overall distribution of the Committee's recommendations relating to the content of Article 7 CRC by region over the last 23 years:

Number of recommendations by region



As highlighted in respect of the trends over time, this is not necessarily – or solely – a reflection of the relative scope of problems in different regions, it is also influenced by the number of times States from a particular region have come up for review. Indeed, the picture is rather different if the number of occasions on which relevant recommendations have been made is expressed as a percentage of how many States' reviews have occurred for countries in the region:

- Middle East and North Africa: 30 of 46 State reviews (65%)
- Asia and the Pacific: 23 of 97 State reviews (24%)
- Europe: 28 of 134 State reviews (21%)
- Africa: 15 of 99 State reviews (15%)
- Americas: 8 of 91 State reviews (9%)

Seen in this light, the Committee has paid far more structural attention to issues relating to children's enjoyment of the right to acquire a nationality in the Middle East and North Africa (MENA) than any other region. While there are, indeed, significant challenges in that region – in particular in respect of gender discrimination in nationality law, which is the most common issue to be raised by the Committee in relation to MENA countries – there are also considerable challenges elsewhere. Such overall trends demonstrate that although the Committee has commented on relevant issues in all regions and across a range of themes, it has not yet been able to achieve consistency in addressing recommendations on the same challenges to all relevant States. There may be different reasons for this, but it demonstrates the need both for there to be greater awareness among all stakeholders of the issues which the Committee considers to fall within the scope of Article 7 CRC and greater capacity of these stakeholders to engage with the Committee on problems that occur in respect of these issues, across different countries.

What substantive recommendations has the Committee made?

To date, the Committee has made recommendations on the content of the child's right to acquire a nationality across a number of themes, clarifying the nature of States Parties' obligations under the CRC as follows:

Access to nationality for stateless children born in the State Party's territory:

The CRC does not specify which rules States should apply in order to fulfil their obligations under Article 7, nor does it oblige States Parties to grant nationality to every child born on the territory. It does, however, oblige States to guarantee access to nationality for children born in their territory

who would otherwise be stateless. The Committee therefore has assessed and commented on whether the provisions of national law related to the right to nationality of children born in the territory, and their implementation, create exceptions based on: the parents' or child's legal status (including residency); the parents' sex, race, religion or ethnicity, social origin, status or other characteristic; the parents' past opinions or activities (e.g. former military personnel); the child belonging to a(n) (ethnic) minority group; and the child being born to (irregular) migrants or (former) refugees.

The Committee urges the State Party to further review and enact legislation in order to ensure that all children who are at risk of becoming stateless... especially children of indigenous and minority groups, and children of migrant workers, refugees and asylum-seekers are provided with access to Thai nationality.

CRC Concluding Observations: Thailand
CRC/C/THA/CO/3-4

The Committee strongly urges the State Party to review the provisions of the Act on Determination of Nationality of Children Born into Marriages of Iranian Women with Men of Foreign Nationality amending the Civil Code and ensure that all children who are born to Iranian mothers, including children born out of wedlock, are entitled to Iranian citizenship on the same conditions as children born to Iranian fathers.

CRC Concluding Observations: Iran
CRC/C/IRN/CO/3-4

Prohibition of gender and other forms of discrimination:

The principle of non-discrimination, one of the Guiding Principles of the CRC, informs the scope and content of Article 7; particularly, when assessing if States ensure equal rights for all parents to pass their nationality on to their children, without distinction based on gender, ethnicity, race, religion, disability or marital status of parents. This prohibition includes the creation of distinct categories of citizenship which result in discrimination, stigmatization, or

the denial of certain rights. The Committee has therefore assessed and commented on whether domestic

laws, policies and practices restrict a child's access to the parents' nationality in circumstances including: the child being born out of wedlock; the child's mother or father being married to a non-national; and the child being born abroad.

Ensuring universal birth registration:

Birth registration provides official evidence of key facts relating to a child's birth, including birthplace and parentage, without which the child may face difficulties proving his/her entitlement to nationality under the law and may not be considered as a national by the State. The right to birth registration is particularly important for disadvantaged groups that are more likely to be affected by statelessness such as, refugee and asylum-seeking children, ethnic minority children, children born out of wedlock and children born abroad. The Committee has therefore assessed and commented on States overcoming structural barriers to achieve universal birth registration, ensuring it is free and accessible to everyone born in the territory, regardless of: the parent's residence status; whether the parents are foreign nationals; whether the parents are themselves undocumented or stateless.

The Committee recommends that the State Party ensure that all children born in Indonesia are registered and issued birth certificates, regardless of their nationality, religion and status at birth, and that birth registration is facilitated and free of charge everywhere and under all circumstances.

