Realising the right of every child to acquire a nationality:

An analysis of the work of the Committee on the Rights of the Child

POLICY PAPER September 2015
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A Factsheet and Analytical Database on Children’s Right to a Nationality under the CRC accompany this Policy Paper and are available at www.InstituteSI.org/children.

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INSTITUTE ON STATELESSNESS AND INCLUSION: DRAFT POLICY PAPER*

Realising the right of every child to acquire a nationality:

An analysis of the work of the Committee on the Rights of the Child

* Based on feedback received from CRC Committee members, organisations active in the field of statelessness and other stakeholders, this draft Policy Paper will be updated and re-published in its final version later in 2015.
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1. Introduction

Article 7 of the Convention on the Rights of the Child (CRC) obliges states to realise every child’s right to acquire a nationality. Even though most human rights should be enjoyed by all persons, regardless of whether they have a nationality or not, in our modern world, nationality often operates as a legal or practical gateway to the enjoyment of other rights. The realisation of article 7 is therefore fundamental to children’s ability to exercise many of the further rights provided for by the CRC.

Where a child lacks a nationality, i.e. is stateless, this creates a situation of severe disadvantage and vulnerability. Statelessness undermines the enjoyment of childhood and the child’s opportunity to develop to his or her full potential. Many stateless children are excluded from the benefits of education and are denied equal access to other rights. Stateless children and their families are often trapped in poverty and grow up knowing only discrimination and marginalisation. For this reason, article 7 CRC not only affirms the right of every child to acquire a nationality, it also goes on to require states to ensure, in the implementation of this right, that children are not left stateless.

In spite of the clear prescription, in the most widely ratified UN convention, that childhood statelessness be avoided, it remains a serious challenge. Today, millions of children around the world are stateless. Moreover, the United Nations High Commissioner for Refugees (UNHCR) estimates that a child is still born stateless every ten minutes.

Further effort is evidently needed to ensure that the right to a nationality is realised for all children. The CRC has a central role to play in achieving this, and with it, the UN Committee on the Rights of the Child (CRC Committee). Over the course of the 22 years in which this body of experts has monitored state parties’ performance in respect of their obligations under the CRC, it has made significant strides in giving further content to “the right to acquire a nationality” by issuing a multitude of recommendations to states on this issue. However, to date, the CRC Committee’s elaboration of how to realise children’s right to a nationality remains dispersed across Concluding Observations to state parties’ reports. There is no General Comment or other single document in which this critical and authoritative guidance has been drawn together and further enhanced. As a result, there is a lack of understanding and awareness of the content of state parties’ obligations under article 7 CRC, which reduces the impact of this core UN human rights instrument in achieving the avoidance of childhood statelessness.

To fill this gap and shed light on how article 7 and related CRC provisions have been interpreted, the Institute on Statelessness and Inclusion has developed a comprehensive analytical database of relevant recommendations made by the CRC Committee. Drawing on the database and other relevant sources, this Policy Paper provides an insight into the CRC Committee’s understanding of the content of children’s right to acquire a nationality, as well as the specific measures of implementation that state parties are expected to undertake to realise this right. The paper also offers some reflections on how the role of the CRC and its Committee can be strengthened to further complement global efforts to reduce and ultimately eradicate childhood statelessness.

1 Barring for example, the right to vote or seek public office.
2 A stateless person is defined under international law as “a person who is not considered as a national of any state under the operation of its law”. Article 1, 1954 Convention relating to the Status of Stateless Persons.
4 Ibid.
5 The database has been made publicly available and can be accessed via http://www.InstituteSI.org/children, along with an explanation as to how the database has been structured and how various data can be extracted from it.
2. The right of every child to a nationality under international law

The Universal Declaration of Human Rights recognises the right to a nationality in its article 15. This right is reaffirmed across many core UN human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR article 24), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD article 5), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW article 9), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW article 29) and the Convention on the Rights of Persons with Disabilities (CRPD article 18).

The right to a nationality is also reaffirmed in article 7 CRC, which pays particular attention to the avoidance of childhood statelessness, setting out that:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights 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.

Moreover, in accordance with article 8 CRC, “states parties undertake to respect the right of the child to preserve his or her identity, including nationality [...] without unlawful interference” and that “where the child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity”.

Protecting the rights of stateless children under the CRC and ICCPR

Despite the recognition of the right to acquire a nationality as a universal right of every child, millions of children around the world remain stateless today and new cases continue to emerge. As mentioned in the introduction to this paper, statelessness has a detrimental impact on children, often obstructing their enjoyment of other rights. Nevertheless, it is important to recognise that human rights, including children’s rights, are generally not contingent on the possession of a nationality. Under the CRC, state parties obligations “apply to each child within the State’s territory and to all children subject to its jurisdiction [and] the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness”.

In its Concluding Observations in respect of state party reports, the CRC Committee has therefore not only issued recommendations on the implementation of children’s right to acquire a nationality, but also on the fulfilment of other rights for stateless children. For instance, in relation to the right to healthcare, the CRC Committee concluded the following on Kuwait: “The Committee is seriously concerned that Bidooon [stateless] families continue to face obstacles that, in many instances, result in their being deprived of access to adequate health care, including post-surgery rehabilitation treatment.

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6 Human Rights Committee, General Comment 15: The position of aliens under the Covenant, 11 April 1986, para. 1; and General Comment 31: Nature of the General Legal Obligations imposed on States Parties to the Covenant, 26 May 2004, para. 10.
7 Emphasis added. CRC Committee, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, para. 12.
8 See section 3.
In the light of its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee urges the State party to take immediate measures to ensure that all Bidoon [stateless] children receive without delay all medical care and treatment required by their health condition. The question of access to rights for stateless children, however, is beyond the scope of the present policy paper and therefore such recommendations have not been included in the analysis presented.

Alongside the core UN human rights treaties, numerous other international instruments also recognise the right of every child to a nationality and provide for the avoidance of statelessness among children. Central among these are the 1961 Convention on the Reduction of Statelessness (articles 1-4) and a number of regional conventions, such as the American Convention on Human Rights (article 20), the African Charter on the Rights and Welfare of Children (article 6), the European Convention on Nationality (article 6) and the Covenant on the Rights of the Child in Islam (article 7). The right of every child to a nationality has also been recognised and further elaborated through the decisions of regional human rights courts and committees, including in the Inter-American Court of Human Rights case of *Yean and Bostico v. Dominican Republic,* the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) case of *Nubian minors v. Kenya,* and the European Court of Human Rights cases of *Genovese v. Malta* and *Mennesson v. France.* Moreover, in 2014, the ACERWC adopted a General Comment on children’s right to a name and nationality under article 6 of the African Charter, outlining how this right is to be interpreted and implemented in the African region. At the UN level, further guidance can also be found on the content of norms relating to children’s right to a nationality and the avoidance of childhood statelessness in a number of resolutions adopted by the UN Human Rights Council and reports issued by the UN Secretary-General, as well as in the Guidelines issued by UNHCR on the interpretation of the relevant provisions of the 1961 statelessness convention. Finally, the Universal Periodic Review (UPR) provides an opportunity for stakeholders to make submissions on the human rights performance of every state in the world and for states to make recommendations to states under review in four-year cycles. The child’s right to a nationality and the consequences of being denied this right is increasingly being taken up in the UPR process.

While the CRC is an autonomous instrument, it sits within this broader body of international and regional standards and mechanisms relating to children’s right to a nationality. As such, and particularly given the almost universal ratification of the Convention, the norms and principles contained within the CRC inform the interpretation of these other standards and the recommendations made by these mechanisms. Consequently, by further clarifying and expanding the normative content on the right of every child to acquire a nationality, the CRC Committee can positively influence the work of these other mechanisms. In the same vein, the work of the CRC Committee in interpreting article 7 CRC may equally draw on the broader normative development on the right to nationality and

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9 CRC/C/KWT/CO/2
14 Available at: http://acerwc.org/?wpdmdl=8606.
avoidance of childhood statelessness. Therefore, where relevant, this Policy Paper makes further reference to some of the above norms and interpretative documents in respect of particular issues discussed.

Lastly, before proceeding to discuss the role of the CRC Committee and exploring its interpretation of article 7 CRC, it is important to note the wider international context in which this Policy Paper was developed. In late 2014, UNHCR launched a global campaign to end statelessness within the next decade. One of the central components of the Action Plan that UNHCR has outlined is to ensure that no child is born stateless. Over the past year, this goal has garnered key support of government and civil society in different regional fora, including through the Brazil Declaration and Plan of Action agreed by Latin American and Caribbean states, the Abidjan Declaration endorsed by ECOWAS Heads of State, the Regional Action Framework adopted at a ministerial conference on Civil Registration and Vital Statistics in Asia and the Pacific, and the Action Statement agreed at the European Network on Statelessness’ regional campaign conference None of Europe’s children should be stateless. In light of these renewed commitments to and the broader trend towards increased engagement on addressing (childhood) statelessness, this Policy Paper provides an analysis of the state-of-play in respect of the role of the human rights treaty body with the furthest reach, in supporting and strengthening efforts to realise the right to a nationality for all children globally.

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18 Available at: http://www.refworld.org/docid/5487065b4.html
19 Available at: http://www.refworld.org/docid/54f588df4.html
3. Interpreting article 7 CRC

The CRC Committee is the body of 18 independent experts that monitors the implementation of the CRC and its optional protocols by state 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 CRC 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 complaints procedure (OPIC), in April 2014, the CRC Committee is also able to consider individual complaints alleging violations of the convention.

As the UN treaty body mandated to interpret and monitor the CRC, the aforementioned work of the CRC Committee is central to gaining a better understanding of state 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 of any individual complaints. Nevertheless, the interpretation of article 7 CRC has been addressed as part of the regular monitoring of state parties’ implementation of their convention obligations and the “Concluding Observations” issued.

State party reporting under the CRC

As shown in the process-diagram below, all state parties are obliged to submit an initial report to the Committee two years after acceding to the Convention, and subsequent periodic reports every five years.23

Following the consideration of state party reports, the CRC Committee adopts “Concluding Observations” in which it points out positive achievements and raises concerns about any issues arising in the country in respect of the rights protected under the CRC. The CRC Committee also makes recommendations on how these concerns are to be addressed and compliance with the

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22 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.

convention can be improved. It is these recommendations which have been analysed in the database which informs this report.

In interpreting the content of the rights protected under the CRC, the CRC Committee gives particular consideration to the “Guiding Principles” that inform the implementation of all rights in the convention. The Guiding Principles that are cross-cutting in the CRC are:

- Non-discrimination (article 2)
- Best interests of the child (article 3)
- Right to life, survival and development (article 6)
- Respect for the views of the child (article 12)

All of these Guiding Principles are relevant to the problem of childhood statelessness and the protection of children’s right to a nationality. However, as will be seen in the exploration of CRC Committee recommendations relating to the content of children’s right to a nationality in section 5 of this Policy Paper, the principle of non-discrimination has had a particularly strong influence in informing the interpretation of state parties’ obligations. Indeed, a number of the relevant recommendations uncovered were made in respect of improving the application of article 2, rather than article 7, of the CRC. The principle of the best interests of the child has also been explicitly referenced by the CRC Committee within recommendations on nationality. Nevertheless, this principle and its influence on the scope and content of children’s right to acquire a nationality has received only limited attention by the CRC Committee to date, especially as compared to the central role it has played in relevant regional jurisprudence and in the ACERWC General Comment on children’s right to a name and nationality under article 6 of the African Charter on the Rights and Welfare of the Child. There remains scope for the CRC Committee to further elucidate the significance and impact of the Guiding Principles of the CRC on the interpretation and application of article 7 of the convention.

In monitoring state parties’ fulfilment of their obligations under the CRC, the CRC 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:

- National plans and strategies for implementation of the CRC
- National mechanisms for coordination implementation

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25 For instance, CRC/C/QAT/CO/2.
26 For instance, CRC/C/MLI/CO/2.
28 CRC Committee, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, 27 November 2003.
As will be discussed in section 6 of this Policy Paper, the CRC 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. There is also greater scope to relate general measures to specific national, regional and global developments and efforts to end statelessness, including those mentioned in section 2 above.
4. General trends in CRC Committee recommendations on the right to acquire a nationality

During the 22 years that the CRC Committee has been reviewing state party reports, starting in 1993, it adopted 443 Concluding Observations. In 94 of these (one in every five Concluding Observations), the CRC Committee has issued recommendations interpreting the content of children’s right to acquire a nationality. In some instances, several relevant recommendations were made in respect of a single state under review, such that a total of 111 recommendations on the content of children’s right to acquire a nationality have been made to date.

Furthermore, 136 Concluding Observations contain recommendations on measures of implementation that states should take in order to improve the protection of children’s right to acquire a nationality (equivalent to 30% of Concluding Observations). Again, some states were issued multiple recommendations on implementing measures within the Concluding Observations adopted, such that a total of 209 recommendations address such matters.

This section of the Policy Paper provides a further analysis of the general trends that can be seen in the way in which the CRC Committee has addressed the issue of the right to acquire a nationality over the course of its work.

a. Growing engagement over time

The CRC Committee’s attention towards 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 four times higher to the number issued in the 1990s.

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29 Note that the Analytical Database on which this report is based includes all Concluding Observations adopted up to and including the January 2015 session of the CRC Committee.

30 From 10 recommendations in the 1990s to 43 recommendations in period 2010-2015.
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 2005-2009.31 How much attention is paid by the CRC Committee to the issue in any given period will necessarily also be influenced, to some degree, by which state parties have been reviewed during that time (the problem of childhood statelessness, for instance, is more acute in some countries than others). Nevertheless, it is important to ensure that the issue does not lose visibility in the CRC Committee’s work, regardless of changes in the composition of the body of experts that comprises the Committee. Relevant issues should consistently be brought before and explored by the CRC Committee as part of its overall review of the state of children’s rights in a state party. Moreover, there also remains significant room for growth in terms of the attention given to the promotion of children’s right to acquire a nationality as even in the most recent period, less than half of states reviewed (42%) receive relevant recommendations whereas problems in respect of children’s right to a nationality are present in the majority of countries worldwide.

b. Greater substance and detail of review and recommendations

During the 1990s, recommendations issued by the CRC Committee had the tendency to be inexplicit, mainly focusing on requests for more information about national legislation and general recommendations for nationality laws to be in conformity with the principles and provisions of the CRC. See, for instance, the following examples relating to how the CRC Committee addressed the problem of gender discrimination in nationality law in some of its early Concluding Observations:

1996: “The Committee particularly recommends that legislative measures be adopted with a view to […] preventing any risk of statelessness for a child born to a Korean mother”.32

1998: “The Committee is “concerned that in the light of Libyan legislation regarding citizenship, decisions related to the acquisition of nationality are based only on the status of the father” then recommends “The Committee also recommends that domestic legislation be reformed to guarantee the right to a nationality to every child in the light of article 7 of the Convention”.”33

Over time, the level of detail and sophistication increased in both the review of issues raised in respect of states (the CRC Committee’s summing up of challenges in the Concluding Observations) and in the recommendations adopted. This is illustrated by the following example of a more recent state party review, dealing with the same issues as those covered in the excerpts above:

2013: “The Committee urges the State party to abide by its obligation to ensure that all children within the State party’s jurisdiction have the right to be registered at birth and acquire a nationality, irrespective of the child’s or his or her parents’ or legal guardians’ sex, race, religion or ethnicity, social origin or status. The Committee urges the State party to take immediate action to:

(a) Ensure gender equality in the 1959 Nationality Act in order for all children born to a Kuwaiti mother and non-Kuwaiti father to automatically acquire their mother’s nationality;

(b) Ensure that identity documents no longer permit the identification of children as being of unknown parentage; and

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31 As a factor of the total number of states reviewed in each period: 9% of states reviewed from 1993-1999 received relevant recommendations; 26% of states reviewed from 2000-2004; 22% of states reviewed from 2005-2009; 42% of states reviewed from 2010-2015.
32 CRC/C/15/Add.51.
33 CRC/C/15/Add.84.
The CRC Committee’s Concluding Observations offer guidance and instruction to governments on their obligations under the CRC and what is expected of them to enhance their performance in this regard. They also serve as the benchmark against which civil society and other bodies involved in advocacy and support at the national level, can scrutinise, follow up on and maintain pressure on states to strengthen the human rights of children. Therefore, the more precise the CRC Committee can be in identifying problematic law, policy and practice by a state party and in recommending how this be addressed, the more effective and impactful its Concluding Observations are likely to be. It is therefore critical that the CRC Committee build on this trend towards a greater level of detail and sophistication in its recommendations on the right to acquire a nationality and that states and other relevant stakeholders provide sufficient information to the Committee on existing state practice to allow it to elaborate tailored and explicit recommendations.

c. The emergence of new areas of engagement

Over the course of the past two decades, the CRC Committee has not only issued a greater volume of recommendations and ensured that these are more specifically tailored to the national context, it has also engaged on a growing range of problems or themes. In other words, the CRC Committee has gradually elaborated on the different issues that it considers to fall within the purview of children’s right to acquire a nationality, expanding the scope of its focus and engagement as follows:

- **1993 – 1999:**
  The need to eradicate gender discrimination in nationality laws.
  Problems relating to deprivation of nationality of children.
  The prevention of statelessness among children born in the territory.

- **2000 – 2004:**
  The need to eliminate other forms of discrimination in nationality law and practice.
  The importance of birth registration in realising the right to nationality.
  The prevention of statelessness in the context of international adoption.

- **2005 – 2009:**
  The prevention of statelessness among children born to nationals abroad.

- **2010 – 2015:**
  The importance of providing for a remedy, including restoration of nationality.
  The need to prevent statelessness among foundlings.

By 2015, a total of nine themes had emerged and further details of the CRC Committee’s recommendations with respect to each of these are provided in section 5 of this Policy Paper. It is of interest to note that ensuring the right to nationality for foundlings, i.e. the most recent topic to be added to the list, was only subject to a direct recommendation by the CRC Committee for the first time.

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34 CRC/C/KWT/CO/2
in 2014. This suggests that “new” problems may continue to be brought to the attention of the CRC Committee. Indeed there are emerging challenges relating to children’s access to nationality and the avoidance of childhood statelessness which the CRC Committee has yet to address, such as preventing statelessness in the context of international commercial surrogacy or the establishment of procedures to identify stateless children (and adults) with a view to providing an appropriate remedy. It will be important to ensure that these are given due consideration such that the CRC Committee can further expand its guidance on the scope and content of obligations under article 7 CRC.

d. Differences in engagement by region

A significant advantage that the CRC holds above such instruments as the 1961 Convention on the Reduction of Statelessness and regional human rights conventions is its almost universal acceptance. This allows the CRC Committee to consider problems and make recommendations on the realisation of children’s right to acquire a nationality across all regions of the world. The following chart shows the overall distribution of the CRC Committee’s recommendations relating to the content of article 7 CRC by region over the last 22 years:

The CRC Committee has issued the highest number of recommendations on children’s right to acquire a nationality to states in Asia and the Pacific (32) and Europe (31), followed by the Middle East and North Africa (25). 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 Concluding Observations have been issued to countries from the region:

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35 This latter issue is addressed, for instance, within the ACERWC General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child. Above n14.
Middle East and North Africa: 64% of Concluding Observations
Asia and the Pacific: 25% of Concluding Observations
Europe: 20% of Concluding Observations
Africa: 14% of Concluding Observations
Americas: 8% of Concluding Observations

Seen in this light, the CRC Committee has paid far more structural attention to issues relating the children’s enjoyment of the right to acquire a nationality in the Middle East and North Africa 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 CRC Committee in relation to MENA countries – there are also considerable challenges elsewhere. As will be discussed further in subsequent sections of this paper, such overall trends demonstrate that although the CRC 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 across different 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 CRC Committee considers to fall within the scope of article 7 CRC and greater capacity of these stakeholders to engage with the CRC Committee on problems that occur in respect of these issues, across different countries.
5. The emerging content of the right to acquire a nationality

As mentioned briefly above, over the course of the last 22 years, the CRC Committee has issued a total of 111 recommendations relating to the content of the right to acquire a nationality. Within these recommendations, the CRC Committee has paid attention to nine distinct problems or themes through which it has helped to explain how article 7 CRC is to be interpreted and applied by state parties. In this section of the Policy Paper, the thematic guidance which has emerged in respect of the content of article 7 will be discussed, starting with the top-3 issues on which the CRC Committee has adopted the highest number of recommendations.

a. Gender discrimination in nationality law

One of the CRC Committee’s main concerns, as expressed in recommendations to states parties, is that gender discrimination can affect the child’s right to acquire a nationality. This has been the subject of 34 recommendations issued since 1993. As one of the Guiding Principles of the CRC, the principle of non-discrimination must inform the interpretation and application of all of the rights contained within the convention, including article 7. Thus, the CRC Committee has clarified in its recommendations to states that they have the obligation under articles 2 and 7 CRC to ensure the equal rights for men and women to pass their nationality onto their children.36 It has clearly outlined that this is also the case in the following situations:

- Child is born out of wedlock
- Child’s mother or father is married to a non-national
- Child is born abroad

A common concern that the CRC Committee has expressed in respect of children born to mixed-nationality marriages, is that children can become stateless when the father is a non-national and the mother is prohibited by law to confer her nationality onto her child.37 Explicit reference is made to the problem of statelessness by the CRC Committee in 35% of the recommendations issued on this topic. In some cases, however, the formulation of this element of the recommendation lacks further elaboration and does not provide clear guidance to states on how it can be realised:

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36 It is of interest to note that seven of the CRC Committee’s recommendations on gender equality in the enjoyment of the right to acquire a nationality (or 1 in 5), were made in respect of the review of the state parties’ performance under article 2 of the convention, rather than article 7. This includes recommendations issued to one state that upholds a reservation to article 7 CRC.

37 Whether the child will become stateless in this context depends on whether the father has a nationality and can transmit this nationality to his child and there are various scenarios in which this is problematic. See further UNHCR, Background note on Gender Equality, Nationality Laws and Statelessness, 6 March 2015, available at: http://www.refworld.org/docid/54f8369b4.html.
“In light of article 7 of the Convention, the Committee is concerned at the apparent discrimination in respect of nationality, and that a child’s name and nationality are derived solely from her/his father and not her/his mother. The Committee recommends that the State party amend its legislation so that citizenship can be passed on to children from either their father or their mother. It also encourages the State party to introduce proactive measures to prevent statelessness”.

Helpfully, in some recommendations, the CRC Committee has also urged states that have reformed their nationality law to introduce gender equality to make provision for the new rules to be invoked retroactively. This is important because it would allow children born before the amendment to the law to acquire their mother’s nationality and may help to resolve existing cases of statelessness that emerged under the constraints of the previous law:

“While welcoming the amendment to the Constitution in April 2004, allowing children to acquire citizenship by descent from their mothers, the Committee notes with concern that this amended law is applied only to children born on or after 15 May 2004 […] The Committee recommends the State party to consider granting citizenship to all children born before 2004 of [nationality] mothers”.

By clarifying that article 7 CRC, read in light of article 2, prescribes gender equality in the transmission of nationality from parent to child, the CRC Committee underscores the complementarity between this instrument and the CEDAW. Article 9(2) of the CEDAW obligates states to “grant women equal rights with men with respect to the nationality of their children”. To ensure that this issue receives structural attention and that governments are issued with appropriate and mutually reinforcing recommendations, it would be of interest for the CRC and CEDAW Committees to consider a joint review of the guidance issued to states in respect of gender discriminatory nationality laws. Moreover, given that a number of state parties to CEDAW have made reservations to its article 9, the opportunity of raising concerns in respect of gender discriminatory nationality laws in such countries through the review process before the CRC Committee ensures that this issue – of common interest to the two Committees – continues to receive the requisite attention.

In this regard, it is important to recognise that gender discrimination in nationality laws remains a serious concern worldwide. In spite of the obligations laid down in the CRC and CEDAW, there are still 27 countries that do not respect the child’s right to acquire their mother’s nationality on the same basis and terms that they would acquire their father’s nationality. All of these countries are state parties to the CRC and have received Concluding Observations from the CRC Committee. Yet, the countries listed below did not receive recommendations relating to the problem of gender discrimination in the nationality law when they came up for review:

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38 CRC/C/SGP/CO/2-3

39 Above n37. The countries are the Bahamas, Malaysia, Bahrain, Mauritania, Barbados, Nepal, Brunei Darussalam, Oman, Burundi, Qatar, Iran, Saudi Arabia, Iraq, Sierra Leone, Jordan, Somalia, Kiribati, Sudan, Kuwait, Swaziland, Lebanon, Syria, Liberia, Togo, Libya, United Arab Emirates, and Madagascar.
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These “gaps” in the recommendations issued by the CRC Committee – in some cases on several successive occasions in respect of the same country – show that there is a need to ensure that the issue is always raised by the CRC Committee as relevant states come before it for review. In order for this to happen, relevant stakeholders must be encouraged to submit information on the problematic legislation and its impact.

b. The prevention of statelessness among children born on the territory

Article 7 CRC provides the child with the right acquire a nationality, without specifying which rules states should apply in granting nationality to children. The provision does not oblige state parties to grant nationality to every child born on their territory under all circumstances, i.e. it does not prescribe universal *jus soli*. However, the CRC Committee has identified the special responsibility that state parties have with regard to the realisation of the right to acquire a nationality for children born within their borders.

A total of 27 recommendations have been issued to date on the obligation to prevent statelessness among children born on the territory. Through these recommendations, the CRC Committee has demonstrated that article 7 CRC is to be interpreted as requiring states to grant nationality to *all* otherwise stateless children born on the territory, regardless of:

- The parents’ legal status, including residence status
- The parents’ sex, race, religion or ethnicity, social origin or status
- The parents’ past opinions or activities (e.g. former military personnel)
- The child being belonging to a(n) (ethnic) minority group
- The child being born to (former) refugees

The CRC Committee has paid increasing attention to this issue over the course of its work, with 12 of the 27 recommendations being issued in the last five years. During the January 2015 review of state parties’ reports, similar recommendations were made to both Turkmenistan and Switzerland with respect to granting nationality to all stateless children born on the territory, irrespective of the legal status of their parents:

“The Committee recommends that the State party review its citizenship legislation and procedures to ensure their full compliance with international standards aimed at the prevention and reduction of statelessness and
These recommendations are of interest because they demonstrate that the CRC Committee considers this obligation to stem directly from the CRC, rather than being contingent on the state also being a party to other “relevant international instruments in this field” as referred to under article 7(2) that contain specific provisions on acquisition of nationality by children born in the territory who would otherwise be stateless. The 1961 Convention on the Reduction of Statelessness is one such instrument, prescribing this safeguard in its article 1 – yet, while Turkmenistan acceded to this convention in 2012, Switzerland has yet to do so and is not a party to any other international convention which details this particular obligation.42 Given that the 1961 statelessness convention still has a limited number of state parties, has no formal monitoring process at the international level; clarifying that this safeguard falls fully within the scope of CRC article 7 is hugely significant.

Indeed, it is of critical importance that the CRC Committee continue to call on states to recognise the right of a child to acquire the nationality of his/her country of birth if he/she would otherwise be stateless because this is one of the most effective ways to prevent intergenerational statelessness as well as to address statelessness arising from a conflict of nationality laws. Furthermore, this is a significant first step towards enhancing the rights of children of stateless refugees and migrants, in countries that deny such groups access to healthcare, education and other basic rights, on the basis that they are not nationals. There are widespread gaps in implementation of this safeguard at the level of domestic legislation and practice all around the world and these should be brought to the attention of the CRC Committee as a matter of priority and routine when it undertakes its state party reviews.

According to UNHCR, “at least 70,000 children born in the 20 major reported non-refugee statelessness situations each year are unable to acquire a nationality”.43 Yet, to date, only a small number of countries with large and intergenerational problems of statelessness have received recommendations in respect of the right to acquire a nationality for children born on the territory – among which are Thailand, Latvia, Syria, Myanmar and the Dominican Republic. Many more countries have protracted situations of statelessness within their borders, with children born into statelessness daily, such as Malaysia, Kuwait, Côte d’Ivoire and Saudi Arabia. And even more common are countries where safeguards in the nationality law to protect children born in their territory from statelessness are incomplete or entirely lacking.44 With a view to realising the goal of ending childhood statelessness by 2024,45 such problems should be addressed as a matter of urgency and the CRC Committee has a clear role to play in more closely monitoring all state parties’ international obligations in respect of realising the right to acquire a nationality for children born on their territory.

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40 CRC/C/TKM/CO/2-4.
41 CRC/C/CHE/CO/2-4.
42 This specific safeguard is also contained in article 6 of the European Convention on Nationality, article 20 of the American Convention on Human Rights and article 6 of the African Charter on the Rights and Welfare of the Child.
43 See above at n17.
44 See, for instance, the recent study by the European Network on Statelessness in Europe where less than 50% of states have adequate safeguards in this respect, ENS, No Child Should be Stateless, September 2015, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf.
45 See above at n17.
c. The importance of birth registration in realising the right to nationality

Article 7 CRC protects not only the right of every child to acquire a nationality, but also their right to birth registration. While the CRC Committee has made many recommendations to states in respect of birth registration as a stand-alone issue, it has also linked these two issues. The Committee acknowledges that not being registered at birth can prevent access to a nationality and lead to statelessness. 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.46

The CRC Committee has linked the challenges of the right to a birth registration and the right to a nationality in 13 recommendations adopted to date. In these, it urges states to make birth registration free and accessible to everyone regardless of:

- The parent’s residence status
- Whether the parents are foreign nationals
- Whether the parents are, themselves, undocumented

Importantly, the right to birth registration is especially stressed for specific 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. One of the recommendations that sets out the interrelation between birth registration and the right to acquire a nationality is as follows:

“The Committee reiterates its concern, noted in its previous concluding observations (CRC/C/XXX), that a number of the State party’s regulations have the effect of limiting the possibility to register the births of children born to parents in certain situations, among them undocumented migrants, who are unable to register the birth of their children. These regulations result in a number of unregistered children and create a situation of de jure statelessness for them.

The Committee recommends that the State party:

a. Amend its nationality and citizenship laws and regulations in accordance with the provisions of article 7 of the Convention so as to ensure the registration of all children and protect children from de jure statelessness; and


Although it is helpful that the CRC Committee has provided some guidance on the relationship between birth registration and the right to acquire a nationality, the relatively low number of recommendations focusing on this dimension of the issue mean that such guidance remains limited. Indeed, a total of 481 recommendations were issued by the Committee on the right to birth registration more generally during the period covered by the report, so the nexus with nationality is dealt with in less than 3% of cases. It is important that the interaction between these issues receive more attention and that the CRC Committee closely review the situation in those states where certain vulnerable

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46 See further UNHCR, Executive Committee Conclusion on civil registration, 17 October 2013; UN Human Rights Council, Resolution on the Right to a Nationality: Women and Children, 16 July 2012.
47 CRC/C/JPN/CO/3
groups – including those already identified by the Committee – face structural barriers in accessing birth registration so as to provide more content-guidance on this matter.48

d. Other themes addressed by the CRC Committee

Alongside the “top 3” themes which the CRC Committee has most regularly commented on with respect to the content of the child’s right to acquire a nationality,49 a number of other common issues have come to light in the analysis of the Committee’s recommendations to state parties. All of these themes are also highly significant in terms of the goal of eradicating statelessness among children.

Other forms of discrimination

In line with the Guiding Principle of non-discrimination set out in article 2 of the CRC, the CRC Committee has clarified that states must ensure equal rights among children to acquire a nationality and prohibit all forms of discrimination, including on grounds of race, disability and the marital status of parents in law and practice. For instance:

“The Committee calls upon the State party to take urgent measures to amend its Constitution and citizenship laws to eliminate discrimination on the basis of colour or racial origin.” 30

The CRC Committee has also outlined that creating different categories of citizenship, resulting in children and their parents being discriminated against, stigmatised and/or denied certain rights is also prohibited under article 7 CRC. Given that many of the most entrenched situations of statelessness around the world have been caused by race discrimination, it is important that the CRC Committee closely reviews the situation in those states with large stateless populations and makes related recommendations on the prohibition of discrimination in relation to article 7. Stakeholders must provide the Committee with relevant information in this regard.

Prevention of statelessness among children born to nationals abroad

According to CRC Committee recommendations, state parties to the CRC not only have particular obligations with respect to the prevention of statelessness among children born in their territory, but also with regard to children born to their nationals abroad. For instance:

“The Committee is concerned that children born abroad to Cuban parents who are outside the categories to transmit nationality, as provided for in article 29 of the Constitution of the State party, are at risk of being left in a stateless situation. [...] The Committee recommends that the State party take the necessary measures to ensure the right of the child to a nationality, including by reviewing and amending the national legislation in order to provide safeguards against statelessness”.

More generally, the Committee has urged state parties to remove restrictions on children born abroad acquiring their parent’s nationality. Recommendations on statelessness amongst children born abroad are still inexplicit, and mainly focus on the need for states to take ‘necessary measures to prevent statelessness’ including, enacting national legislation and accede to the 1954 Convention on the Status

48 In this regard, the CRC Committee may draw inspiration from the guidance issued by the African Committee on the Rights and Welfare of the Child on the right to a nationality, which contains significant content in respect of the role of birth registration. See ACERWC General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, above n14.
49 Together accounting for two-thirds of relevant recommendations issued by the CRC Committee to date.
50 CRC/C/LBR/CO/2-4.
51 CRC/C/CUB/CO/2.
of Stateless Persons and the 1961 Convention. Nonetheless, the issue of addressing the risk of statelessness for children born abroad has also been included in recommendations related to gender discrimination and birth registration, which have already been highlighted above.

**Deprivation / loss of nationality**

Under the CRC, children enjoy both the right to acquire a nationality (article 7) and to preserve this nationality (article 8). The CRC Committee has interpreted these norms to entail that no child shall be deprived of his/her citizenship on any ground, regardless of the status of his/her parent(s). For example:

> “The Committee expresses concern that a child’s citizenship may be renounced by the State party in the following circumstances, as referred to in paragraph 58 of the State party report (CRC/C/UKR/3-4): (a) if the child, and at least one parent, leave for permanent residence abroad and at least one parent gives up Ukrainian citizenship; and (b) when a child has acquired Ukrainian citizenship at birth and, at the time of birth, at least one of his or her parents was a foreigner or stateless person, such citizenship may be renounced at the request of either parent, regardless of the child’s place of residence. […] The Committee recommends that the State party: (a) Amend legislation so as to guarantee by law and in practice the right of the child to a nationality and not to be deprived of it on any ground and regardless of the status of his/her parents”.

In some cases, the CRC Committee recommends simply that all children are registered at birth and acquire an *irreversible* nationality without discrimination. In asserting the right of every child to preserve their nationality, regardless of the question of whether loss or deprivation leads to statelessness, the CRC Committee once again demonstrates the importance of understanding the content of state parties’ obligations under the CRC. This must be taken into account in the interpretation and application of related norms, such as those under the 1961 Convention on the Reduction of Statelessness which tolerates loss or deprivation of nationality from a child *as long as this does not lead to statelessness*. In fact, according to the CRC, any such provision for loss or deprivation of a child’s nationality would be deemed problematic.

**Right to a remedy**

Where children have been left stateless by the failure of the state to realise their right to acquire a nationality, the CRC Committee has stressed the need for States to ensure the acquisition or restoration of nationality. For instance:

> “The Committee notes that a large number of returnees from Bangladesh to northern Rakhine State have gone back to their villages of origin, but is concerned that some 850,000 Muslim residents in northern Rakhine State and large numbers of persons of Chinese or Indian descent throughout the country remain stateless, making it impossible for children of these families to benefit from the provisions and principles of the Convention. […] The Committee recommends that the State party: (a) Take the necessary measures to allow children and their families who have returned to Myanmar and who are stateless to acquire Myanmar citizenship by way of naturalization; (b) Strengthen its efforts to provide adequate assistance to internally displaced children, including their access to food, education and health, and to support the return home of internally displaced populations and their reintegration into their communities; (c) Prevent situations which force children and their families to leave Myanmar;”

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52 CRC/C/UKR/CO/3-4.
53 CRC/C/15/Add.254
(d) Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the 1954 Convention relating to the Status of Stateless Persons; and
(e) Work closely in this regard with UNHCR and UNICEF”.

The CRC Committee has also recommended that children affected by arbitrary deprivation should be compensated for the negative consequences this entails. These recommendations are important in view of the number of children currently affected by statelessness around the globe and the onus that is placed on states to provide a remedy for their situation so as to not only prevent new cases of childhood statelessness, but also end existing ones. There are many other states in which childhood statelessness is a widespread problem and where recommendations relating to a remedy and compensation would be pertinent, so this is another issue which should be raised with the CRC Committee on a more structural basis.

**Foundlings**

Unless states put specific safeguards in place to address the situation of foundlings – children found abandoned on their territory whose parents are unknown – there is a distinct risk of statelessness because of the lack of parental ties and sometimes also evidence of birthplace. Although only one recommendation has been made on this subject to date, in it the CRC Committee has clearly stressed that the right of every child to acquire a nationality also requires states to put in place effective measures to ensure that no child found abandoned should be stateless:

“...The Committee takes note of article 7 of the Citizens Decree, which stipulates that any infant found abandoned in Fiji is deemed to have been born in Fiji unless there is evidence to the contrary. However, the Committee is concerned that this stipulation might carry a risk of statelessness for children of whom it can be proven that they have not been born in Fiji, but whose nationality can nevertheless not be established. [...] The Committee recommends that the State party take all the necessary measures to avoid a child found abandoned in Fiji being stateless.”

This is an important clarification of the scope of article 7 CRC given that, according to UNHCR, “at least 29% of all States have no provision in their nationality laws to grant nationality to children of unknown origin found in their territory [and] at least 37% of all States have inadequate provisions in their nationality laws”. The above first and, to date, only recommendation directed to a state party by the CRC Committee on this issue was adopted in September 2014, so it will be important for this problem to receive more visibility and attention in future.

**Adoption**

Finally, the CRC Committee interprets article 7 CRC as obliging states to avoid statelessness among children who are adopted from abroad. In particular, the Committee has expressed concern that a child can be left stateless during the adoption process, meaning between the time of arrival and their formal adoption, as this recent example shows:

“...The Committee is further concerned about the uncertainty of the legal status of children adopted from abroad by Swiss parents during the year before the adoption process is finalized. [...] The Committee recommends that the State party: ...(c) Accelerate the assessment procedure and ensure that a child adopted from abroad is not...”

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54 CRC/C/15/Add.237.
55 CRC/C/FJI/CO/2-4.
stateless or discriminated against during the waiting period between his or her arrival in the State party and formal adoption.”  

Inter-country adoption, as well as international surrogacy arrangements, are two situations in which there can be a distinct risk of statelessness if there is a lack of coordination between the relevant nationality laws or an absence of safeguards. As the demand for such procedures looks set to increase, rather than decrease, in coming years, this is a question to which the CRC Committee is likely to need to address further attention in its review of state parties’ reports.

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56 CRC/C/CHE/CO/2-4
6. General measures of implementation relating to the right to acquire a nationality

As outlined in section 3 of this Policy Paper, state parties to the CRC are required to develop “General Measures of Implementation” to fulfil the rights set out in the convention. Such measures have to do with “making reality of the human rights of children”.\textsuperscript{57} They are the “how” rather than the “what” in terms of state parties’ obligations under the CRC.

In the recommendations issued within its Concluding Observations, the CRC Committee has outlined a range of implementing measures that states may be required to put in place – as relevant – to realise the right of every child to acquire a nationality. Indeed, 136 such recommendations have been made to date – a higher number than those which have helped to provide further guidance on the interpretation of the content of the norm itself. Some Concluding Observations outline several recommendations on implementing measures in respect of the situation in a state party under review. For instance:

\textit{“The Committee recommends, in accordance with articles 2 and 7 of the Convention, that the State party:}
\begin{itemize}
  \item[a.] \textit{Reduce the number of stateless children by, inter alia, expediting and improving the procedure of naturalization;}
  \item[b.] \textit{Improve the situation of non-citizens without legal residence permits by, among other things, simplifying and shortening the procedures for applying for residence permits;}
  \item[c.] \textit{Carry out campaigns to encourage applications with a view to reducing, as far as possible, the number of children who are stateless or illegal residents;}
  \item[d.] \textit{Take measures to eliminate discrimination against children on account of their parents’ past opinions or activities;}
  \item[e.] \textit{Ensure that all children residing on the territory of [country] enjoy all the rights under the Convention, irrespective of their citizenship or lack of it;}
  \item[f.] \textit{Accede to the Convention relating to the Status of Stateless Persons of 1954 as well as to the Convention on the Reduction of Statelessness of 1961, with a view to ensuring protection to all stateless persons in [country].} \textsuperscript{58}
\end{itemize}

By far the most common implementing measure prescribed by the CRC Committee is accession to relevant international instruments. The Committee began to make such recommendations to states on a relatively structured basis in the late 1990s and they account for over 60% of all recommendations on implementing measures. Nevertheless, as shown in the below diagram, a diversity of other measures have also been recommended by the CRC Committee, ranging from law reform to data collection and from seeking technical assistance of relevant UN agencies to conducting citizenship campaigns:

\textsuperscript{57} See above n28.
\textsuperscript{58} CRC/C/15/Add.196
These recommendations cover most areas of the General Measures of Implementation set out in General Comment 5 of the CRC Committee. However, there are three general measures of implementation deriving from this General Comment that have not yet translated into recommendations by the CRC Committee in respect of the right to acquire a nationality but which could contribute significantly to efforts to resolve childhood statelessness globally.

Firstly, the CRC Committee has not linked the right to acquire a nationality to resource allocation and making children visible in national and other budgets. Yet, this can help with realising the implementation of Article 7 CRC. General Comment No. 5 indicates: “The Committee needs to know what steps are taken at all levels of government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interest of the child as a primary consideration”. Several of the steps that states can take to improve the enjoyment of the right to acquire a nationality within their jurisdiction are low-cost, such as law reform, accession to relevant international instruments or expediting nationality procedures. Nevertheless, others will require appropriate resourcing – including such measures as data collection, monitoring of vulnerable groups,

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59 See above n28.
achieving birth registration or rolling out citizenship campaigns. States with significant stateless populations, in particular, should be encouraged to give due visibility and allocate sufficient resources to realising the right of every child to acquire a nationality.

Secondly, listed among the General Measures of Implementation referred to by the CRC Committee in its General Comment No. 5, is cooperation with civil society. It has indicated that “the State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child- and youth-led organizations and youth groups, parent and family groups, faith groups, academic institutions and professional associations”. Yet, to date, no state parties have been encouraged to explore cooperation or engage with civil society groups in the specific context of ensuring the right to acquire a nationality. This is in spite of the fact that, over the past few years, in particular, civil society initiatives aimed at preventing or resolving childhood statelessness have mushroomed around the world – at local, national and regional levels. For firm progress to be achieved in respect of the fulfilment of article 7 CRC for all children around the world, civil society must further expand its engagement and states must create further space for cooperation on activities to promote access to a nationality for stateless children.

Finally, the Committee has not referred in its recommendations to state parties to the need for international cooperation as an implementing measure that can further the right of every child to acquire a nationality. General Comment No. 5 explains that “when States ratify the Convention on the Rights of the Child, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation”. States therefore have an obligation to promote the right of every child to acquire a nationality, wherever they may be born. States should be encouraged to increase international cooperation and action on this issue, including through actively using the Universal Periodic Review process and other UN mechanisms; supporting international and regional campaigns such as the Global campaign for equal nationality rights and the UNHCR led campaign to end statelessness by 2024 and the European campaign to address childhood statelessness; and through their bilateral engagement with other states.

Thus, while the CRC Committee has already been active in prescribing a variety of implementing measures in respect of article 7 CRC, it would be of interest for the “gaps” identified above to be given due reflection and for recommendations to be considered on these points as well, where relevant, in the review of state parties’ performance. Moreover, the CRC Committee could make greater use of its position to more regularly recommend implementing measures that address certain known, structural gaps in the response to childhood statelessness, in particular the lack of reliable data. To date, the Committee has only once explicitly recommended that a state party “collect data on stateless children”, whereas the concern it expressed in this regard about the lack of data on the number and condition of stateless children residing in the state party in fact points to a significant challenge that is shared by the majority of countries worldwide.

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60 CRC/C/BLR/CO/3-4.
7. Conclusion and recommendations

This Policy Paper was drafted as a contribution to help enhance and further the right to a nationality of all children in all states that are party to the Convention. Drawing on the Institute’s analytical database on the CRC Committee’s Concluding Observations, it explores the Committee’s recommendations both on the content of article 7 and implementing measures thereof. The paper identifies positive trends, as well as areas where there is potential to further strengthen the scope, content and implementation of this right. In this concluding section we:

- Reiterate some of the recommendations already articulated in the paper;
- Provide a checklist of issues related to the right of the child to a nationality;
- Further elaborate on the role of NGOs and other stakeholders in providing information to the Committee;
- Comment on the opportunity for the Committee to clarify certain aspects of article 7 in its joint General Comment with the CRMW; and
- Urge the Committee to consider holding a Day of Discussion, followed by a General Comment on the scope, content and implementation of article 7 CRC.

a. Recommendations to the CRC Committee

The CRC Committee is uniquely placed as the body responsible for interpreting, monitoring the implementation of and hearing individual complaints in relation to the most widely ratified human rights treaty in the world. In respect of the right of every child to acquire a nationality (which is the right to not be stateless), we are at a point in time where in addition to article 7 CRC, there are many other global, regional and even national standards and mechanisms at play. These depend on the CRC Committee for its authoritative interpretation of article 7, but have also developed their own standards and jurisprudence that may provide useful insights to the Committee on the scope of article 7. The Committee is urged to be mindful of its wide reach beyond the processes under the CRC, as well as of these parallel and complementary developments, standards and mechanisms, when clarifying the scope and content of article 7.

Of the four Guiding Principles of the CRC, “non-discrimination” has been extensively drawn on by the CRC Committee to interpret article 7. However, the focus here has been primarily on gender discrimination. Discrimination on the basis of other protected characteristics, in particular, race, ethnicity, religion, national and social origin and sexual orientation can all have a significant impact on the child’s right to acquire a nationality and the Committee is urged to further address them. Similarly, of the other three Guiding Principles, the ‘best interests of the child’ is particularly relevant and has played a significant part in the development of doctrinal guidance and jurisprudence relating to children’s right to a nationality under, for instance, regional human rights mechanisms. Furthermore, the child’s ‘right to life, survival and development’ and ‘respect for the views of the child’ can also play a role in strengthening the scope, content and implementation of article 7. Thus, there remains scope for the CRC Committee to further elucidate the significance and impact of all Guiding Principles of the CRC on the interpretation and application of article 7 of the convention.

Similarly, 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, including through relating them to specific national, regional and global developments and efforts to end statelessness.

Although the CRC 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 across different states. The Committee is urged to systematically and structurally increase the attention it gives to the child’s right to acquire a nationality in its Concluding Observations, regardless of changes in the composition of the body of experts that comprises the Committee. The volume of recommendations, the consistent reiteration of recommendations to different states that face the same challenges, and the level of detail and sophistication of recommendations on the right to acquire a nationality can be strengthened through concerted attention to the issue.

While the Committee has to date, focused on nine themes related to article 7, “new” problems may continue to be brought to the attention of the CRC Committee. Indeed there are emerging challenges relating to children’s access to nationality and the avoidance of childhood statelessness which the CRC Committee has yet to address, such as preventing statelessness in the context of international commercial surrogacy or the establishment of procedures to identify stateless children (and adults) with a view to providing an appropriate remedy. Ensuring access to nationality without discrimination on the ground of disability is another issue which has yet to receive attention from the Committee but which does arise in some states’ domestic law or practice. It will be important to ensure that these further challenges are given due consideration such that the CRC Committee can expand its guidance on the scope and content of obligations under article 7 CRC.

It would be of interest for the CRC and CEDAW Committees to consider a joint review of the guidance issued to states in respect of gender discriminatory nationality laws – an issue which features prominently in the recommendations made by the CRC Committee. Moreover, given that a number of state parties to CEDAW have made reservations to its article 9, the opportunity of raising concerns in respect of gender discriminatory nationality laws in such countries through the review process before the CRC Committee ensures that this issue – of common interest to the two Committees – continues to receive the requisite attention.

Given that many of the most entrenched situations of statelessness around their world have been caused by racial discrimination, it is critical that the CRC Committee closely reviews the situation in those states with large stateless populations and makes related recommendations on the prohibition of discrimination in relation to the implementation of article 7. The CRC Committee’s recommendations that children affected by arbitrary deprivation should be compensated are important in view of the number of children currently affected by statelessness around the globe and the onus that is placed on states to provide a remedy for their situation so as to not only prevent new cases of childhood statelessness, but also end existing ones. There are many other states in which childhood statelessness is a widespread problem and where recommendations relating to a remedy and compensation would be pertinent.

There are widespread gaps in implementation of the safeguard against statelessness at the level of domestic legislation and practice all around the world and these should be brought to the attention of the CRC Committee as a matter of priority and routine when it undertakes its state party reviews. With a view to realising the goal of ending childhood statelessness by 2024, such problems should be addressed as a matter of urgency and the CRC Committee has a clear role to play in more closely monitoring all state parties’ international obligations in respect of realising the right to acquire a
nationality for children born on their territory, particularly, where those children would otherwise be stateless.

The CRC Committee is urged to give more visibility to the right of foundlings to acquire a nationality. Furthermore, inter-country adoption, as well as international surrogacy arrangements, are two situations in which there can be a distinct risk of statelessness if there is a lack of coordination between the relevant nationality laws or an absence of safeguards. As the demand for such procedures looks set to increase in coming years, this is a question which the CRC Committee is likely to need to address further.

Although it is helpful that the CRC Committee has provided some guidance on the relationship between birth registration and the right to acquire a nationality, the relatively low number of recommendations focusing on this dimension of the issue mean that such guidance remains limited. It is important that the CRC Committee closely review the situation in those states where certain vulnerable groups – including those already identified by the Committee – face structural barriers in accessing birth registration so as to provide more content-guidance on this matter.

While the CRC Committee has already been active in prescribing a variety of implementing measures in respect of article 7 CRC, it would be of interest for the “gaps” identified in this report to be given due reflection and for recommendations to be considered on these points as well. Moreover, the CRC Committee could make greater use of its position to more regularly recommend implementing measures that address certain known, structural challenges in the response to childhood statelessness, in particular the lack of reliable data.

b. Checklist of issues

The “list of issues” which results from the CRC Committee’s pre-sessions sets out the issues that the Committee considers to be priorities for discussion, giving both the state under review the opportunity to prepare for its review and the Committee the opportunity to consider additional or updated information from the state, prior to the session. Where relevant, including questions related to article 7 in the list of issues, would strengthen the likelihood of the Committee receiving the information it requires to make robust recommendations in this regard.

As shown in this Policy Paper, the CRC Committee has already identified, through its recommendations to date, a range of different problems relating to the right to acquire a nationality as falling within the scope of article 7. On the basis of these findings and a broader contextualisation of statelessness issues, the following checklist has been elaborated to help relevant stakeholders to assess what topics should be prioritised in relation to the review of a particular state’s implementation of this article:

✔ Existing situation of statelessness: Is there a large habitually resident stateless population in the state under review? Has the state arbitrarily deprived the nationality of a community, rendering them stateless? Is there access to a remedy for persons – especially children – rendered stateless in the country?

✔ Discrimination in nationality law/practice: Are the nationality laws of the state discriminatory on the grounds of the child or the parents’ gender, race, disability, birth in or out of wedlock or any other grounds? Are the nationality laws implemented in a discriminatory manner?
Avoidance of statelessness for children born in the territory: Do the nationality laws of the state contain comprehensive safeguards against statelessness for all children born on the territory, as well as specific regulations for foundlings? Are these safeguards implemented in an effective and non-discriminatory manner; and do they provide for the expeditious granting of nationality?

Avoidance of statelessness for children born abroad: Do the nationality laws contain restrictions in the transmission of nationality to children born to nationals abroad? Are safeguards against statelessness incorporated in these rules and effectively implemented in practice?

Loss/deprivation of nationality: Does the nationality law allow children to lose or be deprived of their nationality, or for parents to renounce nationality on behalf of their children?

International adoption or surrogacy: Does the nationality law provide for the regulation of nationality in the context of international adoption or surrogacy procedures and are safeguards to prevent statelessness incorporated in these rules and effectively implemented in practice?

Birth registration for vulnerable groups: Are there challenges pertaining to access to birth registration in the state? In particular, do minority or indigenous groups, undocumented persons, (irregular) migrants, asylum seekers, refugees, stateless persons face barriers to accessing birth registration?

Reservations: Has the state made any reservations or interpretive declarations that narrow the scope of the application of article 7; or to relevant articles of other instruments (including article 9 CEDAW)?

International obligations / ratifications: Does the state have any further obligations under international or regional mechanisms, that complement its obligations under article 7 CRC? Is it fulfilling these obligations? Are there international or regional instruments which the state could ratify to strengthen its commitment to the right to acquire a nationality?

Data on childhood statelessness: Does the state collect and maintain comprehensive and disaggregated data on statelessness, birth registration and access to nationality?

Although this list is not exhaustive and other issues may also arise, the answers to these questions will give an indication of whether the state is likely to face challenge in implementing its obligations under article 7, which in turn would strengthen the argument for questions related to article 7 being included on the list of issues. The same checklist can also help NGOs and other stakeholders prepare pertinent information for submission to the CRC Committee, as outlined further below.

c. The role of NGOs in general and of the Institute in particular

NGOs and other stakeholders play a key supporting role to UN and regional human rights mechanisms, providing information, assisting with expertise and contributing to normative development. The role of NGOs in relation to the CRC and the right of every child to acquire a nationality is no different. Indeed, the Committee is reliant on NGOs to provide it with independent and credible information in relation to various aspects of article 7 as set out in the paper, and the lack of such information makes it difficult for the Committee to make in-depth recommendations to states. NGOs also play a crucial role in transmitting information, standards and interpretations of rights across mechanisms. Thus for example, CRC Committee recommendations to a given state on the lack of safeguards against statelessness, can be fed by NGOs into the UPR process, resulting in states making recommendations to that state that draw on those made by the CRC Committee.
On the right to a nationality and prevention of statelessness, the Institute is dedicated to playing an expert, catalyst and partner role vis-à-vis other NGOs and stakeholders. We will collaborate with other NGOs to ensure that credible information and analysis on the right of every child to a nationality is provided to the Committee and to other mechanisms and bodies. As evidenced by this paper and the analytical database developed by the Institute, we will also develop resources to assist both the Committee in the exercise of its mandate and other NGOs in the pursuit of their missions. We committed to sharing our expertise and resources with the Committee and other stakeholders to further clarify the scope and content of article 7 CRC and related provisions and to enhance implementation.

d. The joint General Comment of the CRC and CRMW

There are at least 1.5 million recognised stateless refugees in the world, many others forcibly displaced but not recognised as refugees, and many stateless migrants. Ensuring that statelessness does not become an intergenerational problem can be a real challenge in respect of such populations. Moreover, the context of migration can significantly increase the risk of statelessness for other children too, even if their parents hold a nationality, because they are born outside their parents’ country of nationality or to mixed-nationality couples. Restrictions in the transmission of nationality to children born abroad or conflicts of nationality laws can leave children born in a migratory situation without any nationality. Gender or racial discrimination in nationality laws considerably heightens the likelihood of such children being left stateless.

There is, therefore, a real need to clarify the scope of article 7 in relation to the children born in a migratory context. In this context, the joint General Comment of the CRC and CRMW on the rights of migrant children, is an opportunity to further clarify the scope of article 7 in respect of children born outside the country of nationality of their parents. The Committee is urged to draw on some of its existing recommendations to states on the right of every child to acquire a nationality and the particular responsibility that states have to prevent statelessness for children born in their territory or to their nationals abroad – regardless of for example, the legal or marital status of their parents – and include this much needed authoritative guidance in the upcoming General Comment.

e. Further steps in relation to article 7: a Day of Discussion and/or General Comment?

The content of this paper highlights that there already exists a rich but dispersed body of authoritative statements from the Committee, that further clarifies and elaborates on the scope and content of article 7 CRC, as well as the implementing measures that must be taken to give effect to it. It also shows that there are further gaps which must be addressed and opportunities that can be taken. With this in mind, we urge the Committee to consider taking further steps to consolidate and build on its recommendations and authoritative interpretation of article 7.

There are three particularly compelling reasons to do so:

1. As stated in the introduction, in many countries, the lack of a nationality is the basis on which children are denied basic rights including access to education, healthcare and shelter. While such violations must be addressed directly and independently of article 7, it is also important to underline that the lack of a nationality of the child is in itself a violation of the Convention and push states to implement measures to protect against this, which in turn would help
protect against other rights violations. In other words, by strengthening the implementation of article 7, the implementation of other rights in the convention also stands to benefit.

2. As mentioned in this paper, many bodies and mechanisms at national, regional and international levels look to the CRC Committee for its authoritative interpretation of the CRC, as this is influential and relevant to their work. The overlap between CRC article 7 and CEDAW article 9 is one example in many, of how the work of the CRC complements that of another treaty body or mechanism. The dispersed nature of the Committee’s comments on the right of every child to acquire a nationality, makes it difficult for other bodies to benefit from the Committee’s work. This can result in crucial recommendations not being picked up on, to the detriment of the rights of children worldwide.

3. In the past year, there has been increased global action and momentum in the field of statelessness, with the UNHCR campaigning to end statelessness by 2024, and various regional and national efforts complementing this. In all work to address statelessness, priority has been given to ending childhood statelessness and protecting children from statelessness. These efforts would benefit from the guidance that the Committee can provide in terms of the scope and content of article 7 as well as the measures that must be taken to implement it.

By consolidating and enhancing the Committees recommendations related to article 7 in one authoritative General Comment, the Committee would make a significant contribution to our collective understanding of, and efforts to give effect to the right of every child to a nationality. The Institute urges the Committee to consider doing so. Alternatively, or as a first step, the Committee is encouraged to hold a Day of Discussion on the scope, content and implementation of Article 7. The Institute offers its support to both the Day of Discussion and/or General Comment.