CRC Concluding Observations: Indonesia
CRC/C/IDN/CO/3-4

Other themes:

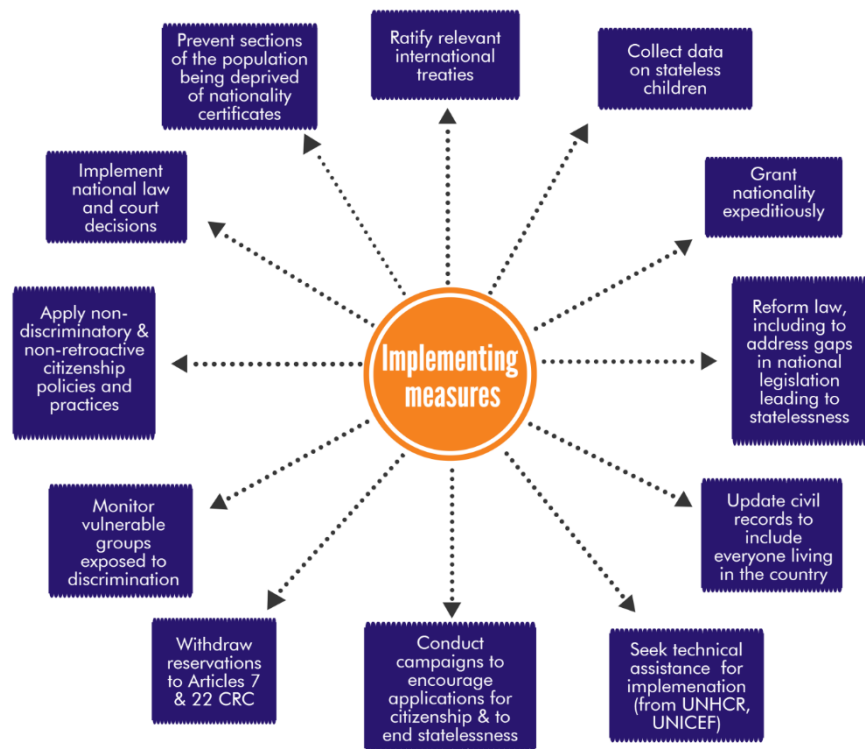
The Committee has also made recommendations on the following;

- a) *Foundlings*: States should put in place specific safeguards and necessary measures to ensure no child found abandoned in the territory is left stateless.
- b) *Children born abroad*: States should remove obstacles to accessing nationality for children born to nationals abroad.
- c) *Adoption*: States should regulate acquisition and loss of nationality in cases of international adoption such that statelessness is avoided.
- d) *Deprivation and loss of nationality*: States should not deprive any child of his/her nationality on any ground; regardless of the status of the child's parents and any loss or deprivation of their nationality.
- e) *Right to a remedy*: States should ensure access to legal remedies for the restoration of nationality in cases of arbitrary deprivation, and for adequate and fair compensation to be paid.

It is important to note, that the Committee has not (fully) addressed all themes relevant to the issue. Issues that could benefit from more in depth attention include that of children born in prisons or other forms of detention, who are particularly vulnerable to statelessness, the risk of statelessness in international surrogacy and discrimination in access to nationality on grounds of disability.

What implementing measures has the Committee recommended?

In monitoring States Parties' fulfilment of their obligations under the CRC, the Committee not only helps to further interpret the content of CRC norms and apply these in their assessment of the challenges faced in a particular State, it also prescribes a range of "General Measures of Implementation" that States are expected to develop. This is in accordance with Article 4 of the Convention which requires States to "*undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention*".



These **General Measures of Implementation** are further crystallized in General Comment 5 of the Committee on the Rights of the Child, and include:³

- **National plans and strategies for implementation of the CRC**
- **National mechanisms for coordinating implementation**
- **Law reform and judicial enforcement of the rights of children**
- **Awareness-raising, training and education**
- **Resource allocation and "making children visible in budgets"**
- **Monitoring**
- **Data Collection**
- **Statutory children's rights institutions**
- **Participation of civil society in implementation of the CRC**
- **International cooperation**
- **The ratification and application of other relevant international standards**

The Committee has been very active in recommending that States take various implementing measures in respect of Article 7 CRC, the most common of which being the last on the above list: the ratification and application of other relevant international standards. Nevertheless, given the significant challenges that are faced around the world in realising children's right to acquire a nationality and ending childhood statelessness, there is also real scope for the further, structural promotion of General Measures of Implementation on this issue. In particular, it must be noted that the Committee has not yet made relevant recommendations on **resource allocation**, **participation of civil society** and **international cooperation**.

³ CRC Committee, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003. Available at: http://www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc.